



INTEGRITY COMMISSION

Special Report of Investigation

Conducted into the Circumstances Surrounding Allegations of Impropriety, Irregularity and Bias Concerning Petrojam Ltd.'s 2017 Tender for Insurance Services

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INTRODUCTION

Special Report of Investigation

Conducted into the Circumstances Surrounding Allegations of Impropriety, Irregularity and Bias Concerning Petrojam Ltd.'s 2017 Tender for Insurance Services

The Government of Jamaica in 2017 passed the Integrity Commission Act, 2017, which was brought into operation on February 22, 2018 by way of publication – the Jamaica Gazette of the Integrity Commission Act, 2017 (Appointed Day) Notice dated the 7th day of March 2018.

Pursuant to Sections 1 and 5 of the Integrity Commission Act (ICA), the functions of the Office of the Contractor General (OCG) has been fully subsumed into the Integrity Commission (IC).

Sections 63(2)(b) of the ICA provides as follows:

“The Commission established under this Act may -...

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

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, on March 20, 2017, initiated an Investigation into the alleged acts of impropriety, irregularity and bias surrounding Petrojam Ltd.'s 2017 tender for insurance services, which was based on the recommendations of Eckler Consultants & Actuaries.

Eckler Consultants & Actuaries is an actuarial consulting firm approved by the Government of Jamaica.

Section 15 (1) of the Contractor-General Act provides the following:



“...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 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 an Investigation into the stated matter(s) was prompted by the receipt of a letter dated February 27, 2017 which was addressed to the OCG by Mr. Richard Burgher, Chairman, Marathon Insurance Brokers Ltd. (MIB). The stated letter indicated, *inter alia*, the following assertions that:

- (a) Eckler Consultants & Actuaries treated the insurance company in an unfair and wrongful manner as it regards its proposal for the provision of insurance services to Petrojam for the period April 1, 2017 to March 31, 2020. It is alleged that the proposal of Marathon Insurance Brokers Ltd. supported by its partner, Willis Towers Watson, **“...provided a lower price and superior coverage and is being sidelined because the Actuary has**



introduced extraneous considerations which were never requirements of the request for proposal [RFP] provided to brokers.” MIB further stated that “the RFP sets [out] very clearly the criteria for Lead underwriters...they are to provide a minimum of 10% of the required capacity and a minimum financial rating of “A” from Standard and Poor or AM Best. Our proposal met both criteria...”;

(b) “...in the long history of this tender, a single broker Fraser Fontaine Kong [FFK] has won this tender 100% of the time except for a single instance when they were automatically disqualified for submitting their bid late.”; and

(c) Longdown EIC, advisors to Petrojam, advised MIB’s correspondent broker, Willis Watson Tower, that they were reviewing the tender submissions for Petrojam, “...thereby bypassing MIB who had submitted the tender proposal.” MIB indicated that Longdown EIC “...are not approved by the Ministry of Finance to review or evaluate Government of Jamaica (GOJ) insurance tender proposals. That power, by law resides with the approved consultant actuary, in this instance Eckler Consultants.” MIB also added that “...the fact that that firm had sight of and was advising on the tender proposal is a clear breach of the tender rules. Our corresponding broker therefore notified Longdown EIC that we would respond directly to Eckler Consultants and we immediately wrote to Eckler Consultants and advised that we would accede to the request...”

MIB further stated that:

“...it is completely egregious that before the official recommendation has been issued, details of our tender have been made known to our competition and notification of their apparent success given to Marsh. We have thereby concluded that that the consultant actuary has



indeed recommended that the existing broker FFK and their corresponding overseas underwriter Marsh to be re-appointed for three years – this notwithstanding:

1. **Our proposal is millions of dollars lower in price and fees while providing superior coverage.**
2. **Our lead underwriters have met the minimum financial rating “A’, therefore the actuary should not be allowed to apply bias against them.**
3. **Lonsdown has clearly illegally participated in and influenced the evaluation of this tender.**
4. *FFK’s broker in London Marsh is confident that notwithstanding our superior proposal, their relationship with the client will allow them to prevail.*
5. **It is apparent that FFK’s correspondent broker Marsh has obtained a copy of our proposal.**
6. **The preceding position is supported by the verifiable fact that Marsh is in the London market securing additional capacity BEFORE the award is announced, an action they would NOT have under taken without being certain that their partner FFK’s bid would be successful, a clear expression of their confidence in retaining the account.”¹**

¹ Letter dated February 27, 2017 which was addressed to the OCG from Mr. Richard Burgher, Chairman, Marathon Insurance Brokers Ltd.



The OCG's Investigation sought to determine, *inter alia*, (a) the circumstances surrounding the submission of bids in relation to Petrojam Ltd.'s 2017 tender for insurance services; and (b) to ascertain whether there was bias, impropriety and/or irregularity involved in the referenced tender process.

The foregoing objectives formed the basis of the OCG's Terms of Reference which were developed in accordance with the provisions contained in Section 4 (1) and Section 15(1) (a) to (d) of the Contractor-General Act.

The Findings of the OCG's Investigations are premised primarily upon an analysis of (a) the responses and documentary evidence which were provided by the Respondents who were requisitioned by the OCG; and (b) the responses provided by the Respondents during the course of hearings.



METHODOLOGY

In the course of its Investigation, the OCG convened hearings with the following persons:

1. Mr. Richard Burgher, Chairman, Marathon Insurance Brokers Ltd. (MIB);
2. Mr. Floyd Grindley, former General Manager, Petrojam Ltd.;
3. Mr. Delroy Brown, former Chief Financial Officer, Petrojam Ltd.;
4. Mr. Leon Jarrett, Manager, Safety, Environment and Quality, Petrojam Ltd.; and
5. Mrs. Constance Hall, Principal, Eckler Consultants and Actuaries.

The OCG also issued a statutory requisition to Mr. Floyd Grindley, then General Manager, Petrojam Ltd.

A detailed review of the responses and supporting documentation was undertaken.



JURISDICTION

Detailed below is the legal basis upon which the Contractor General has enquired into the alleged acts of impropriety, irregularity and bias surrounding Petrojam Ltd.'s 2017 tender for insurance services. The OCG's decision to undertake an Investigation into this matter is predicated upon the alleged breaches of the applicable GOJ Public Sector Procurement Procedures Handbook, as it regards the aforementioned award of contract. The jurisdiction of the Contractor General, in keeping with Sections 15 (1) and 16 of the Contractor-General Act, enables the Office to enquire into the circumstances surrounding the said award of contract.

It is instructive to note that Section 2 of the Contractor-General Act provides as follows:

- *“government contract includes any licence, permit or other concession or authority issued by a public body or agreement entered into by a public body for the carrying out of building or other works or for the supply of any goods or services;”...*
- *“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 above, Petrojam Ltd. is a public body as it is jointly owned by the Petroleum Corporation of Jamaica (PCJ), a statutory body created and wholly owned by the Government of Jamaica, and PDVCaribe, a subsidiary of Petróleos de Venezuela (PDVSA). Consequently, the matters concerning the procurement process undertaken by Petrojam Ltd. is within the OCG's purview of Investigation. In particular, the OCG has sought to ascertain the level of compliance with the provisions of the applicable GOJ Public Sector



Procurement Procedures Handbook, and other relevant Legislations and/or policies governing the procurement process.



TERMS OF REFERENCE

The OCG, in its Special Investigation into the circumstances surrounding the 2017 tender for insurance services to Petrojam Ltd., primarily sought to determine, *inter alia*:

1. The circumstances surrounding the submission of bids in relation to Petrojam Ltd.'s 2017 tender for insurance services;
2. To ascertain whether there was bias, impropriety and/or irregularity involved in the process concerning Petrojam Ltd.'s 2017 tender for insurance services; and
3. To ascertain whether the provisions of the Contractor General Act, the Public Sector Procurement Regulations 2008, the GOJ Public Sector Procurement Procedures Handbook, and/or any other applicable and relevant legislation and/or policies governing the procurement process were complied with in Petrojam Ltd.'s 2017 tender for insurance services.

The specific objectives are, *inter alia*, as follows:

1. To ascertain whether there was bias, impropriety and/or irregularity involved in the process concerning Petrojam Ltd.'s 2017 tender for insurance services based upon any recommendations made by Eckler Consultants and Actuaries;
2. To determine the relationship between Petrojam Ltd. and Longdown EIC;
3. To ascertain the role Longdown EIC played in the referenced tender process;
4. To determine the veracity of the allegation that Longdown EIC reviewed “...*the tender submissions for Petrojam, thereby bypassing MIB who had submitted the tender proposal*”;



5. To ascertain the circumstances under which the bids for the provision of insurance services to Petrojam Ltd. for the period April 2017 to March 2020 were evaluated;
6. To determine the veracity of the allegation that the proposal of Marathon Insurance Brokers Ltd. “...provided a lower price and superior coverage and is being sidelined because the Actuary has introduced extraneous considerations which were never requirements of the request for proposal [RFP] provided to brokers”; and
7. To determine the veracity of the allegation that the insurance broker company, Marsh LLC, had “...sent a submission to the market in London instructing them to agree a 12 month renewal from 1 April.”



FINDINGS OF FACT

1. Petrojam Ltd. issued a Request for Proposal inviting bids for the provision of insurance services to its company for the financial year 2016/2017.
2. For the 2017 tender for the provision of insurance services to Petrojam Ltd., the company utilised the services of Longdown EIC, a consultation company which provides international insurance, risk and claim management consultancies.

Longdown EIC was contracted by Petrojam Ltd. to provide consultation services as it regards “...all aspects relating to Petrojam insurances including but not limited to renewals, claims, tenders, brokers, risk engineering, valuations, MOF interactions and business interruption continuity, all aspects of risk and the management thereof in Petrojam including but not limited to incident assessments, investigations, and good risk practise” and the “implementation of ERM in Petrojam using ISO 3100 as a basis which includes but not limited to creating policy documents and frameworks for approval, setting the risk coordinator, and managing the implementation of ERM to a point of competency of Petrojam.”

3. The role played by Longdown EIC in the 2017 tender for the provision of insurances to Petrojam Ltd. included assisting in the preparation of the Request for Proposal, attending the Broker’s briefing session and assisting with the clarification/concerns raised by the participating bidders, perusing bidders’ proposals, providing clarification and additional information to the actuary as required, participating in the meeting of the submission of the draft evaluation report, and providing an opinion on matters of concern to Petrojam Ltd.’s risk management profile.
4. The bids which were submitted in response to Petrojam Ltd.’s Request for Proposal were evaluated by Eckler Consultants & Actuaries, an independent consulting actuary firm, which thereafter made a recommendation for the award of contract to provide insurance services.



5. In the evaluation of bids for the 2017 tender for the provision of insurance services to Petrojam Ltd., Longdown EIC evaluated the insurance companies in the international market and prepared a report on their findings, which was thereafter submitted to Eckler Consultants & Actuaries to be included in the actuarial report.
6. It is the position of Eckler Consultants & Actuaries that certain evaluation criteria which were the subject of the complaint made by Marathon Insurance Brokers Ltd., was in fact the criteria in which the company was the successful bidder as they scored the most points. However, Eckler Consultants & Actuaries indicated that the company was not successful in the substantial category of a 'fronting fee' as its proposed fee was very high in comparison to those of other bidders.
7. Eckler Consultants & Actuaries recommended Fraser Fontaine & Kong as the successful bidder for the 2017 tender for the provision of insurance services to Petrojam Ltd.
8. The contract for the provision of insurance broking services to Petrojam Ltd., and which was previously awarded to Fraser Fontaine & Kong Limited, was extended for two years commencing April 1, 2017, subsequent to the approval of the NCC and the Cabinet of Jamaica.



DISCUSSION OF FINDINGS

Definition of Key Terms

For the purposes of this Investigation, the OCG deemed it prudent to define the following key terms in accordance with the 2014 GoJ Handbook of Public Procurement Procedures:

“Actuary *An actuary is defined as any accredited member of an ACTUARIAL Organization, recognized by the International Actuarial Association (IAA). An accredited member is one who has attained any of the approved designations granted by such Actuarial organizations.*

Broker *An entity registered under the Insurance Act and Regulations as an intermediary – The Broker negotiates and tries to find the buyer of insurance the best policy by comparing the merits of competing insurance companies to find the best deal for the client.*



The Broker also represents the client to the Insurer and assists the client in getting claims settled speedily. Other services provided by the Broker include assisting the policyholder in the preparation of the Specifications for insurance tenders and in getting the claims data from the Insurer.

It is important to note that the Broker does not sell insurance.

General Insurance *General Insurance or non-life insurance policies, (for example, automobile and homeowners policies), provide payments depending on the loss from a particular financial event. The classes of General Insurance Business in which a registered Insurer may engage in Jamaica are:*



- (a) *Accident Insurance Business;*
- (b) *Liability Insurance Business;*
- (c) *Marine, Aviation and Transport Insurance Business;*
- (d) *Motor Vehicle Insurance Business;*
- (e) *Property Insurance Business; and*
- (f) *Pecuniary Loss Insurance Business.*

Insurer

A company registered under the Insurance Act and Regulations to provide indemnity under an insurance contract – The Insurer undertakes the responsibility to pay the stipulated amount to the policyholder on the occurrence of the insured event.”²

² GoJ Public Sector Procurement Procedures Handbook, 2014. Volume 4.



General Procedures for the Procurement of Insurance Services in the Public Sector

In the procurement of insurance services, Procuring Entities are categorized according to their annual premium thresholds. This categorization is outlined in the table below³:

Table 1

<i>Category</i>	<i>Annual Premium Threshold (JMD)</i>
<i>A</i>	<i>Up to \$1.5 Million</i>
<i>B</i>	<i>Above \$1.5 Million to \$5 Million</i>
<i>C</i>	<i>Above \$5 Million to \$15 Million</i>
<i>D</i>	<i>Above \$15 Million to \$40 Million</i>
<i>E</i>	<i>Above \$40 Million</i>

The GoJ Public Sector Procurement Procedures Handbook (GPPH 2014) stipulates the following requirements in the procurement of general insurance services:

1. Invitations for tender should be advertised in a daily circulated national newspaper for Procuring Entities in categories C, D and E. Categories A and B are not required to advertise invitations for tender and may invite participation by utilising the Limited Tender procurement methodology. On a biannual basis, the Ministry of Finance and Planning circulates schedules of all government entities which will be going to tender to all registered and pre-qualified brokers and insurers, approved actuarial consultants, the Brokers' Association and the Insurance Association of Jamaica.⁴

³ GoJ Handbook of Public Sector Procurement Procedures. 2014. Volume 4 of 4. Page 10.

⁴ Ibid.



2. In assessing the tenders received, a tender opening exercise is conducted. In some instances, a tender briefing session and site inspection may be conducted.

As it regards the conduct of tender briefing sessions, the GPPPH 2014 provides the following provisions:

- “(a) The purpose of the Tender Briefing Session is to allow prospective Brokers to query any aspect of the portfolio to be insured, and for the Procuring Entity to answer general questions on the scope of the portfolio.*
- (b) Tender Briefings may be required for portfolios that are complex, high risk or high value. Briefing Sessions should be scheduled to allow sufficient time for prospective respondents to familiarize themselves with the Tender Documents and make arrangements to attend the session. Adequate time should also be allowed following the Briefing Session to provide respondents with the opportunity to clarify any issues with the Procuring Entity, prior to the close of tender.*
- (c) All questions and responses from the Briefing Session are to be recorded and distributed to each Bidder. Any amendment or clarification of an issue should be circulated to all the Bidders via a formal*



written addendum, without making any reference to which Bidder sought the clarification.

- (d) *In the event that a site visit is necessary a date should be set and all the Bidders invited to attend.”⁵*

In the assessment of tenders via a tender opening exercise, “...government entities are required to procure the services of one of the Actuaries on the Ministry of Finance’s approved list. By issuing invitations to those on the Ministry’s approved list, the Entity then makes a selection from the responses received based on cost-effectiveness. The appointed Actuary must be present at the tender closing and opening exercises.”⁶

*Upon completion of the tender process, “...placement will be made with the successful Broker for a period of three (3) years. Before appointment, the Brokers must sign a **contract**...The Insurer will be appointed for **one (1)** year and it is incumbent on the Holding Broker to go to the market annually to obtain the best coverage for the Procuring Entity. The Procuring Entity shall ensure that this is done and that a clause to this effect is included in the Broker’s contract.”⁷*

The OCG highlights below the procedure required for the procurement of insurance services above JMD\$40 Million:

“Category E

- 1) *Procuring Entities shall conduct a Local Competitive Bidding (LCB), the results of which are to be assessed by an approved Actuarial Consulting*

⁵ GoJ Handbook of Public Sector Procurement Procedures. 2014. Volume 4 of 4. Section 1.6. Page 17.

⁶ GoJ Handbook of Public Sector Procurement Procedures. 2014. Volume 4 of 4. Page 11.

⁷ GoJ Handbook of Public Sector Procurement Procedures. 2014. Volume 4 of 4. Page 19.



Firm and recommendations for award made to the entity and copied to the MoF. The award recommendation shall be approved by the Permanent Secretary, endorsed by the NCC and sent to MoF for comments before Cabinet gives its approval.

PROCEDURE

- 2) *At least one advertisement should be placed in a national, daily circulated newspaper a minimum of **fourteen (14) weeks** before the closing date of the tender...*
- 3) *Procuring Entities should state the level of professional indemnity that Brokers are required to have.*
- 4) *Specifications of the insurance coverage required should be prepared, in consultation with the Holding Broker and the Procuring Entity's insurance adviser, (if any)...The Claims Experience (for the three (3) – year contract period) should be prepared by the Insurer(s). Where appropriate, a Briefing Session...for prospective Bidders should be held.*
- 5) *Procuring Entities shall request quotations for one (1) Like-for-Like proposal and stipulate the number of Alternative proposals that Brokers are required to submit in their tender packages.*



- 6) *Arrangements should be made, prior to the advertisement, to have the Procuring Entity's assets assessed by an appropriate valuator/assessor, to ensure that the asset values are current. Failure to obtain correct values for the insured items may result in the application of the Average Clause, in the event of a claim.*
- 7) *A covering letter, along with the appropriate Form describing the performance of the Holding Broker for the past three (3) years should be forwarded to the Permanent Secretary, the appointed Consulting Actuary and the Procurement and Asset Policy Unit in the Ministry of Finance.*
- 8) *Letters inviting tenders/proposals, as well as guidelines for assessment, grounds for disqualification, claims experience and the Specifications, should be included in the tender package and distributed to the following:*
 - (a) *all interested pre-qualified Brokers/Insurers;*
 - (b) *the appointed Consulting Actuary;*
and
 - (c) *the Procurement and Asset Policy Unit of the MoF.*
- 9) *On the closing date (at least ten (10) weeks before the expiry of the insurance contract), at the*



*specified time (3:00 p.m.) arrangements for the receipt of the proposals/tenders should be effected. After the Opening (3:15 p.m. on the closing day), tenders should be forwarded **immediately** under **CONFIDENTIAL** cover to the appointed Consulting Actuary for assessment and recommendation.*

- 10) *A review of the Actuarial report should be carried out by the Procuring Entity and a recommendation made to the Permanent Secretary of the Portfolio Ministry. The reason(s) for the selection of the recommended Broker and the rejection of the others, should be fully provided. This is to be effected at least seven (7) weeks before the existing insurance contract's expiry date.*
- 11) *The Ministry/Procuring Entity should prepare the Permanent Secretary's comments/endorsement, as well as the Insurance Placement Transmittal Form...at least six (6) weeks before the expiry of the contract, giving detailed reasons for the selection. A summary of the Consulting Actuary's assessment and recommendations should also be attached and forwarded to the Specialist Insurance Sector Committee.*
- 12) *The Portfolio Ministry should prepare the Draft Cabinet Submission at least (6) weeks before the insurance contract's expiry date, detailing reasons for the selection.*



- 13) *A copy of the Draft Cabinet Submission should be forwarded to the Ministry of Finance five (5) weeks before the insurance contract's expiry date, for appropriate comments to be incorporated therein.*
- 14) *The Portfolio Ministry should prepare the final Cabinet Submission and forward it to the Cabinet Secretariat at least four (4) weeks before the insurance coverage is due to be renewed.*
- 15) *The Cabinet Decision should be made available at least two (2) weeks before the renewal date, and communicated to :-*
 - (a) *the Portfolio Ministry, for the information to be sent to the Procuring Entity; and*
 - (b) *the Ministry of Finance.*
- 16) *The Procuring Entity shall issue a letter of appointment to the successful Broker/Insurer and advise the other Bidders, in writing, of the result of their tenders.*

*The following are to be submitted to the Procurement and Asset Policy Unit within **twenty-one (21) days** of the insurance renewal date:*

- (a) *copies of letters of appointment /rejection of Brokers/Insurers; and*



(b) *details of the insurance placed....*”⁸

Instructions to Procuring Entities

The 2014 GPPPH highlights the following instructions to procuring entities in relation to tenders for the provision of insurance services:

- “(a) *For the sake of good order, and so as to facilitate full examination of all their insurance requirements, Procuring Entities should arrange for a common renewal date for all insurance policies. Multiple expiry dates do not facilitate the efficient management of insurance portfolios.*
- (b) *It is extremely important that Procuring Entities initiate the insurance procedure **early** so that there will be adequate time for decisions to be taken on the placement of insurance. The timeframes given in the Procedures are the minimum time periods that should be allowed, and where complex risks and/or overseas placements are involved, due consideration should be given to such matters.*
- (c) *Efforts should be made to obtain in good time, the likely totals for the annual renewal premiums for the insurance portfolio, so that the premium category may be ascertained*

⁸ GoJ Handbook of Public Sector Procurement Procedures. 2014. Volume 4 of 4. Section 1.6. Pages 21-23.



beforehand, and the required steps taken as set out in the biannual lists of Procuring Entities scheduled to go to tender.

- (d) Procuring Entities are required to assess the performance, i.e. level of professional service rendered by the Holding Broker, on an annual basis. Reports should be prepared, using the **Broker's Evaluation Form at Appendix VI**, and should form a part of the procurement record. Copies of the reports shall be sent to the Permanent Secretary under whose portfolio of the Procuring Entity falls, as well as the Consulting Actuary and the Ministry of Finance.*
- (e) Two (2) identical copies of each tender should be requested. One (1) copy shall to be sent to the Consulting Actuaries for evaluation and the other copy should be kept as part of the Procuring Entity's confidential records. All quotations should be supported by copies of signed, stamped and dated Brokers' slips or other documentary evidence of authentication. The appointed Actuary must be present at the tender closing and opening exercises.*
- (f) Tenders received should be kept under the strictest control to ensure that the utmost*



*confidentiality is maintained. **The contents of tenders should not be disclosed to any unauthorized person.***

- (g) Procuring Entities should note that the contents of the tenders and the details of the Actuarial Reports are confidential and shall not be disclosed to any unauthorized person(s). It should also be noted that it creates an unfair advantage to reveal an Alternative Proposal developed by a Bidder.*
- (h) The cost of the assessment of the tender shall be borne by the Procuring Entity.*
- (i) Procuring Entities shall ensure that all Bidders are given equal opportunity in the tendering process, for example, by insisting on strict adherence to the closing date and time for submission of tenders, and by preventing alteration to the proposals thereafter.*
- (j) Procuring Entities shall ensure that the appointed Broker signs a contract...”*

1.5.1 VALUATION OF ASSETS

Procuring Entities should ensure that valuations are done for the insurable assets, prior to issuing invitations to tender. Failure to present correct



values may result in the application of the Average Clause in the event of a claim.

1.5.2 DOCUMENTS TO BE SUBMITTED TO THE APPOINTED ACTUARY

It is important that Procuring Entities engage the services of one of the approved Actuaries prior to the closing date of the tender, and ensure that the following documents are submitted to him/her before this date:

- (a) a copy of the of the [sic] Procuring Entity's insurance Specifications for the upcoming year[†];*
- (b) details of the Claims Experience for the last three (3) years;*
- (c) a summary of the insurance placed over the past three (3) years, indicating the risks, the Insurers, and the respective annual premiums; and*
- (d) the completed Broker's Evaluation Form.[‡]*

1.5.3 SPECIALIST INSURANCE SECTOR COMMITTEE

The Specialist Insurance Sector Committee is comprised of persons with training and skills in insurance. The Ministry of Finance has responsibility for nominating persons to



this Committee, which shall host its meeting at that Ministry.

The NCC's review of the Procuring Entity's recommendations for insurance placement is facilitated through the operation of the Specialist Insurance Sector Committee. One of the primary roles of the Committee is to facilitate the speedy processing of recommendations for awards of three year contracts to suitable Brokers. Additionally, the Committee will perform the following functions, among others:

- (i) ensure that procurement procedures were adhered to;*
- (ii) where facultative placement was obtained overseas, ensure that the requisite approval was obtained;*
- (iii) determine the validity of claims from Brokers of "Blocking of the Market";*
- (iv) ensure that Brokers/Insurers recommended for appointment are in full compliance with their registration conditions; and*
- (iv) examine market conduct in relation to Insurers' response to Brokers.*



That is, submissions will be examined to ensure equitable treatment of Brokers' requests and to detect whether there is any evidence of collusion to afford preferential treatment to any one or more Brokers.

*Annual insurance premium in excess of **\$15 Million** shall be submitted to the Specialist Insurance Sector Committee for endorsement. Cabinet must approve annual premium in excess of **\$40M**. Although the Broker's contract is for three (3) years, the premium quoted by an Insurer is valid for **one (1) year**. At the end of each contract year, the Broker must return to the market to seek the best rates and terms based on the prevailing circumstances. Renewal rates are influenced by the Procuring Entity's Claims Experience and by external factors, such as reinsurance. As a result, it is not possible to forecast the amount of future premiums, or which company will be the Insurer. Procuring Entities, therefore, should **not** multiply the first year's premium to arrive at the cost for the three (3)-year contract, as this would be misleading. Furthermore, if pre-approval is granted, the Broker would have no reason to return to the market and the objective of obtaining the most competitive price would not be fulfilled.*



In the case where the first year's premium is below the threshold requiring Cabinet's approval, but in the second year the premium falls within that category, a Cabinet Note must be submitted outlining the situation.

1.5.4 NEW ENTITIES

A new entity or an entity insuring its assets for the first time should contact the Ministry of Finance for the list of Pre-qualified Brokers. The entity shall select one Broker from the Ministry of Finance/Financial Services Commission's Pre-qualified List, which will go to the insurance market to obtain the most competitive premium rates and terms. The Procuring Entity can utilize the services of one of the Actuarial firms on the MOF/FSC's approved list. After the annual premium is paid to the Broker, the entity should submit a premium summary to the Ministry of Finance on the Form attached at Appendix II. The placement will be for one (1) year, after which the entity will be required to go to tender. For thresholds above \$40M, Cabinet's approval will be required.”⁹

Instructions to Brokers

The 2014 GoJ Handbook of Public Sector Procurement Procedures highlights the following instructions to brokers in relation to tenders for the provision of insurance services:

⁹ GoJ Handbook of Public Sector Procurement Procedures. 2014. Volume 4 of 4. Section 1. Pages 13-16.



- “(a) Applications for permission regarding overseas facultative placement with unregistered Reinsurers shall be submitted in writing to the Financial Services Commission (FSC) by the Insurer/Broker, no later than seven (7) days after the notification of the award of contract. Applications should be accompanied by the required supporting documentation detailed at Appendix I. it should be noted that placement with Lloyds of London does not require FSC approval.*
- (b) Brokers seeking to place facultative reinsurance business overseas shall be registered with the Financial Services Commission as Facultative Brokers and shall do facultative placement in accordance with the Insurance Act and Regulations, 2001 and Facultative Placement guidelines published by the Financial Services Commission (FSC);.*
- (c) Brokers proposing facultative placement shall include the following information in the tender package:*
- i) Name and address of Unregistered Insurers;*



- ii) *Name of Regulators in the jurisdiction(s) in which the Unregistered Insurers are domiciled;*
- iii) *Rating received by the Unregistered Insurers, from International rating agencies (where applicable);*
- (d) *Tender proposals submitted must be complete; coverage should be proposed for the entire portfolio as requested by the Procuring Entity in its Specifications, and not only for some risks.*
- (e) *Each tender must contain a summary of the risks, as indicated at Appendix X.*
- (f) *Pre-qualified Brokers/Insurers will be required to submit with their tenders, a valid Tax Compliance Certificate (TCC) indicating that they are tax compliant at the time of tender, as well as a valid National Contracts' Commission (NCC) Certificate for the provision of insurance services.*



- (g) *The successful Broker will be required to submit proof of professional indemnity at the level prescribed by the Procuring Entity, prior to the award of contract.*¹⁰

Instructions to Insurers

The 2014 GoJ Handbook of Public Sector Procurement Procedures highlights the following instructions to insurers in relation to tenders for the provision of insurance services:

“(a) Insurers should ensure that their quotations are clear so as not to give rise to queries. They should, therefore, refrain from the following:

- i. providing different rates, discounts, or loading to Brokers for the identical risks, or failing to justify special arrangements offered exclusively to a particular Broker;*
- ii. varying the conditions indicated to different Brokers in respect of minimum/maximum participation in a risk or submitting quotations tied to the acceptance of other risks; and*

¹⁰ GoJ Handbook of Public Sector Procurement Procedures. 2014. Volume 4 of 4. Section 3.1. Pages 34-35.



- iii. *failing to state clearly or consistently, the policies to be included in a Package arrangement.*
- (b) *Insurers should indicate explicitly whether premiums are subject to a minimum value, and if so, whether they are adjustable (e.g. on subsequent declarations of insured values, stock levels, etc.).*
- (c) *Insurers should indicate explicitly how rates are to be applied, to which values, etc.*
- (d) *Insurers shall comply with proper market practice, as failure to do so will result in disqualification of their tenders. For example, adding an insignificant modification in terms or programme structure to justify quoting lower premium rates will lead to disqualification of the affected proposal.*
- (e) *Where an Insurer “No Quotes” unconditionally to Brokers, but later decides that the company is open to proposals, he must advise all Brokers. In order to facilitate the monitoring of this aspect of the tender, Brokers are requested to submit their unconditional “No Quote” Brokers’ Slips from the insurance companies with their tenders, so that the Consulting*



Actuaries will be in a position to know which companies “No Quoted” unconditionally.”¹¹

¹¹ GoJ Handbook of Public Sector Procurement Procedures. 2014. Volume 4 of 4. Section 3.2. Pages 37-38.



The Role of the Actuary in the Procurement of Insurance Services

In accordance with Section 3.4 of the GoJ Handbook of Public Sector Procurement Procedures, the role of the actuary is to “...*assess the proposals presented in response to Insurance Tender Notices extending invitations to Brokers/Insurers registered and pre-qualified by the Financial Services Commission. The Consulting Actuary also makes recommendations to the Procuring Entity for the award of insurance contract.*”¹²

Section 3.4 of the GoJ Handbook of Public Sector Procurement Procedures further stipulates the following:

“In doing the assessment, the Actuary shall:

- (a) check that Brokers and Insurers have complied with all the requirements under the guidelines outlined in this Handbook and the Insurance Act and Regulations, and where appropriate, disqualify proposals;*
- (b) ascertain if Tax Compliance Certificates have been submitted and whether they are valid;*
- (c) determine whether the proposal is complete; that is, whether coverage is proposed for all risks/items outlined in the Procuring Entity’s Specifications;*
- (d) determine if Insurers show preferential treatment to any particular Broker(s);*

¹² GoJ Handbook of Public Sector Procurement Procedures. 2014. Volume 4 of 4. Section 3.4. Page 40.



- (e) *verify if premium rates and the terms of coverage proposed by the Broker are authentic (i.e. if Brokers' Slips are signed, stamped and dated by the Insurer whose rate and terms are being proposed).*
- (f) *ascertain whether the Insurer's terms were modified in the proposals, and if so, whether the Insurer agreed to the modification and had informed the market as required; example, untying of risks previously tied by the Insurer.*
- (g) *determine if premiums calculated by the Brokers are consistent with the sums insured stated in the Specifications; and whether the premium rates are applicable to the respective risks, as quoted by the Insurer.*
- (h) *check the premiums calculated by the Brokers and make adjustments as necessary for*
 - i. sums insured inconsistent with the Specifications;*
 - ii. incorrect application of premium rates quoted by Insurer;*
 - iii. incorrect application of discounts; and*
 - iv. arithmetic errors;*



- (i) *ascertain if the Insurer's quotations and terms to Brokers are equitable in comparison to the current market rates;*
- (j) *analyze the terms of coverage under each proposal with reference to the Specifications in order to identify the advantages and disadvantages to the Procuring Entity;*
- (k) *compare proposals to determine which offers the best and/or most appropriate coverage at the most economical premium; and*
- (l) *report on any evidence or supporting documentation of attempt by Brokers/Insurers to "Block the market"¹³*

Based on the foregoing, succinctly, the role of the consulting Actuary in the procurement of insurance contracts is to assess the bid proposals presented by brokers/insurers and make recommendations to the procuring entity for the award of insurance contracts to same.

The OCG, in the course of its Investigation, observed that a contract dated November 16, 2016, was entered into between Petrojam Ltd. and Eckler Consultants & Actuaries "...to provide the Consultancy Services...". The consultancy services provided by Eckler Consultants & Actuaries were also established in the Request for Proposals¹⁴. The Request for Proposals stated, *inter alia*, the following:

¹³ GoJ Handbook of Public Sector Procurement Procedures. 2014. Volume 4 of 4. Pages 40-41.

¹⁴ Contract dated November 16, 2016, which was entered into between Petrojam Ltd. and Eckler Consultants & Actuaries "...FOR THE PROVISION OF ACTUARIAL SERVICES FOR THE PROCUREMENT OF INSURANCE SERVICES". Response dated April 26, 2014 which was addressed to the OCG from Mr. Floyd Grindley, General Manager, Petrojam Ltd.



“The role of the Consulting Actuaries is to assess the proposals presented (in response to Tender Notices for insurance services in the press extending invitations to pre-qualified registered insurance companies and brokers by the Financial Services Commission) and make recommendations to the agency for the award. In doing the assessment the actuary would have regard to the following:

1. Check

- To ascertain if Tax Compliance Certificates are submitted and if they are valid. If not submitted or submitted but expired the affected proposal will be automatically disqualified.*
- To determine if proposal is complete. That is, whether coverage is proposed for all risks/items outlined in the specification.*
- If insurers show preferential treatment to any particular Broker(s)*

2. Verify if premium rates and the terms of coverage proposed by the Broker are authentic (i.e. if brokers slips are signed, stamped and dated by the insurer whose rates and terms are being proposed).



3. *Ascertain whether insurer's terms were modified in the proposals and if so whether the insurer agreed to the modification and had informed the market where required eg. Untying of risks previously tied by the insurer.*
4. *Determine if*
 - *Premiums quoted by the Brokers are consistent with the sums insured stated in the specification and the premiums/premium rates applicable to the respective risks, as quoted by the insurer*
 - ***The insurers quotations and terms to Brokers are equitable in comparison to the current market***
5. *Analyze the terms of coverage under each proposal with reference to the specification in order to identify the advantages and disadvantages to the entity.*
6. *Compare proposals with each other to determine which offers the best and/or most*



*appropriate coverage at the most
economical premiums.”¹⁵*

¹⁵ Document on the letterhead of Petrojam Limited entitled “Provision of Insurance Broking Services **REQUEST FOR PROPOSALS**”, which was submitted to the OCG by Petrojam Ltd. on March 14, 2017. Appendix G. Page 7.



Circumstances Surrounding the Process Concerning the 2017 Tender for Insurance Services to Petrojam Ltd.

The OCG, in the course of its Investigation, sought to determine the circumstances surrounding the process concerning the tender for insurance services to Petrojam Ltd. for the period 2017 to 2020. In an effort to garner further details of the referenced tender, the OCG examined the contents of the Request for Proposals (RFP) which was prepared by Petrojam Ltd. in this regard.

The RFP indicated, *inter alia*, the following details:

“Petrojam Limited is a limited liability company, jointly owned by PDVCaribe, a subsidiary of Petroleos de Venezuela (PDVSA) and Petroleum Corporation of Jamaica, a statutory body created and wholly owned by the Government of Jamaica. The company’s core business is the use of a hydro-skimming process to refine crude oil into finished products (diesel oil, gasoline, asphalt, kerosene, LPG, etc)...

Petrojam Limited invites proposals/bids from Brokers and Insurance companies that are pre-qualified with the Financial Services Commission (FSC) and registered with the National Contacts [sic] Commission (NCC) to provide insurance services to Petrojam Limited and its subsidiaries/affiliated companies. The period of agreement will be valid for three (3) years commencing 1st April 2017.

Cover is currently placed and required for the following classes of insurances:



*Property Damage including Machinery
Breakdown/Business Interruption/Extra Expense
Sabotage & Terrorism
Comprehensive General Liability
Marine Cargo
Computer All Risks
Employer's Liability
Loss of Money
Fidelity Guarantee
Private Motor Comprehensive
Private Commercial Motor Comprehensive
Motor Contingent Liability... ”¹⁶*

The Involvement of Longdown EIC in the 2017 Tender for Insurance Services to Petrojam Ltd.

Longdown EIC Risk Consulting Ltd. is a consultation company which provides advice on international insurance, risk and claim management consultancies and operates from offices in Canada, South Africa and the United Kingdom¹⁷. Longdown EIC “...helps its clients review and manage their complex risk and insurance programmes from an objective, independent and strategic perspective”¹⁸ and offers “...a fresh, independent approach with the ability and expertise to probe into complex issues to ensure that the risks of...clients are properly addressed.”¹⁹

¹⁶ Document on the letterhead of Petrojam Limited entitled “Provision of Insurance Broking Services **REQUEST FOR PROPOSALS**”, which was submitted to the OCG by Petrojam Ltd. on March 14, 2017. INTRODUCTION. Page 3.

¹⁷ Longdown EIC Risk Consulting accessed at <http://www.longdowneic.com/about.php> on November 16, 2017.

¹⁸ Ibid.

¹⁹ Ibid.



The consultation company also seeks to “...ensure that the broadest and most cost-effective protection and mitigation is established through a combination of risk retention and transfer.”²⁰ Additionally, Longdown EIC “...will then actively manage risk and insurance programmes to ensure they remain adequate as the company evolves with time.”²¹

Further, “...in the event of a claim, Longdown EIC works with clients to ensure that a fair settlement is obtained with the minimum amount of disruption to the insured....Longdown EIC manages risk throughout the cycle... and ensures business continuity for clients and minimises the impact of risk.”²²

Of note is the email correspondence dated January 30, 2017, addressed to Mr. Antonio Matta, Head of Facultative, Central America & Caribbean, Willis Towers Watson, the corresponding broker of MIB, was sent by Mr. Dennis Culligan, Director, Longdown EIC, stating, *inter alia*, the following:

“Tony,

We are undertaking our review of the tender submissions for Petrojam.

Can you let me have by return email –

1. CV’s of the proposed Miami and London Petrojam indicating what role each person will play on the account if you are appointed.

2. Experience of your proposed lead markets – Barents Re, Mapfre and Patria Re in leadership of

²⁰ Ibid.

²¹ Ibid.

²² Ibid.



refining risks – particularly on nat cat exposed risks.

Many thanks

Kind regards

*Dennis*²³

At this juncture, the OCG reiterates the allegations of Marathon Insurance Brokers Ltd. (MIB) which was submitted to the OCG on February 27, 2017. It is alleged that Longdown EIC was “...reviewing the tender submissions for Petrojam, thereby bypassing MIB who had submitted the tender proposal.”²⁴ MIB further indicated that Longdown EIC is “...not approved by the Ministry of Finance to review or evaluate Government of Jamaica (GOJ) insurance tender proposals. That power, by law resides with the approved consultant actuary, in this instance Eckler Consultants.”²⁵

Additionally, MIB alleged that “...the fact that that firm had sight of and was advising on the tender proposal is a clear breach of the tender rules. Our corresponding broker therefore notified Longdown EIC that we would respond directly to Eckler Consultants and we immediately wrote to Eckler Consultants and advised that we would accede to the request...”²⁶

²³ Email correspondence dated January 30, 2017, and addressed to Mr. Antonio Matta, Head of Facultative, Central America & Caribbean, Willis Towers Watson, from Mr. Dennis Culligan, Director, Longdown EIC, under the subject heading “Petrojam Tender”.

²⁴ Letter dated February 27, 2017 which was addressed to the OCG from Mr. Richard Burgher, Chairman, Marathon Insurance Brokers Ltd.

²⁵ Ibid.

²⁶ Ibid.



With respect to the aforementioned allegations, Mr. Floyd Grindley, then General Manager, Petrojam Ltd., during the course of a hearing which was convened by the OCG on March 14, 2017 provided, *inter alia*, the following information:

“Q: Now are you familiar with the company Longdown EIC?

A: Yes, sir.

CHAIRMAN: And Longdown EIC they are consultants to...

A: Petrojam.

Q: How long have they been consultants to Petrojam?

A: I know for several years but I not sure the exact time. Approximately nine years.

Q: *Now, Mr Burgher, Mr Richard Burgher of Marathon Insurance Brokers has lodged an objection to an award of contract specifically in relation to the tender for insurance 2017 and the first basis that he uses as his objection is that Longdown EIC, through and [sic] email dated January 30, 2017, wrote to Tony, that's what it's titled, Petrojam tender:*



We are undertaking a review of the tender submissions for Petrojam. Can you let me have by return e-mail..."

...

(Document handed to witness)

...

Are you aware Mr Grindley that Longdown EIC made contact with, made contact directly with Willis Watson Tower on the behalf of Petrojam?

A: We are not aware of it".²⁷
(OCG Emphasis)

Additionally, the OCG requested more detailed information of Mr. Floyd Grindley, then General Manager, Petrojam Ltd., in the above regard. In its requisition to Mr. Grindley dated March 20, 2017, the OCG posed the following questions:

"1. Reference is made to email correspondence dated January 30, [2017] which was sent to Antonio Matta, Willis Towers Watson from Mr. Dennis Culligan, Director, Longdown EIC.

...

²⁷ Transcript of hearing held on March 14, 2017 involving Mr. Floyd Grindley, General Manager, Petrojam Ltd. Pages 5-8.



- (a) *Please indicate whether you or any member of your staff are/is aware of the abovementioned correspondence which was made between Longdown EIC and Willis Towers Watson; and*
- (b) *In the event that your response to (a) above is in the affirmative:*
- (i) *Please state the name(s) and title(s) of the officer(s) at Petrojam Ltd. who was/were so aware;*
 - (i) *Please indicate whether this action was executed on the authority of Petrojam Ltd;*
 - (ii) *Kindly state the name(s) and title(s) of the officer(s) at Petrojam Ltd. who approved the stated action; and*
 - (iii) *In the event that the action was executed on the authority of Petrojam Ltd., please state the basis upon which the abovementioned correspondence was made between Longdown EIC and Willis Towers Watson...*

...

3. *It is alleged that Longdown EIC reviewed "...the tender submissions for Petrojam, thereby bypassing MIB who had submitted the tender proposal." Kindly provide a*



comprehensive statement as to the veracity of this allegation, whether in part or as a whole.

4. *Please indicate whether Longdown EIC played a role in the process as it regards the 2017 tender for insurance services to Petrojam Ltd.*

In the event that your response is in the affirmative, kindly provide the following information:

- (a) *the basis upon which Longdown EIC was involved in the tender process;*
- (b) *the specific role(s) Longdown EIC played in the tender process;*
- (c) *the name(s) and title(s) of the officer(s) at Longdown EIC who was/were involved in the tender process;*
- (d) *whether Petrojam Ltd. advised Longdown EIC of the role it was to play in the tender process; and*
- (e) *in the event that your response to (d) above is in the affirmative, the name(s) and title(s) of the officer(s)*



at Petrojam Ltd. who advised Longdown EIC of same.”²⁸

In his response to the OCG, Mr. Grindley advised, *inter alia*, as follows:

“Question #1

(a) *Members of my staff are aware of the correspondence. It was brought to their attention by Eckler Consultants, the actuary engaged by Petrojam to evaluate bids for insurance services to Petrojam...*

(i) *The following persons were aware:*

<i>Names</i>	<i>Titles</i>
<i>Delroy Brown</i>	<i>Chief Financial Officer</i>
<i>Leon Jarrett</i>	<i>Manager, Safety, Environment & Quality</i>
<i>Carlene Evans</i>	<i>Financial Treasurer & Budget Planning Officer</i>

These persons are members of Petrojam’s internal insurance committee...

...

Question #3

I have no information in relation to the allegation that Longdown EIC reviewed “...the tender submission for Petrojam,

²⁸OCG Requisition dated March 20, 2017 which was addressed to Mr. Floyd Grindley, Managing Director, Petrojam Ltd. Questions 1, 3 and 4.



thereby bypassing MIB who had submitted the tender proposal”

Question #4

- (a) *Petrojam has a long standing practice of engaging consultants in respect of its risk management programme which includes insurance arrangements. This engagement is necessary because 99% of Petrojam’s insurance portfolio is placed in the offshore energy market and brokered by international reinsurance teams with a local correspondent. There is no local market capacity for the major risks of Petrojam. Petrojam would want to avoid the inability to be properly compensated from severe and catastrophic losses; and adverse conditions of recoverability due to poor insurance arrangements/decisions.*

Longdown is the current insurance and risk management consultant to Petrojam. They are skilled in the complex energy insurance markets and operate independently of



insurance brokers. In this capacity, Longdown provides expert advice and review of:

- *The objective and targets for each insurance renewal period*
- *Programme structure and coverage*
- *Security of Insurers and Re-insurers*
- *Acceptability of rates and premiums*
- *Values and Sum Insured*
- *Tender for Insurance services*
- *Claims management*
- *Broker's Fees*

(b) Longdown's roles in the tender process were as follows:

- *Assisted in the preparation of the; Request For Proposal (RFP)*
- *Attended the Broker's Briefing Session and assisted with the clarification/concerns raised by the participating Bidders*
- *Perused bidders' proposals*



- *Provided clarification and additional information to the actuary as required*
- *Participated in the meeting of the submission of the draft evaluation report*
- *Opined on matters of concern to Petrojam’s risk management profile... ”²⁹*
(OCG Emphasis)

The OCG further examined a copy of a contract dated March 1, 2015 which was entered into between Petrojam Ltd. and Longdown EIC. In accordance with the terms of the contract, the services which were contracted by Petrojam Ltd. are described in the following table³⁰:

Table 1

<i>General Heading</i>	<i>Detailed description</i>
<i>Insurance consultancy</i>	<i>Provision of all aspects relating to Petrojam insurances including but not limited to renewals, claims, tenders, brokers, risk engineering, valuations, MOF interactions and business interruption continuity.</i>
<i>Risk Management</i>	<i>All aspects of risk and the management thereof in Petrojam including but not limited to incident assessments, investigations, and good risk practise.</i>
<i>Enterprise risk management (ERM)</i>	<i>Implementation of ERM in Petrojam using ISO</i>

²⁹ Response to the OCG dated March 27, 2017 by Mr. Floyd Grindley, Managing Director, Petrojam Ltd. Responses 1, 3 and 4.

³⁰ *Agreement for the provision of Independent Insurance and Risk Management Consultancy Services.* Item 1 of Schedule 1. Response dated April 26, 2017 which was addressed to the OCG from Mr. Floyd Grindley, General Manager, Petrojam Ltd.



	<p><i>3100 as a basis which includes but not limited to creating policy documents and frameworks for approval, setting the risk areas framework, transferring knowledge by assisting the risk coordinator, and managing the implementation of ERM to a point of competency of Petrojam.</i></p>
--	---

Further, Petrojam’s obligations as described in the referenced contract are to:

“co-operate with [Longdown EIC] as [Longdown EIC] reasonably requires;

provide the information and documentation that [Longdown EIC] reasonably requires as soon as reasonably practicable.

make available to [Longdown EIC] such Facilities as [Longdown EIC] reasonably requires when carrying out the Consultancy Services on the Petrojam premises;

‘Facilities’ mean working space, computer equipment, access to the internet and Petrojam’s computer network, telecommunications system etc., and shall include not only access to such resources but also use of them to the extent that [Longdown EIC] needs to do so in order to perform the Consultancy Services.’³¹

³¹ Agreement for the provision of Independent Insurance and Risk Management Consultancy Services. Pages 2-3. Response dated April 26, 2017 which was addressed to the OCG from Mr. Floyd Grindley, General Manager, Petrojam Ltd.



The involvement of Longdown EIC in the 2017 tender for insurance services to Petrojam Ltd. was further described by Mrs. Constance Hall, Principal, Eckler Consultants & Actuaries in a hearing convened by the OCG on March 25, 2017. Mrs. Hall stated, *inter alia*, as follows:

“Q: ...to your personal knowledge at this time Longdown EIC was already in the picture as a consultant?”

A: Yes. Longdown has, to my knowledge, been their chief consultant for many years, maybe longer than I have.”³²

In relation to the actions of Longdown EIC, whereby, it requested Willis Watson Towers to provide further particulars of its experience in the lead markets, Mrs. Constance Hall further indicated that:

“A: ...the brokers cannot submit information on anything after the tender has closed. The brokers, all of them, must be evaluated based on the information in their tender packages. Mr Culligan clearly doesn't know that. Mr Culligan was out of order, wrong, to have gone to ask anybody for any information. When I heard through the email from Marathon, that information had been requested, I said please do not submit any information, please stop. We cannot give a broker the opportunity to submit additional information after the

³² Transcript of hearing held on March 25, 2017 involving Mrs. Constance Hall, Principal, Eckler Consultants & Actuaries. Page 20.



close of the tender. *If one broker has been given that opportunity, then all brokers have to be given the opportunity and it doesn't end. What I understand when I started doing this work, especially after the NCC got involved in the process, **when the tender closes, that is the end of the collection of documentation. Whatever is not in the package is not in the package at that point.***

Q: Your understanding, therefore, and I just ask you to direct me to it if you can now or at sometime later, that at the 30th of January, 2017, what is on page 2 of Exhibit 1 at this time when Culligan of Longdown EIC sent this e-mail, the tender had already been closed?

*A: **The tender had by then been closed for a couple of weeks. The tender was closed on 12th of January.***

*Q: Now, you said two things awhile ago, but correct me if I am wrong. You didn't use these words, but not only **would it be improper for Mr Culligan to have sent this request after the tender had closed, but it would also be improper for him to send it to one person and not all?***

*A: **Yes. The question is, if a broker is being given the opportunity to provide additional***



information, then all brokers would have to be given the exact same opportunity.

Q: But would you include where we started that also Culligan of Longdown EIC, even though he was a consultant for Petrojam, he also should not have been directly asking Willis Watson and Tower for information either?

A: That is correct, he should not. He shouldn't be asking the questions, full stop. Number two, questions should not be asked to Willis anyway. If there is a question then the question needs to go to Marathon.

...

Q: What is your view in terms of brokers speaking to brokers during a procurement exercise, would you consider that irregular?

A: Ultra vires.³³

(OCG Emphasis)

Of note, Mr. Antonio Matta of Willis Towers Watson replied to the subject email correspondence which was sent by Mr. Dennis Culligan, Director, Longdown EIC. By way of an email correspondence dated January 30, 2017, Mr. Matta replied, as follows:

“Dennis-

³³ Transcript of hearing held on March 25, 2017 involving Mrs. Constance Hall, Principal, Eckler Consultants & Actuaries. Pages 13-14, 26.



Not a problem. We will respond to you in full by 5PM GMT tomorrow 31st January 2017.

However, for good order, please note that our broker partner in Jamaica (Marathon Insurance Brokers Limited) has advised that responses to questions raised by the Consultant Actuary or the Client must be legally submitted through them.

They have also advised us that since the information you requested usually comes from the Consultant Actuary, we have assumed that this request has their blessing.

*Accordingly, Marathon will submit an acknowledgment to the Consultant Actuary today and full response will follow tomorrow.*³⁴

(OCG Emphasis)

On even date, the foregoing email correspondence was communicated to Mrs. Constance Hall, Principal, Eckler Consultants & Actuaries by Marathon Insurance Brokers as indicated below:

“Dear Mrs. Hall,

Our correspondent broker Willis Towers Watson sent the following response to Longdown EIC following their request for further particulars...:

³⁴ Email correspondence dated January 30, 2017 which was addressed to Dennis Culligan, Director, Longdown EIC from Antonio Matta, Willis Towers Watson. Response dated March 14, 2017 which was addressed to the OCG from Marathon Insurance Brokers Ltd.



“We thank you for your questions and as requested we will respond to you in full by 5PM GMT tomorrow 31st January 2017.

Our broker in Jamaica (Marathon Insurance Brokers Limited) has advised that responses to questions raised by the Consultant Actuary or the Client must be legally submitted through them.

They have also advised us that since the information you requested usually comes from the Consultant Actuary, we have assumed that this request has their blessing.

Marathon will submit an acknowledgment to the Consultant Actuary today and their full response will follow tomorrow”

We now acknowledge receipt of the request and will formally provide the information requested tomorrow...”³⁵

By way of an email correspondence dated January 31, 2017, Mrs. Constance Hall responded as follows:

³⁵Email correspondence dated January 30, 2017 which was addressed to Constance Hall, Principal, Eckler Consultants & Actuaries from Levar Smith, General Manager, Marathon Insurance Brokers Ltd. Response dated March 14, 2017 which was addressed to the OCG from Marathon Insurance Brokers Ltd.



“ ...

The request was not from me. Please disregard.”³⁶

Of note, as it regards the manner in which the subject request of Longdown EIC was treated by Petrojam Ltd., the company advised the OCG of, *inter alia*, the following:

“Petrojam considered that the response from the Actuary of January 31, 2017 was adequate and, therefore, did not take any further action.”³⁷

The Conduct of Briefing Sessions and Site Inspections

As previously mentioned herein, the public procurement of insurance services requires the conduct of briefing sessions and site inspections. In this regard, by way of a requisition dated April 13, 2017, the OCG posed the following questions to Mr. Floyd Grindley, then General Manager, Petrojam Ltd.:

“Kindly indicate whether any meetings or briefing sessions were held with brokers and their representatives in relation to the 2017 tender for the provision of insurance services to Petrojam Ltd.

In the event that the response is in the affirmative, please provide the following:

- (a) *A comprehensive statement detailing the nature of the discussions held at these meetings;*

³⁶ Email correspondence dated January 31, 2017 which was addressed to Levar Smith, General Manager, Marathon Insurance Brokers Ltd from Constance Hall, Principal, Eckler Consultants & Actuaries. Response dated March 14, 2017 which was addressed to the OCG from Marathon Insurance Brokers Ltd.

³⁷ Response dated April 26, 2017 which was addressed to the OCG from Mr. Floyd Grindley, General Manager, Petrojam Ltd. Response #11.



- (b) *Copies of all Minutes and/or notes or other documents in relation to what was discussed or information relayed to prospective brokers;*
- (c) *The name(s) and title(s) of all the person(s) who were in attendance; and*
- (d) *The name(s) and title(s) of all the person(s) who facilitated the briefings and/or meetings.*³⁸

In his response to the OCG, Mr. Grindley, stated, *inter alia*, the following:

“Yes. A briefing session was held with Brokers and their representatives on November 14, 2016.

- (a) *Section 1.6 of the GOJ Handbook outlines the requirement for the briefing session. Accordingly, brokers were notified in the tender advertisement as well as the RFP (Section 1A # 6) to attend the tender briefing session on November 14, 2016 at 10:00 a.m.*

The discussion covered the following:

- *An overview of Petrojam;*
- *Key highlights of the tender; and*
- *General questions and answers*

A drive through tour of the refinery was also conducted as a part of this exercise.

- (b) *Please see **Exhibit 2 (b)***

³⁸ OCG requisition dated April 13, 2017 which was addressed to Mr. Floyd Grindley, General Manager, Petrojam Ltd. Question 2.



(c) Please see **Exhibit 2 (c)**

(d) The facilitators were:³⁹

<i>NAMES</i>	<i>TITLES</i>
<i>Delroy Brown</i>	<i>Chief Financial Officer</i>
<i>Carlene Evans</i>	<i>Financial Treasurer & Budget Planning Officer</i>
<i>Leon Jarrett</i>	<i>Manager, Safety Environment & Quality</i>
<i>Rhonda Willacy</i>	<i>Safety Officer</i>

³⁹ Response dated April 26, 2017 which was addressed to the OCG from Mr. Floyd Grindley, General Manager, Petrojam Ltd. Response #2.

Of note, Exhibits 2 (b) and (c) are the Briefing Notes and the List of Attendees, respectively. Exhibit 2 (b) outlined concerns raised by a bidder regarding the evaluation criteria. Such concerns were reflected by Marathon Insurance Brokers Ltd. herein.



The Evaluation Process Surrounding the 2017 Tender for Insurance Services to Petrojam Ltd.

The OCG, in the course of its Investigation, deemed it prudent to ascertain details regarding the evaluation of bids for Petrojam Ltd.'s 2017 tender for insurance services. The OCG's decision is premised upon the receipt of an allegation on February 27, 2017 from Mr. Richard Burgher, Chairman, Marathon Insurance Brokers Ltd. The allegation stated, *inter alia*, that Marathon Insurance Brokers Ltd.:

“...provided a lower price and superior coverage and is being sidelined because the Actuary has introduced extraneous considerations which were never requirements of the request for proposal [RFP] provided to brokers...The RFP sets [out] very clearly the criteria for Lead underwriters...they are to provide a minimum of 10% of the required capacity and a minimum financial rating of “A” from Standard and Poor or AM Best. Our proposal met both criteria...”⁴⁰

The RFP issued by Petrojam Ltd. provided, *inter alia*, the following information as it regards the evaluation of bids:

*“**Evaluation of Bids** The proposals presented in response to Tender Notices for insurance services will be assessed by an independent Consulting Actuary firm that will make recommendations*

⁴⁰ Letter dated February 27, 2017 addressed to the OCG by Mr. Richard Burgher, Chairman, Marathon Insurance Brokers Ltd.



*for the award...The evaluation of the substantially responsive bids will be based on the Evaluation Criteria listed in Section IV of this Document.*⁴¹

(OCG Emphasis)

Section IV of the RFP, as referenced above, listed the evaluation criteria and further details pertinent to Petrojam Ltd.'s 2017 tender for insurance services.⁴²

“Section IV

Bid Evaluation Criteria

The main criteria that will be used to assess the responses to this RFP in respect of Petrojam's risks will be as below. The maximum points to be allotted in respect of each criterion are also shown. A minimum of 50% of the total points or each set of risks (US\$ and J\$ denominated) must be obtained for a Bid to be considered worthy of award.

The financial security of overseas insurers and re-insurers is of paramount importance to Petrojam Limited and will be an overarching consideration in the assessment of responses to this document.

⁴¹Document entitled “**PROVISION OF INSURANCE BROKING SERVICES 2017 – 2020 PETROJAM LIMITED**”. REQUEST FOR PROPOSALS. Section I. Page 12.

⁴² Document entitled “**PROVISION OF INSURANCE BROKING SERVICES 2017 – 2020 PETROJAM LIMITED**”. REQUEST FOR PROPOSALS. Section IV. Pages 31-32.



Petrojam will only consider responses to this RFP which are from, or include proposals from, parties whose financial rating is not lower than that required by Petrojam Limited.

In respect of International Insurers and Re-Insurers Petrojam Limited requires Insurer Security Ratings of not less than Standard & Poor's "A-", or the A M Best equivalent in respect of any risk subscribed.

The Standard & Poor's or A M Best equivalent Insurer Security rating must be shown for each underwriter proposed as a leading or following underwriter on any of the US\$ designated insurance.

Local insurance companies must also provide evidence of complying with local regulations pertaining to liquidity and or have the ratings as indicated above

	MAXIMUM SCORE	MAXIMUM SCORE
	US\$ Denominated Risks	J\$ Denominated Risks
<i>Coverage to be provided (including limits, sub-limits Deductibles)</i>	5	5
<i>Competitive Local Fronting Overseas Placement</i>	N/A	30
<i>Competitive Premium Rates/Premiums</i>	10	
<i>Alternative Programme Structure Proposals</i>	10	5
<i>Brokers Remuneration in Calculated Value</i>	40	



<i>Brokers Remuneration in Calculated Value Overseas/Local Broker ratio split</i>	50	
<i>Local policies brokers remuneration</i>		10
<i>General Energy Expertise & Experience of Broker/s & Specific Experience of Nominated Personnel</i>	25	10
<i>Account Management, Communication & Service Proposal</i>	10	15
Total	150	75

	<i>Criteria</i>	<i>Points Allocation Basis</i>	<i>Maximum Score/ (Points)</i>	
			<i>Overseas</i>	<i>Local</i>
1.	<i>Like for like Coverage to be provided (including limits, sub-limits Deductibles)</i>	<i>Compliance with coverage i) Over 70% compliant - (4-5 points) ii) 50 – 70% compliant - (3-5 points) iii) 0 - 49% compliant – 1-point</i>	5	5
2.	<i>Competitive Local Fronting Overseas Placement</i>	<i>Maximum points will be awarded for lowest price and proportionate for others <u>Lowest Cost x Weight</u> Stated Cost</i>	N/A	30
3.	<i>Competitive Premium Rates/Premiums</i>	<i><u>Lowest Cost x Weight</u> Stated Cost</i>	10	
4.	<i>Alternative Programme Structure Proposals</i>	<i>i) Effective premium reduction by restructure (4 to 5 points) ii) no premium reduction with restructure (2 to 3 points) iii) little or no restructure --(1 to 2 points)</i>	10	5
5.	<i>Overseas Brokers Remuneration in Calculated Value Overseas</i>	<i>Supported by statement of estimated man-hours of placement and average</i>	40	



		<p>rate for each broker.</p> <p>Maximum points will be awarded for most appropriate man-hours and rate for the placement of the risk in the international market as considered by Petrojam, and proportionate for others</p>		
6.	<p>Brokers Remuneration in Calculated Value</p> <p>Overseas/Local Broker ratio split</p>	<p>Allocation of overseas policies commissions between overseas Broker and Local Broker.</p> <p>Maximum points will be allocated for the most appropriate ratio as considered by Petrojam and proportionate for others.</p>	40	
7.	<p>Local policies brokers remuneration</p>	<p><u>Lowest Cost x Weight</u></p> <p>Stated Cost</p>		10
8.	<p>General Energy Expertise & Experience of Broker/s & Specific Experience of Nominated Personnel</p>	<p>Bidders will be evaluated based on information supplied (see Form 2):</p> <p>i) References</p> <p>ii) Relevant energy market experiences of nominated personnel</p> <p>iii) Relevant Experience the classes of cover</p>	25	15
9.	<p>Account Management, Communication & Service Proposal</p>	<p>Bidders must provide clearly defined plan showing:</p> <ul style="list-style-type: none"> • relationship with client including consultant; • account servicing plan that details brokerage & administrative support and claims & risk management 	20	10
	Total		150	75



Additionally, the RFP detailed the requirements as it relates to the responsiveness of bids by Petrojam Ltd. Outlined hereunder is an extract of the RFP which lists the referenced requirements:

“Responsiveness Requirements:

In addition to the eligibility requirements, the Proposal submitted by the Bidder shall comprise of the following documents in order to be considered responsive:

- i. Evidence of Registration as a Facultative Insurance Broker if Facultative Insurance is being proposed*
- ii. Summary of the risks*
- iii. Evidence of Fidelity Insurance Cover for local Brokers*
- iv. Audited Financial Statement for the Brokers and local Insurance Company for the last 3 complete years prior to deadline for the submission of tenders*
- v. Broker’s Profile*
- vi. Names and designations of the person(s) authorized to negotiate on the Bidder’s behalf*
- vii. Rating of Overseas Insurers from internationally recognized Rating Agency*
- viii. In respect of International Insurers and re-Insurers:
Petrojam Limited requires Insurer Security Ratings of not less than Standard & Poor’s “A-”, or the A M Best equivalent in respect*



of any risk subscribed. The Standard & Poor's or A M Best equivalent Insurer Security rating must be shown for each underwriter proposed as a leading or following underwriter on any of the US\$ designated insurance.

- ix. Local insurance companies must also provide evidence of complying with local regulations pertaining to liquidity and or have the ratings as indicated above.*
- x. Completed and signed Statement of Acceptance of the Terms and Conditions of the Draft Standard Contract Form (Appendix A)...⁴³*

In furtherance of the OCG's Investigation, the Office posed the following question to Mr. Floyd Grindley, then General Manager, Petrojam Ltd.:

“Please provide a comprehensive statement detailing the evaluation process which was undertaken by Petrojam Ltd. and/or any person or entity acting on its behalf in the review and assessment of the proposals which were received in the captioned regard. Your statement should include the following:

⁴³ Document entitled “**PROVISION OF INSURANCE BROKING SERVICES 2017 – 2020 PETROJAM LIMITED**”. REQUEST FOR PROPOSALS. Section I. Pages 6-7.



- (a) *Whether the proposals were reviewed/evaluated by an Evaluation Committee;*
- (b) *The names and titles of the persons who comprised the Evaluation Committee;*
- (c) *The date(s) on which the proposals were evaluated;*
- (d) *The Evaluation Criteria which was utilised in the Assessment of the proposals; and*
- (e) *The Evaluation Report which was generated, if any, subsequent to the conclusion of the evaluation process... ”⁴⁴*

In response to the OCG, Mr. Grindley indicated, *inter alia*, the following:

“Tender Evaluation

In accordance with the GOJ Handbook of Public Sector Procurement Procedures Volume 4, Section 1, Petrojam procured the services of Eckler Consultants to conduct the assessment of the tender for insurance services based on a limited tender bidding process.

- (a) **The proposals were evaluated by Eckler**
- (b) **There was no direct internal evaluation team.**

⁴⁴ OCG requisition dated March 20, 2017 which was addressed to Mr. Floyd Grindley, General Manager, Petrojam Ltd. Question 6.



- (c) *The proposals were evaluated by Eckler between January 12, 2017 to January 27, 2017. The draft report was submitted for Petrojam's comment on January 30, 2017 and finalized on February 3, 2017. The participants in this exercise were as stated in response to Question 1 (b) (iii) above.*
- (d) **Evaluation criteria used in the assessment of the proposals was as contained in Section (iv) of the RFP....**
- (e) **The evaluation report generated by Eckler was the final and sole report...**⁴⁵

(OCG Emphasis)

Further, the OCG, by way of a requisition dated April 13, 2017, enquired of Petrojam Ltd., the aspects of the evaluation criteria upon which Longdown EIC's expertise was relied. In his response to the OCG, Mr. Grindley, General Manager, Petrojam Ltd., stated, *inter alia*, as follows:

*“Longdown's expertise was relied on for item #8 of the evaluation criteria “General Energy Expertise & Experience of Broker/s & Specific Experience of Nominated Personnel.”*⁴⁶

In furtherance of its Investigation, the OCG enquired of Eckler Consultants & Actuaries, the role the company played in the evaluation process surrounding the subject 2017 tender for insurance

⁴⁵ Response dated March 27, 2017 which was addressed to the OCG from Mr. Floyd Grindley, General Manager, Petrojam Ltd. Response #6.

⁴⁶ Response dated April 26, 2017 which was addressed to the OCG from Mr. Floyd Grindley, General Manager, Petrojam Ltd. Response #9.



services. By way of a hearing convened on March 25, 2017, the following, *inter alia*, was disclosed by Mrs. Constance Hall, Principal, Eckler Consultants & Actuaries:

“A: ...Usually when we do a tender, so long as the insurers are 'A' rated, 'A' minus by one of the three big rating agencies, that's it, we do not go any further. We make sure that the insurers are 'A' rated and we make sure that we see the insurers actually signing on that they are yes, a part of the programme. That's the end of it. **Petrojam is the only client that I have that says it is not enough for an insurer to be 'A' rated because an 'A' rated insurer may still not be able to manage my portfolio. An 'A' rated insurer may not in London or wherever they are, be able to get people to follow them on my programme. So this is the reason why I accept Petrojam's, I accept their concerns about their insurers and the only thing we have used from - and it is written in the long report that we released, the only thing we used from the consultants are the consultants' evaluation of the insurance companies in London. That's the only role that they played.**

Q: I am not privy yet to your report but that has been shared with Petrojam?

A: Oh yes.



Q: So your understanding, and in fact it is a fact, Longdown EIC evaluated...

A: The insurance companies.

Q: And as it relates specifically to this tender opportunity they evaluated the tender companies, but your role is also to evaluate the tender companies?

A: No.

Q: Sorry, not tender, the insurance companies.

A: No. I do not evaluate insurance companies, that's where my role stops. I do not evaluate insurance companies. The tender has, the RFP has a whole string of criteria and we are looking at all of those criteria. The insurance company is one bullet in a string and we rely on them just for this one bullet.

...

I cannot evaluate insurance companies. I can tell what the rating is, I can't do anything else. That's the extent of my ability. Normally for a tender this is all that I am expected to do.

Q: ...Is there anything written in black and white that Petrojam actually asked you to evaluate insurance companies or anything that would cause you to think that this is what they are asking?



A: ***It is not in black and white but they did ask.***⁴⁷ (OCG Emphasis)

Of note, Petrojam Ltd., in its response to the OCG which was dated April 26, 2017, indicated, *inter alia*, that the company did not request Eckler Consultants & Actuaries to evaluate insurance companies, as highlighted below:

*“Petrojam did not request Eckler to commence an evaluation of insurance companies either prior to or upon the award of contract to them. At a meeting held on January 30, 2017, Longdown was requested to conduct an independent review of the leaders on the re-insurance panels. A similar request was also made of Eckler at that meeting and they indicated that they could only utilize information that was provided in the tender.”*⁴⁸

The OCG reiterates that, as indicated by Eckler Consultants & Actuaries, Longdown EIC evaluated the proposals of the insurance companies. Thereafter, Longdown EIC’s evaluation results are utilised by and included in the actuarial report which is prepared by Eckler Consultants & Actuaries.

The OCG notes with emphasis the following provision of the 2014 Government of Jamaica Handbook of Public Sector Procurement Procedures as it regards the confidentiality of the content of actuarial reports:

“Procuring Entities should note that the contents of the tenders and the details of the Actuarial

⁴⁷ Transcript of hearing held on March 25, 2017 involving Mrs. Constance Hall, Principal, Eckler Consultants & Actuaries. Pages 10-15.

⁴⁸ Response dated April 26, 2017 from Petrojam Ltd. which was addressed to the OCG. Response #7.



Reports are confidential and shall not be disclosed to any unauthorized person(s). It should also be noted that it creates an unfair advantage to reveal an Alternative Proposal developed by a Bidder.⁴⁹

(OCG Emphasis)

Based on the above provision of the 2014 Government of Jamaica Handbook of Public Sector Procurement Procedures, the OCG is unable to disclose contents of the actuarial report which was prepared by Eckler Consultants & Actuaries in relation to the 2017 tender for insurance services to Petrojam Ltd.

Notwithstanding the inability of the OCG to disclose the contents of the actuarial report, the Office notes that, upon an application of best practices and thorough due diligence, there is no evidence of bias in the evaluation process undertaken by Eckler Consultants & Actuaries regarding Petrojam's 2017 tender for insurance services.

⁴⁹ Government of Jamaica Handbook of Public Sector Procurement Procedures. Volume 4. Page14.



Allegations of Bias, Impropriety and/or Irregularity Surrounding the Role of Eckler Consultants and Actuaries in its Recommendation for the 2017 Award of Contract for the Provision of Insurance Services to Petrojam Ltd.

At this juncture, the OCG highlights that Marathon Insurance Brokers Ltd. made certain allegations of bias in relation to the recommendation of brokers for the 2017 Award of Contract for the Provision of Insurance Services to Petrojam Ltd. In its letter to the OCG dated February 27, 2017, Mr. Richard Burgher, Chairman, Marathon Insurance Brokers Ltd. stated, *inter alia*, the following:

“In the long history of this tender, a single broker Fraser Fontaine Kong [FFK] has won this tender 100% of the time except for a single instance when they were automatically disqualified for submitting their bid late.

Marathon [MIB] did not participate in the 2012 tender, because we believed then that there was no chance of succeeding, since the process was unfairly biased in favour of FFK. Our letters to the then Chairman Mr. Erwin Jones dated June 25th 2012 and to Minister Dr. the Hon Andrew Wheatley dated October 13th 2016... sets out in detail, evidence of the bias in favour of FFK. We have not received a response from the Minister.

...

The bias against Marathon:

On February 23 2017, our correspondent broker Willis Towers Watson advised us in part... of the following:



“The lead underwriter on the Petrojam account at xxx (xxx xxxxxxxx) recently left to join another syndicate. His (xxx xx) boss (xxxxxx xxxxx) who has taken over the account told us that Marsh have said we have presented terms that are cheaper on premium and fee but that they are confident of retaining the account due to the good relationship they have with the client”.

It is completely egregious that before the official recommendation has been issued, details of our tender have been made known to our competition and notification of their apparent success given to Marsh. We have thereby concluded that the consultant actuary has indeed recommended that the existing broker FFK and their corresponding overseas underwriter Marsh to be re-appointed for three years – this notwithstanding:

- 1. Our proposal is millions of dollars lower in price and fees while providing superior coverage.*
- 2. Our lead underwriters have met the minimum financial rating “A”, therefore the actuary should not be allowed to apply bias against them.*
- 3. Lonsdown [sic] has clearly illegally participated in and influenced the evaluation of this tender.*



4. *FFK's broker in London Marsh is confident that notwithstanding our superior proposal, their relationship with the client will allow them to prevail.*
5. *It is apparent that FFK's correspondent broker Marsh has obtained a copy of our proposal.*
6. *The preceding position is supported by the verifiable fact that Marsh is in the London market securing additional capacity **BEFORE** the award is announced, an action they would NOT have under taken without being certain that their partner FFK's bid would be successful, a clear expression of their confidence in retaining the account.*

We are strongly of the view that if this recommendation from the consultant actuary is allowed to prevail without challenge, then it would make a mockery of the tender system. Additionally, because the process is obviously not being conducted in a fair and appropriate manner, participating in future



*tenders would be an exercise in
futility: FFK would continue to
prevail no matter what competing
brokers propose... ”⁵⁰*

Of note, the referenced letter which was addressed to Dr. the Hon. Andrew Wheatley, Minister of Science, Energy and Technology by Marathon Insurance Brokers Ltd., indicated, *inter alia*, the following:

**“Re: An Absence of Transparency – GOJ Tender
for Insurances Services – Petrojam Limited**

Dear Minister,

*After an absence from the tender system for five (5)
years, Petrojam is again inviting brokers to
participate in a competitive tender process to
provide insurance services.*

*Minister – the problem with the invitation is this –
the process is not transparent and therefore is open
to being challenged as lacking patent integrity. This
is not to cast doubt on the integrity of the persons
responsible to adjudicate the process – but even
good people do become victims of endemic
structural deficiencies.*

Background: The 2012 Tender:

⁵⁰ Letter dated February 27, 2017 which was addressed to the OCG from Mr. Richard Burgher, Chairman, Marathon Insurance Brokers Ltd.



In the long history of tenders for this account, a single broker has won it 100% of the time except in a single instance when they were automatically disqualified for submitting their bid late.

*In 2012, (the last time this account went to tender), we refused to participate because it was clear to us that the Bid Evaluation Criteria would result in the award going back to that broker. As it turned out, notwithstanding CGM had the lowest price (by approximately J\$8M) and was overall the best proposal, the biased points system resulted in the award returning to the apparently “permanent” broker. **The country paid \$8M more than was necessary.** CGM appealed the award to no avail – we wrote to the then Chairman of the Board and provided him with an objective analysis (attached for ease of reference) that concluded that even if our bid was \$20M less than that of the awardee and provided similar or indeed superior quality of cover, we would lose because of the biased points system.*

The problem with the 2017 Bid Evaluation Criteria:

The attached 2017 Bid Evaluation Criteria, while it makes superficial changes, is in our opinion, far worse than the biased 2012 Bid Evaluation Criteria. We say this because with the 2012 criteria, the broker’s performance was at least evaluated on a



measurable evaluation criteria – it was not arbitrary.

*In the 2017 evaluation criteria... 53% of the overseas points allocation **is arbitrary** (Criteria 5 and 6 reads inter alia – (most appropriate as considered by Petrojam) – NO OBJECTIVE MEASURABLE CRITERIA IS SET. Bidders are therefore forced to place trust in the actuary and whomever else!*

And if that is not bad enough, Criteria 8 and 9 representing 33% of the local points allocation, depends on the experience and relationship of the broker to Petrojam – this is in a country which has one refinery and one broker who has effectively won it 100% of the time.

*Minister – we recognize the danger associated with speaking up but we cannot hit the 5% growth target which has eluded our country since the 60's unless the magic of the market and transparency is allowed to flourish in harmony. **We must believe we will be given a 'fair shake'...***⁵¹

Attached to the foregoing letter was a copy of the 2017 Bid Evaluation Criteria, as provided below:

⁵¹ Letter dated October 13, 2016 which was addressed to Dr. the Hon. Andrew Wheatley, Minister of Science, Energy and Technology by Mr. Richard Burgher, Chairman, Marathon Insurance Brokers Ltd.



No.	Criteria	Points Allocation Basis	Original - Over/Local (1/2012)	Overseas (2017)	Local (2017)	Comments
1	Like for like Coverage to be provided (including limits, Sub-limits Deductibles)	Compliance with coverage 1. Over 70% compliant -(4-5 points) 2. 50 -70% compliant -(3-5 points) 3. 0 -49% compliant 1 point	10/5	5	5	the local insurer with the lowest fronting fee in 5 terms
2	Competitive Local Fronting Overseas Placement	Maximum points will be awarded for lowest price and proportionate for others Lowest cost * Weight/ Stated cost	na/25	N/A	30	
3	Competitive Premium Rates/Premiums	Lowest cost * Weight/ Stated cost	30/10	10	5	
4	Alternative Programme Structure Proposals	1. Effective premium reduction by restructure (4-5 points) 2. No premium reduction with restructure (2-3 points) 3. Little or no restructure (1-2 points)				
5	Overseas brokers Remuneration in Calculated Values	Supported by statement of estimated man-hours of placement and average rate for each broker. Maximum points will be awarded for most appropriate man-hours and rate for the placement of risk in the international market as considered by vet/region, and proportionate for others	30/40	40		The allocation of points for this criteria (which contributes 25% of the score) is arbitrary since no objectively measurable criteria is stated.
6	Brokers Remuneration in Calculated Value Overseas/Local Broker ratio split	Allocation of overseas policies commissions between overseas Broker and Local Broker. Maximum points will be allocated for the most appropriate ratio as considered by Petrosim, proportionate for others			10	The allocation of points for this criteria (which contributes 25% of the score) is arbitrary since no objectively measurable criteria is stated
7	Local policies brokers remuneration	Lowest cost * Weight/ Stated cost				Bearing in mind Jamaica has one refinery, the allocation of points to the local market is skewed to the holding broker who has lost this account just once because they were late in submitting the bid
8	General Energy Expertise & Experience of Broker/s & Specific Experience of Nominated Personnel	Bidders will be evaluated based on information supplied (see form 2): 1. References 2. Relevant energy market experience of nominated personnel 3. Relevant Experience the classes of cover	25/15	25	15	Bearing in mind Jamaica has one refinery, the allocation of points to the local market is skewed to the holding broker who has lost this account just once because they were late in submitting the bid
9	Account Management, Communication & Service Proposal	Bidders must provide clearly defined plan showing: 1. Relationship with client including consultant 2. Account servicing plan that details brokerage & administrative support and claims & risk management	5/5	20	10	
Total			100/100	150	75	
				53.0%	33.3%	



Further, during a hearing convened by the OCG on March 14, 2017, Mr. Richard Burgher, Chairman, Marathon Insurance Brokers Ltd., stated, *inter alia*, as follows:

“A: *In 2012 when the criteria for determining the successful bidder came out, it was clear to us that it was heavily weighed in favour or Frazier Fontane Kong. We did not participate in that tender because to our mind it would not make sense. We wrote to the then chairman, setting out the reasons and I may say this, to our expense we brought in actuarial experts, to evaluate, not just the fairness, but if you appointed, if you applied the rules set out in the criteria to award the tender, then only FFK could win and we say that as an example, you were getting a substantial amount of points, say twenty-five or thirty points if you had experience dealing with a refinery. Well, sir, you only have one refinery and only one person has won it, so you wouldn't find anybody else with any experience, clearly. Things like that. And we got no response, we didn't participate. This year certain changes were made but we noticed that some thirty-three percent of the points to be awarded to the local provider of the services, the local broker, again was arbitrary...*”



...

We are saying the minute we got the RFP and we looked at the criteria for selection, we knew we could have possible problems so we wrote to the Honourable Minister asking for his intervention to remove what we saw as the subjectivity which was a part of the consideration to determine who would be the broker. And you may notice on Page 2, sir, that we said that Criteria eight and nine represented 33 percent of the local points allocation and it depended on something called experience and relationship and only one broker in the country would have that because only one broker had won.

...

...our primary reason, Contractor General, for writing to the Minister and what represented our darkest fear was this part that says:

Most appropriate as considered by Petrojam.

That was what gave us pause. So we objected in this letter; we formally objected at the tender [sic] review and we formally objected at the tender opening. We were



not all together surprised when we were hearing at the end of the day that, maybe you were successful in terms of price and in terms of quality and in terms of coverage but they still don't care, we decide that we don't want you.

...

Q: If that is not bad enough criteria 8 and 9 represented 33 per cent of the local points allocated. It depends on the experience and relationship of the broker to Petrojam, this in a country which has one refinery and one broker who had effectively won it a hundred percent of the time.

...

Number points allocated? That's right. And you go to eight and nine, point awards eight and nine; the point awards listed number eight and number nine, you will see the that 15 points will be allocated to the bidder, that brings what is called general energy expertise and experience in this business.

A: Just look at the column that is marked criteria and under Local you will see:

15 points will be allocated the broker with the general energy expertise and



experience and specific experience of the nominated personnel.

You only can have one winner, Contractor General. It is just one refinery we have, everybody knows it and only one person ever wins. Everybody knows that.

Q: So having said that, you believe that these criteria, at least two, both of them, the playing field is not level based on...

A: It absolutely, in our view, was not level. You notice our comment, our remarks under Comments. By the way, this was included in the letter to the Honourable Minister.

...

OCG OFFICER: Mr Burgher, I refer to the second paragraph on page one of Exhibit 1 where you indicated that Willis Towers Watson provided a lower price and secure coverage and is being side lined because Eckler has introduced extraneous considerations which were never requirements of the RFP.



What do you mean by extraneous considerations?

...

...the consideration that you are referring to would be the new criterion, you are submitting, in relation to the experience of the lead market?

A: **Right.**

...

I ask myself sometimes, Contractor General, what is the motive behind all of this? People just don't like Marathon? Have they singled me out for special punishment or something like that? And what interest would a - say, Longdown have or even an Eckler in maintaining the status quo? I mean, these are reasonable considerations that enter my mind. Am I just miserable? Have some money to spend on legal fees?



Longdown came to Jamaica as advisers to Petrojam about five or six years ago to provide what they call advisory services for a particular claim which apparently Petrojam required assistance for, five or six years ago. Longdown charged Petrojam about \$US300,000 per year for these services.

For whatever reason, the existing broker FFK is comfortable with that. Well everybody knows we wouldn't be comfortable with that because it's very simple. That's my job, I employ me as a broker. Sir, I am the second largest or third largest broker in Jamaica, Willis is the third largest reinsurance broker in the world. There is nothing you do, or you have no better qualified people on



paper anywhere else than we do; so that's a problem.”⁵²

(OCG Emphasis)

The OCG reiterates that Marathon Insurance Brokers Ltd. alleged that the process involving the 2017 tender for insurance services to Petrojam Ltd. was not fair. It is the opinion of Marathon Insurance Brokers Ltd. that the process was not fair as the 2012 criteria for determining the successful bidder was heavily weighted in favour of Fraser Fontaine & Kong. Further, the company alleged that the substantial criteria to determine the successful bidder was ‘experience and relationship with a refinery’ and as such, Fraser Fontaine & Kong would be highly favoured as the company has been successful in this regard on several previous occasions.

During a hearing held on March 25, 2017, the OCG posed to Eckler, Consultants & Actuaries the abovementioned allegations as well as the contents of the referenced letter which was addressed to Dr. the Hon. Andrew Wheatley from Marathon Insurance Brokers Ltd. The actuarial company indicated, *inter alia*, as follows:

“CHAIRMAN: ...We had paused at page five of what is Exhibit 1 in respect of the comment/complaint of Marathon Insurance Brokers and the suggestion that the Consultant Actuary, the conclusion he has drawn, that's Marathon, that the consultant actuary had indeed recommended that the existing broker, FFK and their corresponding overseas underwriter,

⁵² Transcript of hearing held on March 14, 2017 involving Mr. Richard Burgher Chairman, Marathon Insurance Brokers Ltd. Pages 19-23, 30-33.



Marsh, to be reappointed for three and you had started in respect of commenting on that conclusion that has been drawn by marathon.

A: **So clearly marathon has the result of tender and I am not surprised. Marathon, Fraser didn't win, which is where I was going because of their relationship with Petrojam. They didn't win because of their superior insurance market.** *The points for the various criteria set out in the tender, and I agree with Marathon actually that there are some things there that are subjective and I do not like subjective things in tenders because it makes me have to decide and I would rather not have to decide. **However, maybe the one item in the whole two hundred and twenty-five point ten or twelve criteria, the one item that was totally not subjective is the place where Frazier won. Thirty points out of two hundred and twenty five. On Annex 4 it is number 2. Thirty points were awarded for something called Fronting Fee.** The Fronting Fee is an amount charged by a local*



insurer, which as the name suggests, is simply a front. The risks are going to be placed abroad with a panel of insurers. The local insurer is a front and there are lots of reasons why they front. We don't need to get into any of them. For the role of fronting the local insurer charges a fee. **Petrojam has been concerned over many years that the fronting fees are high and they do not believe the fronting insurers did any work for the money they collect. Petrojam puts the Fronting Fee here as a criteria and gave it a whole thirty points. The Fronting Fee is the only thing here, well, not the only thing but the only thing with big number of points which is strictly proportionate, the lowest fronting fee gets the whole thirty points and everybody else is rated proportionate to that thirty. Frazier, which is the current broker, quoted ten thousand US for Fronting Fees. The other broker that hasn't been mentioned at all who is in the mix, quoted thirty thousand. Marathon quoted ninety-three.**



Q: Ninety-three thousand US?

A: US

So Fraser ended up getting 30 points for its ten thousand dollars. The other company got nine points for its 30 thousand; Marathon got three points for its ninety-three thousand. With that difference of 27 points it didn't matter what other thing we looked at here, Frazier was going to win; there was no way to cover that gap. If we take out all the criteria that Marathon is worried about:

That they are subjective; that the actuary can be biased; the fees are not transparent.

If we take out all the non-transparent things, if we take out all the things that are subject to bias, Fraser still wins on this one point because there was no way to make up. There is no way to make up a difference of 27 points in this kind of tender.

At the end of the of the evaluation of the US dollar portion of the



portfolio – the portfolio is in US and Jamaican – the US portion has only fifty points. The three brokers were neck and neck - 96, 99, 98, three points maximum separating them. There was a one point difference between Frazier and Marathon. On points five and six which Marathon complains about, Marathon won those two categories. Put them together they won those categories. Where they lost the tender is on the Fronting Fee.

...

Q: Might I just invite you to the very first page of the said document, the one I referred to as Exhibit 1. And it is the second paragraph.

We contend, that a proposal submitted by our partner Willis Towers Watson [the 3rd largest Insurance In the world] provided a lower price and superior coverage and is being sideline because the Actuary has introduced extraneous considerations which were never requirements of the request for proposal [RFP] provided to brokers.

Would you care to comment on that or you need some more information?



A: *I wouldn't know what the extraneous considerations are, sir.*

Q: *I am going to share with you Exhibit 5 which is an October 13, 2016 letter on the letterhead of Marathon Insurance Brokers Limited, address to Doctor the Honourable Andrew Wheatley.*

[Document read to witness]

Before you comment, could I interject and say that the evaluation criteria is not set by you but set by Petrojam.

A: *Correct.*

Q: *So one should not point any fingers at you for something – you have been given a measurable tool to work with, you are seeking now to see whether or not whatever is being submitted if it is within the criteria provided, is that correct?*

A: *That's correct.*

Q: *I make that observation out loud but I just ask you to comment if you can in respect of the several allegations that are cast at you, whether you think they are a fair balance or not?*



A: Sir, I do not know what would be considered extraneous considerations introduced by the actuary and feel that the complainant should be asked to write down what those are.

...

A: *I attended the broker's briefing sessions at Petrojam, not because we had to, not because – I think this is the only one I have gone to. At that briefing session Petrojam explained and I hope that their notes on the document already. Petrojam explained that experience was not expected to be experience with Petrojam. Petrojam recognizes that there is a single refinery and everybody can't have Jamaica refinery experience so therefore it was any energy experience. So for example some gas stations would qualify with energy experience. Moreover one of the reasons why the brokers are expected here to from [sic] linkages with overseas brokers, is because of the limited experience here. So the overseas broker would be expected to have the experience if the local broker doesn't and they are evaluated as a unit. There is no separate evaluation of the overseas. My thinking would be that if a*



local broker is unable to partner with an overseas broker with the requisite experience, then the local broker probably lacks the experience to manage the portfolio.

...

If a local broker is unable to partner with an overseas broker which has the experience, then the local broker probably lacks the experience to manage Petrojam's portfolio. I am thinking that outside of a tender system where a broker can go and form an alliance with one of the many, many overseas brokers, a local broker that considers himself or herself to be capable of managing Petrojam's business would be able to form a relationship with a qualified overseas broker. *I was at the session and Petrojam explained that they are not asking Jamaica refinery experience, they are asking for energy experience, broad energy experience. The overseas experience. The [overseas] experience counts.*

Q: ...

That information you supplied with us earlier in respect of the second criteria on



the 30-point allocation and the reason why Petrojam has taken this position, that is confidential information, correct? I just ask in the context of what we do here will be published in Parliament and I just want to censure that it is something that is confidential that persons should not know, I just want you to know that is something that would not be disclosed.

A: The fact that the Fronting Fee has 30 points that's not confidential information...⁵³

The OCG notes that similar concerns regarding the evaluation criteria were raised at the briefing session which was held on November 14, 2016. Based on its perusal of a document entitled **“PROVISION OF INSURANCE BROKING SERVICES – 2016 BRIEFING SESSION”**, the OCG observed the following information:

“5. A bidder expressed concern about item #9 of the evaluation criteria which reads:

<p><i>Account Management, Communication & & Service Proposal</i></p>	<p><i>Bidders must provide clearly defined plan showing:</i></p> <ul style="list-style-type: none"> <i>• relationship with client including consultant;</i> <i>• account servicing plan that details brokerage & administrative support and claims & risk</i>
--	---

⁵³ Transcript of hearing held on March 25, 2017 involving Eckler Consultants & Actuaries. Pages 30-32, 37-42.



	management
--	------------

6. *It was felt that other bidders would be at a disadvantage given the lack of association with a refinery as PJ is the only refinery in Jamaica; and that one Broker has managed the account over a long tenure.*

PJ highlighted the following:

- *The points allocation for this item is 10 out of 75 points*
- *The required experience relates to the general energy market which consists of several players e.g. Power and energy marketing companies.*
- *The experience of the service team will be considered, noting the dynamism of local Broking industry.*

7. *Concern was raised about item #5 in the evaluation criteria.*

It was felt that the basis of the allocation of points was not transparent as there was no specified hours.



<i>Overseas Remuneration Calculated Overseas</i>	<i>Brokers in Value</i>	<i>Supported by statement of estimated man-hours of placement and average rate for each broker.</i> <i>Maximum points will be awarded for most appropriate man-hours and rate for the placement of the risk in the international market as considered by Petrojam, and proportionate for others</i>
--	-------------------------	--

8. *PJ highlighted the following:*

- *The points allocation for this item is 40 out of 150 points for International Brokers only*
- *The PJ programme is predominantly placed in the international market hence the need to demonstrate the marketing efforts of the overseas team.*
- *It is contingent on Brokers to demonstrate their capability; part of which is an assessment of service hours*



- *Brokers are a requested to provide 3 years fixed fees. Fees should be derived from an estimate of man-hours*

...

Key Decision(s)

Petrojam maintains its position and will not make any changes to Items 5 & 9 in the Evaluation criteria.⁵⁴ (OCG Emphasis)

Based on the foregoing, the OCG reiterates the statements provided by Eckler Consultants & Actuaries regarding the complaints made by Marathon Insurance Brokers Ltd. in relation to the criteria utilised to evaluate bids submitted for the referenced tender. It is the position of Eckler Consultants & Actuaries that Criteria 5 and 6, which were the subject of the complaint made by Marathon Insurance Brokers Ltd., were in fact the criteria in which the company was the successful bidder as they scored the most points. However, Eckler Consultants & Actuaries indicated that the company was not successful in the substantial category of a ‘fronting fee’ as its proposed fee was very high in comparison to those of other bidders.

Subsequently, in an email correspondence dated November 6, 2017, which was submitted to the OCG, Mr. Richard Burgher, Chairman, Marathon Insurance Brokers, indicated, *inter alia*, as follows:

“While I have always had to rely on my overseas partner’s word, that our proposal was superior to FFK’s; I now have evidentiary proof of the value and coverage of that superiority

⁵⁴ Document entitled “**PROVISION OF INSURANCE BROKING SERVICES – 2016 BRIEFING SESSION**”. Response dated April 26, 2017 which was addressed to the OCG from Mr. Floyd Grindley, General Manager, Petrojam Ltd. Exhibit 2 (b). Pages 5-6.



The attached copy of the placement slip for Petrojam's insurances by reinsurance brokers MARSH reveals that Petrojam paid in excess of \$200M more for insurance coverage than they needed to

The attached slips from Marsh proves this beyond any doubt

We also attach a spreadsheet summarizing the Premium differences and vastly superior coverage provided by MIB..."⁵⁵

The OCG reiterates that, as indicated by Eckler Consultants & Actuaries, Marathon Insurance Brokers Ltd. was not successful in the most substantial category of a 'fronting fee' as its proposed fee was very high in comparison to those of other bidders. Of note, this category was allotted the most points as highlighted in the evaluation criteria.

The OCG also observed that attached to the email correspondence is a copy of the contract entered into between Petrojam Ltd. and Marsh LCC, the underwriter for Fraser Fontaine Kong, for the period April 1, 2017 to April 1, 2018.

⁵⁵ Email correspondence dated November 6, 2017 which was addressed to the OCG from Mr. Richard Burgher, Chairman, Marathon Insurance Brokers Ltd.



Allegations Concerning the Extension of the Contract for the Provision of Insurance Services to Petrojam Ltd. which was awarded to Fraser Fontaine & Kong Ltd.

By way of a letter dated April 4, 2017 which was sent to the OCG by Mr. Richard Burgher, Chairman, Marathon Insurance Brokers Ltd., the Office observed that the contract for the provision of insurance services to Petrojam Ltd. which was awarded to Fraser Fontaine & Kong Ltd. was considered for an extension of one (1) year. The referenced letter indicated, *inter alia*, as follows:

*“The email below was received on March 27, 2017
from our partners Willis:*

...

Richard,

Below from our London team:

“We didn’t hear back from you with regards to the above so assume that this is a dead duck. We do know that Marsh are currently in the market, and have been since last week, with an extension from the client for 1 year as the tender was declared null and void.

We also know that Marsh are trying to convince Aspen, Mapfre and Barents Re to write the account to them going forwards.

...

You will recall that these three reinsurers (Aspen, Mapfre and Barents Re) are the same ones used by MIB in its tender that Longdown raised questions about their adequacy in their email to Willis asking for better particulars. Somehow they are now good enough, so



much so that Marsh is now trying to persuade them to join with them in providing the one year cover as enticement which will effectively block MIB from using them in any future tender for Petrojam as to do so would amount to a conflict to bid in the future against a co-insurer.”⁵⁶

Further, Marathon Insurance Brokers Ltd., by way of a letter dated April 24, 2017 which was addressed to Petrojam Ltd. and copied to the OCG, indicated, *inter alia*, the following:

“ ...

...there are strong rumours in the local and international markets that the tender has been extended for one (1) year and that it will go back to public tender later this year, which if true, would be a fact known for certain by the existing broker only, thereby putting the competition at a disadvantage.

Sir, we say this because, among other things, we have received the following information from the international market:

- *Our [MIB] lead reinsurers have been approached with an offer for a three (3) year contract to provide services to Petrojam if they agree to come on board as co-insurers with Marsh.*

⁵⁶ Letter dated April 4, 2017 which was addressed to the OCG from Mr. Richard Burgher, Chairman, Marathon Insurance Brokers Ltd.



We believe that to offer our underwriters a (3) three year contract suggests the existing players are supremely confident that they will prevail in the award of this tender. Nevertheless, in the absence of an award, their action would be in breach of the government procurement rules.

Mr. Grindley, we strongly suggest that the motive inherent in offering this enticement to these underwriters, with whom we partnered in our initial bid, is that if they agree it will effectively block MIB from working with them in any future tender for the Petrojam account, since these underwriters would now form a part of the existing client's panel of insurers. This would effectively block MIB from competing.”⁵⁷

To ascertain the veracity of the allegations made by Marathon Insurance Brokers Ltd. in this regard, the OCG posed the following questions to Mr. Floyd Grindley, then General Manager, Petrojam Ltd and Mr. Leon Jarrett, Manager, Safety, Environment & Quality, Petrojam Ltd. during the course of a hearing held on April 4, 2017:

“**CHAIRMAN: Mr Grindley, let me start with you. I am advised that notice has been given with a view to extending the contract for another year.**

⁵⁷Letter dated April 24, 2017 which was addressed to Petrojam Ltd. from Mr. Richard Burgher, Chairman, Marathon Insurance Brokers Ltd.



MR GRINDLEY:

Yes sir.

CHAIRMAN:

Do you have the actual date that, that directive was given and by whom?

MR GRINDLEY:

On Friday we acknowledged to the incumbent...

CHAIRMAN:

Friday when?

MR GRINDLEY:

Friday 31st of March, via e-mail to proceed with the extension.

CHAIRMAN:

The previous contract had a proviso or provision in relation to an extension?

MR GRINDLEY:

I am not sure exactly the details to they do have provisions for extension.

MR JARRETT:

The contract has provisions for extension, meaning that the expiring wording of the contract remains in force; wording: Terms remain in force until advised.

CHAIRMAN:

It also, I am almost sure, has a provision that stipulates that it must be done by a particular time. Meaning that you wouldn't be doing it the day before the contract expires, you would give



reasonable notice to the company that is contracted and also if you have a process ongoing with other bidders, you would give reasonable time. Does the contract – Sorry, Mr Grindley.

MR GRINDLEY: We obviously had to go back to the incumbent to request the extension and to confirm the premium so that started before the confirmation was provided on the 31st which was the ultimate last date because as of April 1, there would not be a policy if we didn't confirm on that date.

CHAIRMAN: Do you have, if not here, documentation in terms of the communication with the incumbent in terms of seeking to – asking them to consider continuing? You have that documentation in house?

MR GRINDLEY: We can provide it at a later date.

MR JARRETT: The final draft document was not submitted but the request



for quotation was submitted.

CHAIRMAN: *Mr Jarrett, you are speaking to the request for quotation from the incumbent? That's where I am. Before I go to the – let me leave aside the bidders who were part of a process, I speaking to the extension to the incumbent and the notification that was given on the 31st of March to the incumbent. I am speaking specifically to the documentation prior to the 31st and on the 31st that spoke to the incumbent about considering an extension to the contract. That's what I am speaking specifically in relation to.*

MR GRINDLEY: *We will provide the communication after this meeting.*

CHAIRMAN: *Okay. So I will make a note of that. What has been done also in respect of the process that had been undertaken in respect of considering someone for the contract*



which would commence on the 1st of April? What has become of that process because as you would recall, that's why had come here on the last occasion. What has happened to that process and the persons involved?

MR GRINDLEY: We are still waiting on the communication from NCC. The last communication we got from them is that they need more time to make recommendation to proceed so we are still waiting on them and they have also subsequently given us an extension. They allowed is [sic] to extend the current contract by one year.

CHAIRMAN: So the NCC made a recommendation to you?

MR GRINDLEY: Yes, for one year extension while – they request more time to complete their valuation of the current tender.

CHAIRMAN: So number 2 on the list, Mr Grindley, is _____ the



communication from the
NCC in respect of the
recommendation for the
extension for the additional
year?

A: Yes, sir.

Q: But you would agree with
me that the two can't operate
at the same time so if you
are at the 31st agreeing to
an extension, one could
almost call the process that
the NCC is considering is
almost – minimis is not the
word – almost redundant.
Let me repeat. If you have
all but agreed with the
incumbent to continue for a
year based upon a
recommendation, that the
NCC is also considering a
process that they say put on
hold the two can't operate
because let us say that the
NCC for one moment was
separated from its brain and
said the process is the go on,
the process can't go on
because you have told the



incumbent you are continuing for a year. You understand where I am coming from?

*MR GRINDLEY: Yes, but he had no other choice than to proceed with the extension because we had to have a refinery that would be covered for insurance so we had no other choice than to proceed.*⁵⁸

In a letter dated April 26, 2017, Petrojam Ltd. provided the OCG with several documents and/or communiqué concerning the extension of the contract for the provision of insurance services to Petrojam Ltd. which was awarded to Fraser Fontaine & Kong Ltd. In its perusal of the mentioned documents, the OCG observed various letters of approval in relation to the extension of the referenced contract.

As indicated previously by Mr. Grindley, General Manager, Petrojam Ltd., the NCC recommended that the present contract for the award of insurance services to Petrojam Ltd. by Fraser Fontaine & Kong be extended. The OCG notes below the contents of a letter dated March 10, 2017 which was sent by Mr. Raymond McIntyre, Chairman, NCC, addressed to the Ministry of Science, Energy and Technology and copied to Petrojam Ltd.:

***“Re: Award of Contract – Petrojam Limited –
Renewal of the General Insurance Portfolio
2017/2018***

...

⁵⁸ Transcript of hearing held on April 4, 2017 involving Mr. Floyd Grindley. Pages 2-5.



Having noted the information from the ensuing discussion, the NCC wishes to conduct further consideration of the matter and therefore recommends that Petrojam pursues a one (1) year extension of the current contractual arrangement for insurance services which expires 2017 March.

*In the foregoing regard, Petrojam Limited is advised to submit a completed Variation Form, along with the appropriate Actuarial Report and the Head of Entity's letter of approval. The NCC will undertake to treat the matter expeditiously and therefore advises that the request for variation should be submitted directly to the NCC, given the time sensitive nature of the procurement.*⁵⁹

In response to the NCC's letter of March 10, 2017, Petrojam Ltd. stated, *inter alia*, the following:

"We refer to your letter of 2017 March 10 recommending that Petrojam pursues a one (1) year extension to the current contractual arrangement for Insurance Broking Services which expires March 31, 2017.

Enclosed as requested are:

⁵⁹ Letter dated March 10, 2017 which was sent to Mrs. Hillary Alexander, JP, Permanent Secretary, Ministry of Science, Energy and Technology, from Mr. Raymond McIntyre, Chairman, NCC which was entailed in the April 26, 2017 Response of Petrojam Ltd. Exhibit 1 (ii).



- *Completed Variation Form &*
- *Head of Entity Letter of Approval.*

An Actuary Report is not required for extension and regular annual placement of insurances as there is not a process that involves the comparison of quotations. *The placement of the Insurance portfolio is with local insurers General Accident Insurance Company Ltd. and CV Starr International as lead reinsurer. **The renewal and placement of insurances is conducted within a single market and a defined panel of re-insurers.***⁶⁰

Attached to the abovementioned response is a copy of the referenced Variation Form, as shown below:

⁶⁰Letter dated March 17, 2017 addressed to Mr. Raymond McIntyre, Chairman, NCC from Mr. Floyd Grindley, General Manager, Petrojam Ltd., which was entailed in the April 26, 2017 Response of Petrojam Ltd. Exhibit 1 (ii).



NATIONAL CONTRACTS COMMISSION

VARIATION FORM

REQUEST FOR APPROVAL OF VARIATION TO EXISTING CONTRACT
To Be Completed in Triplicate

The Completion of all Sections is mandatory

SECTION A (to be completed by Procuring Entity)

1. SECTOR COMMITTEE HOST:

WORKS [] GOODS [] CONSULTANCY & GENERAL SERVICES [] INSURANCE [✓] ICT []

2. NAME OF PROCURING ENTITY: PETROJAM LIMITED

3. NAME OF CONTRACT: Provision of Insurance Broking Services

4. CONTRACT TYPE: GOODS [] SERVICES [✓] WORKS []

5. NAME OF CONTRACTOR: Fraser Fontaine & Kong Limited

6. NCC Approval/Meeting Date: N/A 7. Original Contract Sum: JA\$6,347,000; US\$5,285,069 (incl. GCT)

8. DESCRIPTION OF ORIGINAL CONTRACT ACTIVITY: The Provision of Insurance Placement for Petrojam's Business Operations

9. Original Contract Duration: 1 year 10. Actual Contract Start Date: April 1, 2016

11. Percentage of Contract Executed: (a) Period: 100% (b) Sum: JA\$6,347,000; US\$5,285,069 (incl. GCT)

12.A. Consultant's Name: Delroy Brown/Carlene Evans – Petrojam Limited

12.B. Consultant's Function & Role: Chief Financial Officer/Budget Planner & Financial Treasurer

13. Variation Activity	Contract Amount \$	Net Variation (+/-)
<u>To facilitate the tender approval process</u>	<u>JS\$6,347,000; US\$5,285,069 (incl. GCT)</u>	<u>(Est.) JS\$5,448,000; US\$3,922,000 (exc. GCT)</u>
TOTAL	<u>JS\$6,347,000; US\$5,285,069 (inc.GCT)</u>	<u>(Est.) JS\$5,448,000; US\$3,922,000 (exc. GCT)</u>

13A. Status of Variation Works: (a) Started [] (b) Completed [] (c) Pending approval [✓]

14. Justification for Variation:

1. This is to facilitate the approval process.

15. Additional Time Required: One (1) Year

16. Justification for Additional Time: To facilitate completion of tender process for a new contract after the process was delayed by queries from external approval agency and an investigation from the OCG



The OCG also perused a copy of a letter dated March 15, 2017 which was addressed to the NCC from the Ministry of Science, Energy and Technology. The stated letter, which expressed no objection to Petrojam Ltd.'s request for an extension of contract, indicated, *inter alia*, as follows:

“Re: Extension of Contract – Insurance Broking Services for Petrojam Limited

...In keeping with the request contained therein this is to advise that the Ministry of Science, Energy and Technology is in support of the request from Petrojam, to extend their contract for Insurance Broking Services with Fraser Fontaine and Kong Limited for a period of one (1) year. The estimated value of this extension is Three Million, Nine Hundred and Twenty-two Thousand United States Dollars (US\$3,922,000.00) and Five Million, Four Hundred and Forty-eight Thousand Jamaican Dollars (J\$5,448,000.00), excluding GCT and brokers fee.

The extension of the contract for one (1) year is to facilitate the approval process for the award of a new contract.”⁶¹ (OCG Emphasis)

By way of a letter dated March 24, 2017, the NCC approved the extension of the contract to provide insurance services to Petrojam Ltd. as the company met the requirements of the Commission in providing the foregoing Variation Form and approval from the Ministry of

⁶¹ Letter dated March 15, 2017 which was addressed to Mr. Raymond McIntyre, Chairman, NCC from Mrs. Hillary Alexander, JP, Permanent Secretary, Ministry of Science, Energy and Technology, which was entailed in the April 26, 2017 Response of Petrojam Ltd. Exhibit 1 (ii).



Science, Energy and Technology. The NCC indicated, *inter alia*, the following to the Ministry of Science, Energy and Technology:

“The National Contracts Commission (NCC), considered the matter at its meeting held on 2017 March 22 and approved Petrojam Limited’s request to vary its contract with Fraser Fontaine & Kong Limited in the sum of Five Million Four Hundred and Forty Eight Thousand Jamaican Dollars (\$5,448,000.00) plus GCT (or \$6,346,920.00 inclusive of GCT) for the Jamaican Denominated Risks and Three Million Nine Hundred and Twenty Two Thousand United States Dollars (orUS\$4,569,130.00 inclusive of GCT) for the United States Dollars Denominated Risks.

...

The NCC notes that the variation is for a period of one (1) year, thus representing a fourth (4th) year insurance coverage.

...

Kindly submit to Cabinet for its approval.”⁶²

Subsequent to the approval of the NCC as it regards the extension of the subject contract, the Cabinet approved same as highlighted below:

⁶² Letter dated March 24, 2017 which was addressed to Mrs. Hillary Alexander, JP, Permanent Secretary, Ministry of Science, Energy and Technology, from Mr. Raymond McIntyre, Chairman, NCC which was entailed in the April 26, 2017 Response of Petrojam Ltd. Exhibit 1 (ii).



“Re: Approval for the Extension of Contract – Insurance Broking Services.

Cabinet by way of Decision No. 12/17 advised that on March 27, 2017 consideration was given to the captioned Cabinet Submission.

The Submission sought the approval for the Cabinet to approve a one year extension of the existing contract with Fraser Fontaine and Kong Limited (FFK) and their overseas correspondent broker, Marsh Limited, with respect to the placement of Petrojam’s insurance portfolio.

...

...Please be advised that by Decision of April 3, 2017 that Committee recommended that the Cabinet amend the Decision of March 27, 2017 with respect to the extension of the contract with Fraser Fontaine and Kong for the provision of insurance brokerage services for Petrojam and instead approved the following:

- ***the extension of the existing brokerage contract with Fraser Fontaine and Kong and their overseas correspondent broker, Marsh Limited for a two year period;***
- *the placement of Petrojam’s Insurance portfolio through Fraser Fontaine and Kong and their overseas correspondent broker Marsh Limited, in*



the first year of the extension, in the premium amount of US\$3,922,000.00 plus J\$5,448,000.00, exclusive of General Consumption Tax and broker's costs; and

- *the signing of the appropriate extension, prior to the expiration of the existing insurance contract.*

The Cabinet noted the information provided and approved the recommendation of the Infrastructure Committee, which supersedes the Decision of March 27, 2017 regarding the captioned subject.”⁶³

At this juncture, the OCG notes with importance that the Cabinet approved the extension of the contract for **two (2) years**. The OCG also highlights that by way of a previous letter dated March 27, 2017, Mr. Floyd Grindley, then General Manager, Petrojam Ltd., advised Mr. Gerald Fontaine of Fraser Fontaine & Kong Ltd. that the company “wishes to extend the contract for the provision of insurance broking services...**for three[sic] years** commencing April 1, 2017.” (OCG Emphasis)

Further, after the Cabinet approved the referenced extension of contract for a period of two (2) years, Mr. Floyd Grindley, then General Manager, Petrojam Ltd., by way of letter dated April 18, 2017, advised Mr. Gerald Fontaine of Fraser Fontaine & Kong Ltd. of the following:

“This letter supersedes our letter of March 27, 2017.

*Petrojam wishes to extend the contract for the provision of insurance broking services...**for two***

⁶³ Letter dated April 13, 2017 which was addressed to Mr. Floyd Grindley, then General Manager, Petrojam Ltd. by Mrs. Hillary Alexander, JP, Permanent Secretary, Ministry of Science, Energy and Technology, which was entailed in the April 26, 2017 Response of Petrojam Ltd.



years commencing April 1, 2017.”⁶⁴ (OCG Emphasis)

In furtherance of its Investigation, the OCG, by way of its a requisition dated April 13, 2017, posed the following question to Mr. Grindley:

“14. Reference is made to letter dated April 7, 2017 which was addressed to the OCG from Mr. Richard Burgher, Marathon Insurance Brokers Ltd. The referenced email indicated, *inter alia*, the following:

“The email below was received on March 27, 2017 from our partners **Willis**:

...

Richard,

Below from our London team:

“We didn’t hear back from you with regards to the above so assume that this is a dead duck. We do know that Marsh are currently in the market, and have been since last week, with an extension from the client for 1 year as the tender was declared null and void.

⁶⁴ Letter dated April 18, 2017 which was addressed to Mr. Gerald Fontaine, Fraser Fontaine & Kong Limited Mrs. Mr. Floyd Grindley, then General Manager, Petrojam Ltd. which was entailed in the April 26, 2017 Response of Petrojam Ltd. Exhibit 1 (ii).



We also know that Marsh are trying to convince Aspen, Mapfre and Barents Re to write the account to them going forwards.

...

You will recall that these three reinsurers (Aspen, Mapfre and Barents Re) are the same ones used by MIB in its tender that Longdown raised questions about their adequacy in their email to Willis asking for better particulars. Somehow they are now good enough, so much so that Marsh is now trying to persuade them to join with them in providing the one year cover as enticement which will effectively block MIB from using them in any future tender for Petrojam as to do so would amount to a conflict to bid in the future against a co-insurer.”

Please provide an executive summary outlining the full extent of the knowledge of Petrojam Ltd., if any, concerning the aforementioned email correspondence.”⁶⁵

In his response to the OCG, Mr. Grindley stated that *“Petrojam is not aware of the email correspondence.”*

⁶⁵ OCG requisition dated April 13, 2017 which was sent to Mr. Floyd Grindley, then General Manager, Petrojam Ltd.



CONCLUSIONS

Based upon the sworn responses provided by employees of Marathon Insurance Brokers Ltd., Petrojam Ltd. and Eckler Consultants & Actuaries, as well as documentary evidence submitted to the OCG during the course of hearings, the OCG has arrived at the following considered conclusions:

1. The OCG has found **no evidence of bias** in the circumstances surrounding the 2017 tender for insurance services to Petrojam Ltd. based upon the recommendation of Eckler Consultants & Actuaries.

Notwithstanding the inability of the OCG to disclose the contents of the actuarial report which was prepared by Eckler Consultants & Actuaries, the Office notes that, upon an application of best practices and thorough due diligence, there is **no evidence of bias** in the evaluation process undertaken by the actuarial company regarding Petrojam's 2017 tender for insurance services.

2. The OCG concludes that Marathon Insurance Brokers Ltd. was not the successful bidder of the Petrojam's 2017 tender for insurance services as it was not successful in the most substantial category of a 'fronting fee'. The fronting fee proposed by the company was very high in comparison to those of other bidders. Of note, this category was allotted the most points as highlighted in the evaluation criteria.

It is also the position of the OCG that, Criteria 5 and 6, which were the subject of the complaint made by Marathon Insurance Brokers Ltd., were in fact the criteria in which the company was the successful bidder as they scored the most points.

3. The OCG concludes that the actions of Longdown EIC in its request to Willis Watson Towers to provide further particulars of its experience in the lead markets after the close of tender is **irregular**. The referenced actions of Longdown EIC, which were not



authorised by Petrojam Ltd., is tantamount to a breach of the provisions of the 2014 Government of Jamaica Handbook on Public Sector Procurement Procedures which states that “*tenders received should be kept under the strictest control to ensure that the utmost confidentiality is maintained*” and that “*procuring entities shall ensure that all Bidders are given equal opportunity in the tendering process, for example, by insisting on strict adherence to the closing date and time for submission of tenders, and by preventing alteration to the proposals thereafter.*”

4. It is the opinion of the OCG that Petrojam Ltd. was aware that the actions of Longdown EIC were irregular in the above regard and took no action to remedy same. In point of fact, Petrojam Ltd. was satisfied that the actions of Eckler Consultants & Actuaries to disregard the request made by Longdown EIC to provide further particulars after the close of tender, was adequate.
5. The OCG **found no evidence of impropriety and/or irregularity** as it regards the extension of the previous contract for the provision of insurance services which was awarded to Fraser Fontaine & Kong. The OCG is of the opinion that the extension, which was approved by the Cabinet of Jamaica and the NCC, is necessary as Petrojam Ltd. would risk having no insurance coverage as at the date of expiry of contract on April 1, 2017.



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)

Having regard to the foregoing, the OCG now posits the following recommendations:

1. The OCG strongly recommends that Procuring Entities should scrupulously adhere to the GOJ Procurement Guidelines and Regulations in the award of government contracts. In particular, the OCG recommends that Petrojam Ltd. abides by the provisions of Section 1, Volume 4 of the GoJ Handbook of Public Sector Procurement Procedures:

*“Tenders received should be kept under the strictest control to ensure that the utmost confidentiality is maintained. **The contents of tenders should not be disclosed to any unauthorized person.**”*

2. It is the recommendation of the OCG that in circumstances where Petrojam Ltd. and/or other Procuring Entity has identified that there is a breach of any applicable laws, regulations or guidelines, such as in the case of Longdown EIC, the Procuring Entity should seek to remedy the said breach in an expeditious and effective manner as opposed to continuing with the implementation of the project in violation of the said applicable laws, regulations or guidelines.
3. The OCG also recommends that procurement workshops be undertaken with Petrojam Ltd. and entities with which it engages for procurement related services, to reinforce the



requirements of the GOJ Procurement Guidelines and Regulations in the award of government contracts, particularly those for the provision of insurance services.