



OFFICE OF THE CONTRACTOR GENERAL OF JAMAICA

Special Report of Investigation

Conducted into the Circumstances Concerning the Award of Certain Contracts to One Touch Construction and Equipment Limited, formerly One Touch Tours and Equipment Limited, by the St. Thomas Parish Council.

St. Thomas Parish Council

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INTRODUCTION

On January 24, 2014, the Office of the Contractor General (OCG), acting on behalf of the Contractor General, and pursuant to the provisions which are contained in Section 15(1) and 16 of the Contractor General Act, initiated an Investigation into the alleged irregularities surrounding the award of certain Government contracts to the entity One Touch Construction and Equipment Limited, formerly, One Touch Tours and Equipment Limited, by the St. Thomas Parish Council.

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 OCG’s decision to commence a formal Investigation was triggered by an anonymous complainant that was made to the OCG. The complaint involved a Physical Infrastructure Constituency Development Fund (CDF) Project, referred to as the Mount Lebanon Footbridge Rehabilitation Project that was awarded to One Touch Tours and Equipment Limited. **The referenced entity was reportedly registered with the National Contracts Commission (NCC) in the category of Transportation and Haulage, specializing in Garbage Collection and Disposal’.** The allegation also inferred that another company which had submitted a Bid, as it regards the referenced procurement opportunity, and which was registered with the NCC, in the category of ‘*Civil Engineering Works – Grade 4*’ was not awarded the contract.

The aforementioned allegations raised several concerns for the OCG, especially in light of the perceived irregularities and infractions of the GoJ Procurement Guidelines and the Contractor General Act. Section 4 (1) of the Act requires, *inter alia*, that GoJ contracts should be awarded “...impartially and on merit” and that the circumstances of the award should “...not involve *impropriety or irregularity*”.

The OCG’s Investigation sought to determine, *inter alia*, (a) whether there were breaches of the Revised GOJ Public Sector Procurement Procedures and/or any other applicable rules and regulations, on the part of the St. Thomas Parish Council and (b) the circumstances surrounding the award of contracts by the St. Thomas Parish Council to One Touch Tours and Equipment Limited for the period November 2008 to May 2009.



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

At the commencement of its Investigation on January 24, 2014, the OCG, by way of a letter of even date, wrote to the Hon. Noel Arscott, MP, Minister of Local Government and Community Development, Ministry of Local Government and Community Development, to inform of the OCG's decision to launch an Investigation into the referenced matter. The OCG's letter was also copied to the attention of Mrs. Dionne Jennings, Permanent Secretary, Ministry of Local Government and Community Development, Mayor, Ludlow Mathison, Chairman, St. Thomas Parish Council, and Mrs. Suzzette Hemmings-Bryan, then Acting Secretary Manager, St. Thomas Parish Council.

The Findings of the OCG's Investigation are premised primarily upon an analysis of the statements and documentary evidence which were provided by the Respondents, who were requisitioned by the OCG, during the course of the Investigation.



FINDINGS OF FACT

1. During the period November 10, 2008 to April 20, 2009, the St. Thomas Parish Council awarded at least four (4) construction related contracts to the entity One Touch Tours and Equipment Limited.
2. The contracts that were entered into and awarded by the St. Thomas Parish Council to One Touch Tours and Equipment Limited were as follows:
 - (a) The construction of a Footbridge and /U Drain at Bongo Gully, Trinityville, St. Thomas, at an original contract value of \$855,220.00.
 - (b) The construction of a retaining wall at “*Trinity Ville*”, St. Thomas, at an original contract value of \$2,850,000.00;
 - (c) The building of a retaining wall at Mount Lebanon, Trinityville, St. Thomas, at an original contract value of \$2,324,250.00; and
 - (d) The re-erection of a Footbridge at Mount Lebanon, Trinityville, St. Thomas, at an original contract value of \$4,224,270.00.
3. One Touch Construction and Equipment Limited, formerly One Touch Tours and Equipment Limited, is a limited company incorporated under the name, One Touch Construction and Equipment Limited, as at June 10, 2009.
4. One Touch Construction and Equipment Limited has been solely registered by the NCC on the list of approved Supplier of goods and services to the Government of Jamaica, in the category of Transportation & Haulage (Specializing in garbage collection & disposal).
5. The St. Thomas Parish Council was unable to locate the records of the majority of the procurements records requested by the OCG, in its investigation of the circumstances surrounding the subject contracts. In fact, the Council failed to produce records of:



- (a) Details of the evaluation criteria utilized by the Council to evaluate bids,
 - (b) Details of the eligibility requirements; and
 - (c) The Tender Document and/ or the tender specifications that were prepared by the Council and communicated to prospective Bidders.
6. In relation to the award of contract to One Touch Tours and Equipment Limited, for the building of a retaining wall at Mount Lebanon, Trinityville, St. Thomas, at an original contract value of \$2,324,250.00, the Council was only able to locate and provide a copy of the Contract Agreement that was entered into between the parties and Estimates received from three (3) entities.
7. The failure of the Council to locate or produce pertinent records relevant to its procurement activities amounts to a breach of Sub-section 2150 of the GHPPP (November 2008). Sub-section 2150 of the GHPPP establishes the GoJ's structure and content of record keeping for the procurement of general services, goods and works.
8. The St. Thomas Parish Council failed to report to the OCG, by way of its QCA submission, the contracts which were awarded to One Touch Tours and Equipment, for (a) the re-erection of a Footbridge at Mount Lebanon, Trinityville, St. Thomas, at an original contract value of \$4,224,270.00 and (b) the construction of a retaining wall at "Trinity Ville", St. Thomas, at an original contract value of \$2,850,000.00.

Having regard to Section 4 (4) of the Contractor General Act, and based upon the St. Thomas Parish Council's non-compliance and failure to report the referenced contract, the Accountable Officer(s) of the St. Thomas Parish Council who was/were required to sign and submit the referenced QCA Reports, breached Section 29 (a) and (b) (ii) of the Contractor General Act.

9. In relation to the contract which was awarded to One Touch Tours and Equipment for the construction of a Footbridge/ U Drain, at the original contract value of \$855,220.00, there



is no evidence that a Comparable Estimate was prepared and stated on the relevant procurement documents.

The foregoing amounts to a breach of Section S-2110 IV(5), which requires, *inter alia*, that the “...*comparable estimate should be made public at the tender opening and figure recorded on the Bid Receipt Record.*”

10. The OCG observed significant discrepancies between the information which was reported to the OCG by way of the St. Thomas Parish Council’s QCA submission for the contract which was awarded to One Touch Tours and Equipment for the construction of a Footbridge/ U Drain, and that which was evidenced by way of the relevant procurement documents. The discrepancies identified are noted hereunder;

- (a) The referenced contract which was entered into between the St. Thomas Parish Council and One Touch Tours and Equipment Limited was dated November 10, 2008, whereas the Council indicated via its QCA Report a contract award date of December 12, 2008.
- (b) The contract value, as per the Contract Agreement, was in the amount of \$855,220.00, whereas the contract value reported on the QCA was in the amount of \$752,539.00.
- (c) The QCA submission that was made by the St. Thomas Parish Council indicated that the Selective Tender procurement methodology was utilized. However, the representations of Mr. Errol Greene, by way of his response of August 7, 2014, indicated that the Limited Tender Procurement methodology was utilized.

11. The following discrepancies were also identified between the information which was reported to the OCG, by way of the St. Thomas Parish Council’s QCA submission for the contract which was awarded to One Touch Tours and Equipment for the construction of a retaining wall at Mount Lebanon, and that which was evidenced by way of the relevant procurement documents. The discrepancies identified are noted *hereunder*;



- (a) The contract which was entered into between St. Thomas Parish Council and One Touch Tours and Equipment Limited was dated November 24, 2008, whereas the Council indicated, via its QCA Report, a contract award date of December 16, 2008.
 - (b) The contract value, as per the Contract Agreement, was in the amount of \$2,324,250.00, whereas the contract value reported on the QCA was in the amount of \$2,045,340.00.
 - (c) The contract completion date, as indicated in the Contract Agreement was December 15, 2008, whereas the contract award date, as represented on the QCA was December 16, 2008.
 - (d) The QCA submission that was made by the St. Thomas Parish Council indicated that the Selective Tender procurement methodology was utilized. However, the representations of Mr. Errol Greene, by way of his response of August 7, 2014, indicated that the Limited Tender procurement methodology was utilized. In relation to this anomaly, the OCG has found that based upon the requirements of the then applicable GHPPP, the Limited Tender procurement methodology is recommended for contracts which fall within the value threshold of above \$1,000,000.00 to \$3,000,000.00. Of note, the referenced contract was in the amount of \$2,324,250.00.
12. The entity, One Touch Tours and Equipment Limited, first sought registration with the NCC, by way of an Application Form for Registration as an Approved Supplier of Goods and Services, on September 5, 2008. In the said Application, the entity sought registration in the categories of Towing and Wrecking, as well as Transportation and Haulage – Garbage Disposal.
13. The NCC, by way of a letter which was dated September 24, 2008, wrote to One Touch Tours and Equipment Limited advising that the entity had been approved as a Supplier of



Goods and Services to the Government of Jamaica, and had been placed in the category of Transportation & Haulage (Specializing in garbage collection & disposal).

The aforementioned registration was valid for twelve (12) months and expired on September 23, 2009.

14. The referenced company again sought registration with the NCC, in the category of Transportation and Haulage- Garbage Disposal, by way of an Application Form for Registration as an Approved Supplier of Goods and Services, on October 8, 2009.
15. The entity, by way of a letter which was dated November 4, 2009, was re-registered by the NCC and placed in the category of Transportation and Haulage (specializing in garbage collection and disposal) on the list of Approved Suppliers. The said registration was valid for twelve (12) months and expired on November 3, 2010.
16. One Touch Tours and Equipment Limited, as at the date of this Report, was last registered with the NCC, in the category of Transportation and Haulage (specializing in garbage collection and disposal) on the list of Approved Suppliers on March 18, 2015.
17. **One Touch Tours and Equipment Limited, being registered by the NCC in the category of Transportation and Haulage (specializing in garbage collection and disposal) was not appropriately registered and/or qualified, by the standards of the NCC, to be awarded construction related government contracts.**

Based upon the NCC's Category and Grade Assessment Criteria for the Registration of Contractors, the category of Civil Engineering is recommended for such works which require the "*...construction, alteration and repair of infrastructure and public utility works...*"



In the case of General Road Works, the Assessment Criteria indicates that this category is recommended for such works which involves the “*construction, alteration and repair of highways, roads, streets, parking lot and other public ways used for vehicular traffic, including any drains, tunnels, bridges and other appurtenances to the construction.*”

18. The actions of the St. Thomas Parish Council, in awarding at least four (4) separate construction related contracts to One Touch Tours and Equipment Limited, an Approved Supplier, in the category of Transportation and Haulage (specializing in garbage collection and disposal), amounts to a breach of Sub-section S-2080 of the then applicable GHPPP.
19. The St. Thomas Parish Council was unable to provide the OCG with details of relevant construction related job experience, which qualified One Touch Tours and Equipment Limited as a competent entity to execute construction related works, inclusive of the ‘building of retaining walls’ and the ‘erection of a Footbridge’.
20. In an attempt to attest to the successful completion and execution of the referenced contracts, the St. Thomas Parish Council was only able to provide the OCG with two (2) Memoranda which were dated April 16, 2009 and August 13, 2009. The Memoranda were sent, in each instance, by the then Superintendent of Roads and Works to the then Secretary Manager and stated as follows: “...*claim for Retention from One Touch Tours and Equipment is recommended for approval as the site was visited and the wall constructed remained the same*”.
21. In relation to the contract which was awarded to One Touch Tours and Equipment Limited for the construction of a Footbridge and /U Drain at Bongo Gully Foot Bridge, Trinityville, St. Thomas, and for which the original contract value was \$855,220.00, a total amount of \$855,220.00 was paid.



22. The total amount of \$2,324,250.00 was paid in relation to the contract which was awarded to One Touch Tours and Equipment Limited for the construction of a retaining wall at Mount Lebanon, Trinityville, St. Thomas, and for which the original contract value was \$2,324,250.00.
23. Payment records indicate that the total amount of \$2,850,000.00 was paid in relation to the contract which was awarded to One Touch Tours and Equipment Limited for the construction of a retaining wall at, 'Trinity Ville', St. Thomas, and for which the original contract value was \$2,850,000.00.
24. In relation to the contract which was awarded to One Touch Tours and Equipment Limited for the re-erection of a Footbridge at Mount Lebanon, Trinityville, St. Thomas, and for which the original contract value was \$4,224,270.00, a total amount of \$4,446,600.00 was paid.

In accounting for the variation between the original contract sum and that which was expended, the St. Thomas Parish Council disclosed that the Contractor was paid based upon the "*in-house estimate*", instead of the approved contract sum.

25. The foregoing admitted error, on the part of the St. Thomas Parish Council, is contrary to that Section 19 B of the Financial Administration and Audit Act (FAA-Act, and reflects an egregious flaw which is tantamount to gross negligence and/or mismanagement.



TERMS OF REFERENCE

The primary objectives of the OCG's Investigation into the circumstances surrounding the alleged irregularities as it regards the award of the subject Government contracts, by the St. Thomas Parish Council to One Touch Tours and Equipment Limited, are to determine, *inter alia*, the following:

1. Whether there were breaches of the then applicable GOJ Public Sector Procurement Procedures and/or any other applicable rules and regulations, on the part of the St. Thomas Parish Council, or anyone acting on their behalf, in the award of contracts to One Touch Tours and Equipment Limited to perform works in Trinityville, St. Thomas, for the period November 2008 to May 2009.
2. To identify the basis upon which the St. Thomas Parish Council qualified and subsequently contracted the services of One Touch Tours and Equipment Limited to perform works in Trinityville, St. Thomas, for the period November 2008 to May 2009.

The specific objectives of the OCG's Investigation were to determine, *inter alia*:

1. The circumstances surrounding the award of contracts by the St. Thomas Parish Council to One Touch Tours and Equipment Limited for the period November 2008 to May 2009.
2. To determine the procurement process that was utilized by the St. Thomas Parish Council, in the award of contracts to One Touch Tours and Equipment Limited, for the following projects:
 - (i) The building of a retaining wall at Bongo Gully Foot Bridge, Trinityville, St. Thomas;
 - (ii) The building retaining wall at Mount Lebanon, Trinityville, St. Thomas; and



(iii) The re-erection of a Footbridge at Mount Lebanon, Trinityville, St. Thomas.

3. To determine whether there was any impropriety and/or irregularity involved in the process which was utilized by the St. Thomas Parish Council in the contracting of the services of One Touch Tours and Equipment Limited for the above stated projects.
4. To determine whether the quality and/or performance of One Touch Tours and Equipment Limited in the above stated contracts reflected value for money.
5. To determine whether the processes which led to the award of the above contracts to One Touch Tours and Equipment Limited was fair, impartial, transparent and based on merit.



JURISDICTION

Detailed below is the legal basis upon which the Contractor General has enquired into certain contracts that were awarded by the St. Thomas Parish Council to the entity One Touch Tours and Equipment Limited.

The OCG's decision to undertake an investigation into this matter is predicated upon the apparent breaches of the applicable GoJ Procurement Guidelines, as it regards the award of the referenced contracts to One Touch Tours and Equipment Limited by the St. Thomas Parish Council. The Jurisdiction of the Contractor General enables the Office to enquire into the circumstances surrounding the said award of contract(s) to One Touch Tours and Equipment Limited, in keeping with Sections 15(1) and 16 of the Contractor General Act.

Instructively, Section 2 of the Act provides the following interpretation:

- **“government contract”** includes any licence, permit or other concession or authority issued by a public body or agreement entered into by a public body for the carrying out of building or other works or for the supply of any goods or services;
- **“prescribed licence”** means any licence, certificate, quota, permit or warrant issued or granted pursuant to any enactment by a public body of any officer thereof;
- **“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, noted above, it is held that the St. Thomas Parish Council is, in fact, a Public Body as defined by the Act. Consequently, the matters concerning the procurement process undertaken by the St. Thomas Parish Council is the reason for the OCG's Investigation. In particular, the OCG has sought to ascertain compliance, on the part of the St. Thomas Parish Council, with the provisions of the Contractor General Act (1983), the then applicable GOJ Handbook of Public Sector Procurement Procedures (GHPPP, October 2008) and other relevant Legislations governing the procurement process.



METHODOLOGY

The Requisitions/Questionnaires, which formed a part of the OCG's investigative methodology, were directed by the OCG to Mr. Errol Greene, Secretary Manager, St. Thomas Parish Council. Mr. Greene was required to provide written responses to the formal Requisitions that were directed to him by the OCG.

The OCG conducted a detailed review and cross-referencing of the Statements, and supporting documentation that were submitted by Mr. Errol Greene.

The OCG also undertook a comprehensive review of the National Contracts Commission (NCC) Databases, the Quarterly Contracts Awards (QCA) Database, as well as certain files and documents that were requested pursuant to the OCG's monitoring mandate.



PRELIMINARY REVIEW

The Office of the Contractor General (OCG), subsequent to its receipt of an anonymous complaint, and pursuant to its monitoring mandate, commenced a Preliminary Enquiry into the award of certain contracts to the entity One Touch Tours and Equipment Limited by the St. Thomas Parish Council.

The documents that were reviewed by the OCG during its Preliminary Enquiry included (a) procurement related documents that were received from the St. Thomas Parish Council, (b) certain documents obtained from the Constituency Development Fund Project Management Unit (CDFPMU), (c) information retrieved from the OCG's Contract Management System (CMS), and (d) the Quarterly Contract Awards (QCA) Consolidated Database.

Mount Lebanon Footbridge Rehabilitation Project

During its Preliminary Enquiry the OCG found that a Contract Agreement, in the amount of \$4,224,270.00, to “*Re-Erect the Footbridge at Mount Lebanon*”, and which was dated April 20, 2009, was entered into between the St. Thomas Parish Council and One Touch Tours and Equipment Limited.¹ Upon review of the QCA Consolidated Database, the OCG found no evidence that the St. Thomas Parish Council had reported a contract fitting such a description in 2009, via its QCA submissions.

Mrs. Fay Neufville, former Secretary Manager, St. Thomas Parish Council, in response to an OCG request for information relating to the Mount Lebanon Footbridge Rehabilitation project, provided the OCG with the following:

1. A copy of the Letters of Invitation;
2. A copy of the Bid Reveal Form;
3. A copy of the Tender Evaluation Form;
4. A copy of the Bids that were received;

¹ St. Thomas Parish Council Contract Agreement with One Touch Tours and Equipment Limited, dated April 20, 2009.



5. A copy of the Contractors' NCC Registration Certificate, or letter from the NCC approving the Contractor's Registration;
6. A copy of the signed contract document; and
7. A copy of the expenditure to date.

A copy of the Letters of Invitation that were issued by the St. Thomas Parish Council and which were dated April 2, 2009, indicated that three (3) entities were invited to participate in the procurement opportunity.² The referenced letter, however, did not indicate the following:

1. The Eligibility Requirements;
2. Availability of a Bid/ Tender Document inclusive of the Bill of Quantities;
3. Instruction to Tenderers; and
4. The time of the Tender Closing and Opening.

The OCG found, based upon its review of the Tender Receipt Form that was prepared in respect of the 're-erection of a Footbridge at Mount Lebanon', *inter alia*, the following:

- That the Comparable Estimate for the project was in the amount of \$4,446,600.00;
- That three (3) entities, namely, One Touch Tours and Equipment Limited, Lanvintar Limited, and Biersay Equipment Limited submitted Bids to the St. Thomas Parish Council;
- That the Bid that was submitted by One Touch Tours and Equipment Limited was in the amount was \$4,472,500.00;
- That the Bid that was submitted by Lanvintar Limited was in the amount of \$5,143,300.00; and
- That the Bid that was submitted by Biersay Equipment Limited was in the amount of \$5,043,400.00.

The OCG also observed that both the Contract Agreement and an Inter-Office Memorandum, that was sent by the then Superintendent of Roads and Works, Mr. Earl Dawkins to the Secretary

² Letter Dated April 2, 2009 from the St. Thomas Parish Council to One Touch Tours and Equipment Limited, Biersay Equipment Limited and Lanvintar Limited.



Manager, Mrs. Fay Neufville, recommending that One Touch Tours and Equipment Limited be awarded the contract for the re-erection of the Footbridge at Mount Lebanon, were dated on April 20, 2009. The OCG notes, by an inscription on the said Inter Office Memorandum, that approval was provided, by the then Secretary Manager, Mrs. Fay Neufville, for payment in relation to the said contract on May 18, 2009.

The St. Thomas Parish Council had also furnished the OCG with copies of Payment Vouchers that were dated May 28, 2009 and May 15, 2009, in the amounts of \$2,341,100.00 and \$2,105,500.00, respectively. The Payment Vouchers were both prepared in respect of the contract for the re-erection of the Footbridge at Mount Lebanon. The OCG's calculations indicate that the referenced payments amounted, cumulatively, to \$4,446,600.00, which is equivalent to the sum stated in the referenced Contract Agreement.

Instructively, the OCG has seen no evidence to indicate that the referenced payment(s) and/or contract was reported to the OCG, in keeping with the mandatory requirement for the submission of QCA Reports by all procuring public bodies.

The OCG found that the Tender Receiving Form that was prepared by the St. Thomas Parish Council, in relation to the erection of the Footbridge in Mount Lebanon, St. Thomas, indicated that the entities, Lanvintar Limited and Biersay Equipment Limited had also submitted Bids in the amount of \$5,143,300.00 and \$5,043,400.00, respectively. The OCG found that notwithstanding the fact that the St. Thomas Parish Council failed to specify the eligibility criteria required in respect of the referenced tender, it was stated on the Tender Receiving Form that the NCC category and grade required were "*General Road Construction /Grade 4*"³.

The OCG was provided with a copy of the NCC Certificate of Registration for Lanvintar Limited, which indicated that the entity was registered as a Grade 4 Contractor in the categories of Civil Engineering Works, Building Construction, Building Maintenance, General Road Works and Road Maintenance Works. The OCG was also provided with a copy of a letter that was issued by the NCC on September 24, 2008 to the entity One Touch Tours and Equipment Limited and which notified that the entity had been approved as a Supplier of Goods and

³ Tender Receiving Form regarding the Re-erection of a Footbridge at Mount Lebanon. St. Thomas.



Services in the category of Transportation and Haulage specializing in garbage collection and disposal.

The OCG received no NCC related certification from the St. Thomas Parish Council in relation to the entity Biersay Equipment Limited and as such, conducted a review of the CMS to ascertain the then registration status of the entity. The CMS review revealed that Biersay Equipment Limited was approved as a Supplier of Goods and Services in the category of General Services specializing in Equipment Rental.

Having regard to the foregoing, it is to be noted that although all three (3) entities possessed valid NCC certification, as at the date of the Tender Opening Ceremony for the referenced contract, only Lavintar Limited was registered in the appropriate category, given the works that were to be executed.

Further, the OCG was provided with a copy of the Tax Compliance Certificates (TCC) for the entities One Touch Tours and Equipment Limited and Biersay Equipment Limited. The OCG received no such submission for Lanvintar Limited. A copy of the Certificates of Incorporation and/or Certificate of Registration for all three (3) entities was also evidenced by the OCG.

Additional Contracts

Based upon the revelation concerning the NCC's registration of One Touch Tours and Equipment Limited, the OCG undertook a review of its QCA Consolidated Database in an effort to ascertain whether the entity had been awarded any other construction related contracts. The OCG review of the aforesaid Database, as well as the QCA submission that was made by the St. Thomas Parish Council for the 4th Quarter of 2008 revealed that the entity, One Touch Tours and Equipment Limited, was awarded a contract in the amount of \$752,539.00 to build a retaining wall at Bongo Gully Footbridge, Trinityville, St. Thomas. The information provided in the QCA Report of the St. Thomas Parish Council also indicated that the Selective Tender procurement methodology was utilized.

It was also revealed, by way of the OCG's review of the QCA Consolidated Database that One Touch Tours and Equipment Limited was awarded a contract in the sum of \$2,045,340.00, to



build a retaining wall at Mount Lebanon, Trinityville, St. Thomas, utilizing the Selective Tender procurement methodology.

The OCG conducted a company review of the Entity 'One Touch Construction and Equipment Limited' utilizing the Databases of the Companies Office of Jamaica. The referenced company review revealed, *inter alia*, that the company is owned by Mr. Denvor Howell and was incorporated on October 2, 2007.

It was also observed by way of a Certificate of Incorporation on Change of Name, that One Touch Construction and Equipment Limited, formerly One Touch Tours and Equipment Limited, is a limited company incorporated under the name, One Touch Construction and Equipment Limited, as at June 10, 2009.

Based upon the above stated irregularities observed in the procurement and contract award process of contract for the Mount Lebanon Footbridge project, the OCG pursuant to Section 4(1) and 15(1) of the Contractor General Act considered it necessary to conduct an Investigation into the questionable circumstances surrounding the award of the contract.



DISCUSSION OF FINDINGS

Procurement Process undertaken for the Erection of the Footbridge at Mount Lebanon in 2009.

The OCG, by way of its statutory Requisition which was dated March 10, 2014, required the Secretary Manager, St. Thomas Parish Council, to respond to the following questions:

“Please provide an Executive Summary detailing the process through which Contractors were selected for the award of a contract to ‘...re-erect Footbridge at Mount Lebanon’, in St. Thomas in 2009. The Executive Summary should include, inter alia, the following:

- a) The methodology, if any, which was utilized to screen and select suitable/qualified Contractors;*
- b) The name(s) and title(s) of the person(s) who was/were involved in the Contractor selection process at the St. Thomas Parish Council;*
- c) Copies of the approval(s) which was/were received from the respective authority(ies), for the award of contract;*
- d) Details of the evaluation criteria requirement(s) which was were outlined by the St. Thomas Parish Council;*
- e) Details of the evaluation criteria and process which was utilized by the St. Thomas Parish Council;*
- f) Whether a formal Tender Document and/or Tender Specifications was/were was prepared by the St. Thomas Parish Council and communicated to*



- prospective bidders in respect of the captioned contract. If yes, please provide a copy of the same;*
- g) Copies of all correspondence between the St. Thomas Parish Council and the Contractor, One Touch Tours and Equipment Limited; and*
- h) A copy of the signed contract document.”⁴*

Mr. Errol Greene, Secretary Manager, by way of his response to the OCG that was dated August 7, 2014, informed the OCG of the following:

“The Council’s records indicate the following:

- (a) **The limited Tender method was used to screen and select suitable/qualified Contractors.***
- (b) The names and titles of the persons who were involved in selection process of the contractor at the St. Thomas Parish Council were....*
- Earl Dawkins – Former Superintendent of Roads and Works*
 - Fay Neufville – Former Secretary/Manager*
 - Naudia Crosskill – Former Director of Finance*
 - Patricia Bailey – Secretary – Roads & Works*
- (c) See letter from the Former Superintendent of Roads and Works to the contractor regarding approval of contract along with the Constituency Development Fund Project submission Form for the Mount Lebanon Footbridge ...*
- (d) Unable to locate record re the eligibility requirements.*

⁴ OCG Requisition Letter dated March 10, 2014 that was to Mr. Errol Greene, Secretary Manager, St. Thomas Parish Council.(Question 1).



- (e) *A tender evaluation was done by the former Superintendent of roads and Works...*
- (f) *Unable to locate record, however, letters were sent to selected bidders requesting their quotation for the Building of retaining wall at Bongo Gully...*
- (g) *Records found have been included in the exhibits.*
- (h) *See attached signed contract document... ”⁵(OCG Emphasis)*

As indicated above, the Tender Receipt Form that was prepared by the St. Thomas Parish Council identified, *inter alia*, the following:

1. The NCC Category and Grade required was General Road Construction, Grade 4;
2. The date of the Tender Opening and Closing was April 4, 2009; and
3. The Comparable Estimate of \$4,446,600.00.

The referenced Form also indicated that Tenders were received from One Touch Tours and Equipment Limited with the proposed amount of \$4,472,500.00, Lanvintar Limited with the proposed amount of \$5,143,300.00, and Biersay Equipment Limited with the proposed amount of \$5,043,400.00.

The OCG was also provided with a copy of an Inter-office Memorandum that was sent by the Superintendent of Roads and Works to the Secretary Manager.⁶ In the referenced Memorandum, it was stated that One Touch Tours and Equipment Limited was chosen based on the fact that the entity's estimate of \$4,472,000.00 “...comes closest to the cost associated with the project of \$4,446,600.00 when compared with the other estimates received by Lanvintar Limited and Biersay Equipment.”

Additionally, the OCG was provided with a copy of a letter that was dated April 20, 2009, that was sent by Mr. Earl Dawkins, the then Superintendent of Roads and Works, St. Thomas Parish

⁵ Letter by the St. Thomas Parish Council dated April 7, 2014 to the OCG.

⁶ Inter-Office Memorandum dated April 20, 2009.



Council, to the Manager of One Touch Tours and Equipment Limited. The referenced letter informed of the approval for the award of contract in the amount of \$ 4,224,270.00, to the said entity for the re-erection of a Footbridge at Mount Lebanon.

The OCG, in the conduct of its investigation, sought to ascertain whether a formal Tender Document and/or Tender Specification(s) was/were prepared and issued to the prospective Bidders by the St. Thomas Parish Council. In this regard, the St. Thomas Parish Council informed the OCG that the Council was “...unable to locate the record”.

The St. Thomas Parish Council, however, submitted to the OCG letters that were sent to the prospective Bidders requesting quotations for the said project. In this regard, the OCG notes that three (3) separate letters, each dated April 2, 2009, were sent to Mr. Paul Biersay of Biersay Equipment Limited, One Touch Tours and Equipment Limited and Lanvintar Limited by the St. Thomas Parish Council.⁷

The OCG’s review of the aforementioned letters of April 2, 2009, revealed that the entities were invited to enter the bidding process, however, and as revealed during the OCG’s Preliminary Review, the following information was not stated:

1. The Eligibility Requirements;
2. Availability of a Bid/ Tender Document inclusive of the Bill of Quantities; and
3. Instructions to Tenderers.

In point of fact, the information conveyed to the entities by Mr. Earl Dawkins, then Superintendent of Roads and Works, St. Thomas Parish Council, was as follows:

“The St. Thomas Parish Council is requesting your involvement in the bidding process for the project below:

- Mount Lebanon Footbridge

⁷ Letters dated April 2, 2009 to One Touch Tours and Equipment Limited, Lanvintar Limited and Biersay Equipment Limited



The deadline for submission is no later than Tuesday, April 16, 2009. Please feel free to contact the Superintendent of Roads and Works Department at the St. Thomas Parish Council at number 982-2941 for any further queries you may have.

Your participation is anticipated.”⁸

Based upon the foregoing, and the inability of the St. Thomas Parish Council to provide the OCG with a copy of the Tender Document, the OCG is also unable to concretely establish the specifications which were required by the Council. This is further buttressed by the fact that there is no indication that written and/or formal Specifications that detailed the requirements of the St. Thomas Parish Council were made available to the prospective Bidders.

The OCG highlights that Section 2050 of the then applicable GHPPP 2008, stipulates the requirements in relation to the preparation of Bidding Documents for goods, works and general services. Section 2050 further states that the preparation of the Bidding Document is applicable to all procurement involving goods and works and holds the following as the purpose of the Bidding Document:

“Bidding documents inform and instruct potential Bidders, suppliers and contractors of the requirements expected during a particular procurement opportunity. Thus the bidding document should be drafted in such a manner, so as to permit bidders to submit responsive bids. Bidding documents should clearly define the scope of works, goods or services to be supplied, the rights and obligations of Procuring Entity and of suppliers and contractors, and the conditions to be met in order

⁸ *ibid.*



for a bid to be declared valid and responsive. Bidding document should also set out be fair and non-discriminatory criteria for selecting the winning bid... ”⁹

The OCG notes the disclosure that was made by Mr. Errol Greene that the St. Thomas Parish Council was “...Unable to locate record...” of the Tender Document and/or Tender Specifications. Notwithstanding this representation, the failure of the St. Thomas Parish Council to locate and provide a copy of the Tender Document, as well as other documentation relevant to the procurement process, amounts to a breach of Sub-section 2150 of the GHPPP (November 2008). Sub-section 2150 of the GHPPP establishes the structure and content of record keeping for the procurement of general services, goods and works. The referenced section stipulates as follows:

“Without prejudice to the method of storage and in accordance with the Financial Administration and Audit Act – Instructions, the procuring entity shall maintain records of each contract action for a minimum period of ten (10) years. Procurement process and expenditure records, although entrusted to the safeguard of accounting officers, are the property of the Ministry of Finance and shall promptly be made available to the Ministry upon request in its carrying out of expenditure and/or compliance monitoring mandates. The minimum standards of recorded information are as follows:

⁹ Section S-2050 GoJ Handbook of Public Sector Procurement Procedures November 2008. (Page 1 of 3.)



- *Brief description of the works, goods or services procured;*
- *Names and addresses of contractors; Procurement procedure used and authorization reference;*
- *Procurement Procedure used and authorization reference;*
- *Name of successful contractor;*
- *Date of approval;*
- *Contract price and actual completion cost;*
- *Contract duration;*
- *Information relative to the qualifications of contractors;*
- *Summary of the evaluation and comparison of quotations and/or tenders;*
- *Any offsets applied and the corresponding authorization reference pursuant to the Handbook;*
- *Reason(s) for rejection of any or all quotations/tenders;*
- *Summary of requests for clarification/verification of bid documents and any modifications thereof;*
- *Information relative to the successful contractor's performance on the contract; and*
- *Information relative to complaints, resolution decisions and appeals.”¹⁰*

¹⁰ Government of Jamaica, Handbook of Public Sector Procurement Procedures, Procurement Methods for Goods, Works & General Services, sub-section 2150, page 1 of 2.



The OCG perused a copy of the signed Contract Agreement that was entered into between the St. Thomas Parish Council and One Touch Tours and Equipment Limited and notes the following details:

- The works that were to be performed involved the re-erection of the Footbridge at Mount Lebanon;
- The location of the works was in the Trinityville Division, St. Thomas;
- The contract sum was in the amount of \$4,224,270.00;
- The contract commencement date was April 20, 2009;
- The contract duration was three (3) weeks; and
- The contract completion date was May 8, 2009.

Submission of QCA Report

The OCG, via its Quarterly Contract Awards (QCA) Consolidated Database, sought to verify whether the St. Thomas Parish Council had reported the referenced contract by way of its QCA submission to the OCG.

In this regard, it is instructive to note that a review of the QCA Consolidated Database, as well as the hard copy submission produced no evidence that such a contract was reported to the OCG, in keeping with the requirements stipulated in the OCG's letter of July 11, 2006.

The referenced letter, which was issued pursuant to Section 4(4) of the Contractor General Act, required all procuring Public Bodies to submit to the Contractor General, QCA Reports of the particulars of contracts which are awarded by it which are of a value of J\$250,000.00 to J\$3,999,999.99. The regulatory regime was expressed to apply to all classifications of Government contracts awarded as of May 1, 2006.

The aforementioned Requisition was revised by way of an OCG Requisition, dated November 20, 2008, and required, commencing with contracts that are awarded as at October 1, 2008, a procuring Public Body to prepare, certify and submit, directly to the Contractor General, a QCA



Report comprising the particulars of each contract awarded whenever such contract is of a value of between J\$275,001 and J\$10,000,000.

The OCG notes that Section 4 of the Contractor General Act provides as follows:

“...the Contractor-General shall have power to require any public officer or any other person to furnish in such manner and at such times as may be specified by the Contractor-General, information with regard to the grant, issue, suspension or revocation of any prescribed licence and such other information in relation thereto as the Contractor-General considers desirable.”

Having regard to Section 4 (4) of the Contractor General Act, and based upon the St. Thomas Parish Council’s non-compliance and failure to report the referenced contract, the OCG has found that the Accountable Officer(s) of the St. Thomas Parish Council who was/were required to sign and submit the referenced QCA Reports, breached Section 29 (a) and (b) (ii) of the Contractor General Act.

Section 29 (a) and (b) (ii) of the Contractor General Act stipulates as follows:

“Every person who –

- (a) willfully makes any false statement to mislead or misleads or attempts to mislead a Contractor-General or any other person in the execution of his functions under this Act; or*
- (b) without lawful justification or excuse –*



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

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

Additionally, the OCG notes that the Oversight Responsibilities of a Contractor General is stipulated in Sub-section 1020 of the then applicable GHPPP, which states as follows:

“The Contractor General, inter alia, shall be entitled to be advised of the award and where applicable, the variation of any government contract by the public body responsible for such contract...”



Procurement Process undertaken for the Construction of a Retaining Wall at Bongo Gully, St. Thomas, 2008.

The OCG, by way of its statutory Requisition that was dated March 10, 2014, required the Secretary Manager, Mr. Errol Greene, to respond to the following questions:

“Please provide and Executive Summary detailing the process through which Contractors were selected for the award of a contract to “...re-erect Footbridge at Mount Lebanon’, in St. Thomas in 2009. The Executive Summary should include, inter alia, the following:

- a) The methodology, if any, which was utilized to screen and select suitable/qualified Contractors;*
- b) The name(s) and title(s) of the person(s) who was/were involved in the Contractor selection process at the St. Thomas Parish Council;*
- c) Copies of the approval(s) which was/were received from the respective authority(ies), for the award of contract;*
- d) Details of the evaluation criteria requirement(s) which was were outlined by the St. Thomas Parish Council;*
- e) Details of the evaluation criteria and process which was utilized by the St. Thomas Parish Council;*
- f) Whether a formal Tender Document and/or Tender Specifications was/were was prepared by the St. Thomas Parish Council and communicated to prospective bidders in respect of the captioned contract. If yes, please provide a copy of the same;*



- g) *Copies of all correspondence between the St. Thomas Parish Council and the Contractor, One Touch Tours and Equipment Limited; and*
- h) *A copy of the signed contract document.*¹¹

Mr. Errol Greene, Secretary Manager, St. Thomas Parish Council, by way of his response that was dated August 7, 2014, stated as follows:

“The Council’s records indicate the following:

- a) ***The limited Tender method was used to screen and select suitable/qualified Contractors.***
- b) *The names and titles of the persons who were involved in selection process of the contractor at the St. Thomas Parish Council were...*
 - *Earl Dawkins – Former Superintendent of Roads and Works*
 - *Fay Neufville – Former Secretary Manager*
 - *Patricia Bailey –Secretary Roads & Works*
- c) *Unable to locate record; however see an unsigned letter to contractor and the Constituency Development Fund Project submission Form for the building of Retaining wall at Bongo Gully ...*
- d) *Unable to locate record re the eligibility requirements.*
- e) *An unsigned tender evaluation report was found on file...*
- f) *Unable to locate record; however, letters were sent to selected bidders requesting their quotation for the Building of retaining wall at Bongo Gully...*

¹¹ Letter to Mr. Errol Greene by the OCG dated March 10, 2014.



- g) *Records found have been included in exhibits.*
- h) *See attached signed contract document... ”¹²*

The Tender Receival Form that was prepared by the St. Thomas Parish Council identified, *inter alia*, the following:

- (a) The project involved the construction of a retaining wall and ‘U-Drain’.
- (b) The project location was Bongo Gully, Trinityville, St. Thomas.
- (c) The NCC category and grade required was General Road Construction, Grade 4.

It is instructive to note that the referenced Form failed to indicate the date and time of the Tender Opening as well as the Comparable Estimate.

Having regard to the fact that the referenced procurement records produced by the St. Thomas Parish Council failed to indicate that a Comparable Estimate was prepared, amounts to a breach of Section S-2110 IV(5). The referenced Section requires, *inter alia*, that the “...*comparable estimate should be made public at the tender opening and figure recorded on the Bid Receipt Record.*”

The OCG also notes that the St. Thomas Parish Council was unable to locate, and, thereby, furnish the OCG with evidence of the approval(s) that was/were received from the respective authority(ies) in relation to the referenced contract.

As it regards details of the tender evaluation process, the St. Thomas Parish Council provided the OCG with a copy of an unsigned Tender Report. The referenced document was entitled “*CONSTITUENCY DEVELOPMENT FUND (CDF) TENDER REPORT Contracts: Bongo Gully Footbridge/U Drain*”, and included a description of the works that were to be performed, the assigned measurements and the associated costs as estimated by each of the referenced contractors.

¹² Letter by the St. Thomas Parish Council dated April 7, 2014 to the OCG.



It must be noted that based upon the said Tender Report, the total cost for the execution of the referenced works, as proposed by One Touch Tours and Equipment, was in the amount of \$879,500.00. That which was proposed by Biersay Equipment Limited amounted to \$959,300.00 and Lanvintar Limited a total of \$1,155,000.00. The OCG also observed a note which was inscribed on the mentioned Tender Report which stated as follows: “*Comments: based on his rates One Touch Tours & Equipment was selected.*”

Further, the St. Thomas Parish Council provided the OCG with a copy of a letter that was dated October 7, 2008, which was sent by Mr. Earl Dawkins, Superintendent of Roads and Works, St. Thomas Parish Council to the Manager of One Touch Tours and Equipment Limited. The referenced letter informed of the award of the contract to construct a Footbridge/ U Drain at Bongo Gully.¹³

During the course of its investigation, the OCG questioned whether a formal Tender Document and/or Tender Specification(s) was/were prepared and communicated to the prospective Bidders. The St. Thomas Parish Council, however, indicated that they were unable to locate the record. The Council provided the OCG with letters that were sent to the prospective Bidders requesting quotations for the building of the retaining wall at Bongo Gully.

The OCG observed that three (3) separate letters, each dated October 15, 2008 were sent to Mr. Paul Biersay of Biersay Equipment Limited, One Touch Tours and Equipment Limited and Lanvintar Limited by the St. Thomas Parish Council, under the signature of Mr. Earl Dawkins, in his then capacity as Superintendent of Roads and Works. The aforementioned letters stated as follows:

“The St. Thomas Parish Council is requesting your involvement in the bidding process for the project below:

- Bongo Gully Footbridge/U Drain

¹³ Letter dated October 7, 2008 from Earl Dawkins to One Touch Tours and Equipment Limited.



The deadline for submission is no later than Wednesday, November 5, 2008. Please feel free to contact the Superintendent of Roads and Works Department at the St. Thomas Parish Council at number 982-2941 for any further queries you may have.

Your participation is anticipated.”¹⁴

The OCG’s review of the aforementioned letters of October 15, 2008, revealed that the entities were invited to enter the bidding process, however, the following information was not stated:

1. The Eligibility Requirements;
2. Availability of a Bid/ Tender Document inclusive of the Bill of Quantities; and
3. Instructions to Tenderers.

Based upon the foregoing, and the inability of the St. Thomas Parish Council to provide the OCG with a copy of the Tender Document, and thereby indicate the requirements of the St. Thomas Parish Council, the OCG is also unable to concretely establish the specifications which were required by the Council. This failure, on the part of the St. Thomas Parish Council, amounts to a breach of Section 2050 of the then applicable GHPPP 2008, which stipulates the requirements in relation to the preparation of Bidding Documents for goods, works and general services.

The OCG perused a copy of the signed Contract Agreement that was entered into between the St. Thomas Parish Council and One Touch Tours and Equipment Limited and observed the following details:

1. That the works to be performed involved the construction of a Bongo Gully Footbridge/ U Drain.
2. The location of the work was “*Trinity Ville*”, St. Thomas.
3. The contract sum was in the amount of \$855,220.00.

¹⁴ Letters dated October 15, 2008 that was sent by the St. Thomas Parish Council to Prospective Bidders.



4. The commencement date was November 10, 2008.
5. The contract duration period was three (3) weeks.
6. The completion date was December 1, 2008.

The OCG makes specific note of the assertions made by Mr. Errol Greene, Secretary Manager, St. Thomas Parish Council, as it regards the Council's inability to produce certain documentation relevant to the procurements which forms the bases for the OCG's investigation. Mr. Greene advised the OCG, by way of his response which was dated August 7, 2014, as follows:

*"The Council has examined its records and have enclosed a number of the documents requested; however, it is unable to provide responses to all of the requisitions/questions, as some of the officers who were directly involved in the process are no longer with the Council and the records are limited."*¹⁵

Having regard to the foregoing, and, in particular, the failure of the St. Thomas Parish Council to locate certain procurement records, the OCG reiterates the provisions of Sub-section 2150 of the GHPPP (November 2008) which establishes the structure and content of record keeping for the procurement of general services, goods and works. In this regard, the OCG found that the failure of the St. Thomas Parish Council to properly file and record the procurement records relevant to the subject awards of contracts amounts to a breach of Sub-section 2150 of the GHPPP.

Submission of QCA Report

The OCG, via its Quarterly Contract Awards (QCA) Consolidated Database, sought to verify whether the St. Thomas Parish Council had reported the referenced contract by way of its QCA submission to the OCG.

¹⁵ Response that was received from Mr. Errol Greene that was dated April 7, 2014.



Upon review of the 4th Quarter of 2008 (October- December) QCA submission, which bore the reporting date of January 12, 2009, the following, *inter alia*, was reported:

1. That the contract award date was noted as December 12, 2008, with the contract description being the building of a retaining wall at Bongo Gully.
2. That the contract was awarded to One Touch Tours and Equipment Limited, in the amount of \$752,539.00.
3. That the Procurement Method utilized was Selective Tender.
4. That three (3) Tenders were requested and received.
5. That the procurement was approved by the Procurement Committee.

Having regard to the foregoing, the OCG notes the following discrepancies between the information which was reported to the OCG by way of the St. Thomas Parish Council's QCA submission and that which was evidenced by way of the relevant procurement documents:

- (d) The contract which was entered into between the St. Thomas Parish Council and One Touch Tours and Equipment Limited was dated November 10, 2008, whereas the Council indicated via its QCA Report a contract award date of December 12, 2008.
- (e) The contract value, as per the Contract Agreement was in the amount of \$855,220.00, whereas the contract value reported on the QCA was in the amount of \$752,539.00.
- (f) The OCG has seen no record evidencing the Procurement Committee's approval, as indicated in the referenced QCA Report.
- (g) The QCA submission that was made by the St. Thomas Parish Council indicated that the Selective Tender procurement methodology was utilized. However, the representations of Mr. Errol Greene, by way of his response of August 7, 2014, indicated that the Limited Tender Procurement methodology was utilized. In relation to this anomaly, the OCG notes that based upon the requirements of the then applicable GHPPP, the Limited Tender procurement methodology is



recommended for contracts which fall within the value threshold of above \$275,000.00 to \$1,000,000.00.

Further, the GHPPP requires that in utilizing the Limited Tender procurement methodology the following procedure is required:

“ –Invite three registered contractors to quote;

-Evaluation is carried out by an Evaluation Committee;

-The award recommendation is approved by the Accounting Officer/Head of the procuring entity;”



The Procurement Process that was undertaken for the Erection of a Retaining Wall at Mount Lebanon in 2008.

The OCG by way of its statutory Requisition that was dated March 10, 2014, required the Secretary Manager, St. Thomas Parish Council, to respond to the following.

“Please provide and Executive Summary detailing the process through which Contractors were selected for the award of a contract to “...re-erect Footbridge at Mount Lebanon”, in St. Thomas in 2009. The Executive Summary should include, inter alia, the following:

- a) The methodology, if any, which was utilized to screen and select suitable/qualified Contractors;*
- b) The name(s) and title(s) of the person(s) who was/were involved in the Contractor selection process at the St. Thomas Parish Council;*
- c) Copies of the approval(s) which was/were received from the respective authority(ies), for the award of contract;*
- d) Details of the evaluation criteria requirement(s) which was were outlined by the St. Thomas Parish Council;*
- e) Details of the evaluation criteria and process which was utilized by the St. Thomas Parish Council;*
- f) Whether a formal Tender Document and/or Tender Specifications was/were was prepared by the St. Thomas Parish Council and communicated to prospective bidders in respect of the captioned contract. If yes, please provide a copy of the same;*



- g) Copies of all correspondence between the St. Thomas Parish Council and the Contractor, One Touch Tours and Equipment Limited; and*
- h) A copy of the signed contract document.”¹⁶*

Mr. Errol Greene, by way of his response of August 7, 2014, informed the OCG as follows:

“The Council’s records indicate the following:

- a) Unable to locate record.*
- b) Unable to locate record.*
- c) Unable to locate record.*
- d) Unable to locate record.*
- e) Unable to locate record; however copies of quotations were found...*
- f) Unable to locate record.*
- g) Unable to locate record.*
- h) See attached signed contract document...”¹⁷*

As indicated above, the St. Thomas Parish Council was unable to locate the records of the majority of the procurements records requested by the OCG. In fact, the only procurement records that the St. Thomas Parish Council was able to locate were the Contract Agreement and copies of the Quotations that were received in relation to the subject tender.

In this regard, the OCG observed three (3) separate Estimates that were proposed by each entity as follows:

1. Estimate from Lanvintar Limited in the amount of \$3,231,900.00;
2. Estimate from Biersay Equipment Limited in the amount of \$3,171,600.00; and
3. Estimate from One Touch Tours and Equipment Limited in the amount of \$2,324,250.00.

¹⁶ Letter to Mr. Errol Greene by the OCG dated March 10, 2014.

¹⁷ Letter by the St. Thomas Parish Council dated April 7, 2014 to the OCG.



The OCG perused a copy of the signed Contract Agreement that was entered into between the St. Thomas Parish Council and One Touch Tours and Equipment Limited and highlights the following details:

1. The works to be performed included the building of a retaining wall at Mount Lebanon;
2. The location of the work was “Trinity Ville”, St. Thomas;
3. The contract sum was in the amount of \$2,324,250.00;
4. The contract commencement date was November 25, 2008;
5. The contract duration was three (3) weeks; and
6. The contract completion date was December 15, 2008.

In relation to the inability of the St. Thomas Parish Council to locate certain procurement records, the OCG found that the failure of the St. Thomas Parish Council to properly file and record the procurement records relevant to the subject award of contract amounts to a breach of Sub-section 2150 of the GHPPP.

Submission of QCA Report

The OCG, via its Quarterly Contract Awards (QCA) Consolidated Database, sought to verify whether the St. Thomas Parish Council had reported the referenced contract by way of its QCA submission to the OCG.

Upon review of the 4th Quarter of 2008 (October- December) QCA submission, which bore the reporting date of January 12, 2009, it was observed that the following, *inter alia*, was reported:

1. That the contract award date was noted as December 16, 2012, with the contract description being the building of retaining wall at Mount Lebanon.
2. That the contract was awarded to One Touch Tours and Equipment Limited, in the amount of \$2,043,340.00.
3. That the procurement method utilized was Selective Tender.
4. That the number of Tenders requested and received was three (3).
5. That the procurement was approved by the Procurement Committee.



Having regard to the foregoing, the OCG notes the following discrepancies between that which was reported to the OCG by way of the St. Thomas Parish Council's QCA submission and that which was evidenced by way of the relevant procurement documents:

- (e) The contract which was entered into between St. Thomas Parish Council and One Touch Tours and Equipment Limited was dated November 24, 2008, whereas the Council indicated, via its QCA Report, a contract award date of December 16, 2008.
- (f) The contract value, as per the Contract Agreement, was in the amount of \$2,324,250.00, whereas the contract value reported on the QCA was in the amount of \$2,045,340.00.
- (g) The contract completion date, as indicated in the contract document was December 15, 2008, whereas the contract award date, as represented on the QCA was December 16, 2012.
- (h) The QCA submission that was made by the St. Thomas Parish Council indicated that the Selective Tender procurement methodology was utilized. However, the representations of Mr. Errol Greene, by way of his response of August 7, 2014, indicated that the Limited Tender procurement methodology was utilized. In relation to this anomaly, the OCG has found that based upon the requirements of the then applicable GHPPP, the Limited Tender procurement methodology is recommended for contracts which fall within the value threshold of above \$1,000,000.00 to \$3,000,000.00. Of note, the referenced contract was in the amount of \$2,324,250.00.

Instructively, the said Guidelines stipulate that the Selective Tendering procurement methodology is recommended where the contract falls within the value threshold of \$3 million to \$10 million.

- (i) Additionally, the OCG has seen no record of the Procurement Committee's approval, as indicated in the referenced QCA Report.



Review of the NCC Contractor Registration Database

Based upon the circumstances attending this matter, the OCG undertook to conduct a review of the Application Forms that were submitted by the entity One Touch Tours and Equipment Limited, as well as the subsequent certifications that were provided by the National Contracts Commission (NCC).

The OCG's review revealed that the entity, One Touch Tours and Equipment Limited, first sought registration with the NCC, by way of an Application Form for Registration as an Approved Supplier of Goods and Services, on September 5, 2008. It is to be noted that, in the said Application, the entity sought registration in the categories of Towing and Wrecking, as well as Transportation and Haulage – Garbage Disposal. The OCG also notes that the requisite verification exercise was conducted on September 18, 2008, by the OCG's Technical Services Officer to verify the veracity of the attestations and representations that were made by the proprietor(s) and represented to the NCC. Subsequently, and by way of a letter which was dated September 24, 2008, the NCC wrote to One Touch Tours and Equipment Limited advising as follows:

*“This serves to notify that your application to become a supplier of goods and services to the Government of Jamaica has been approved and **“One Touch Tours and Equipment”** has been placed in the following category on the list of Approved Suppliers.*

Transportation & Haulage

(Specializing in garbage collection & disposal)”

The aforementioned registration was valid for twelve (12) months and expired September 23, 2009.

The referenced company again sought registration with the NCC, in the category of Transportation and Haulage- Garbage Disposal, by way of an Application Form for Registration



as an Approved Supplier of Goods and Services, on October 8, 2009. By way of a letter which was dated November 4, 2009, the OCG notes that the said entity was re-registered by the NCC and placed in the category of Transportation and Haulage (specializing in garbage collection and disposal) on the list of Approved Suppliers. The said registration was valid for twelve (12) months and expired on November 3, 2010.

Instructively, and as at the date of this Report, the referenced entity was registered with the NCC, in the category of Transportation and Haulage (specializing in garbage collection and disposal) on the list of Approved Suppliers on March 18, 2015.

Having regard to the foregoing, and given the fact that the contracts that were awarded by the St. Thomas Parish Council to One Touch Tours and Equipment Limited involved the construction of a retaining wall, as well as the rehabilitation/construction of a Footbridge, **the OCG has found that the said contractor was not appropriately registered to be so awarded.**

In point of fact, the OCG highlights that Sub-section 1020 of the GHPPP stipulates that the “...NCC is responsible for the maintenance of the Register of Approved Contractors.” Additionally, Sub-section S-2080 of the GHPPP provides as follows:

“Contractors desiring participation in public sector procurement opportunities must be registered with the NCC. Qualification requirements for government-approved status include documented proof that applicants are capable of satisfactory performance in the categories and grades within which they apply to be registered, i.e., carrying out the work, delivering the goods, providing the services or installing equipment. Contractors interested in providing goods and services, including construction works, to the government may contact the NCC for further



information. Evaluation criteria for registration shall include the following:

- Experience;
- Professional qualification(s);
- Performance record;
- Legal capacity to enter into contract;
- Tax compliance;
- Capacity (managerial, technical and financial, as necessary).

Registration with the NCC does not automatically guarantee participation in public sector procurement opportunities. Pursuant to the terms and conditions for participation in particular procurement opportunities, procuring entities may require that contractors demonstrate eligibility in accordance with stated criteria, which shall relate only to performance, experience, professional qualification, technical, managerial and financial competence, and tax compliance. All government entities that engage in procurement activities are required to utilize the GOJ registers, except in the following circumstances:

- No qualified firm in the particular discipline desired has been registered; or
- No response to tender or proposal invitation is received
- Where open tendering is utilized”.(OCG Emphasis)



Having regard to the foregoing provisions, the OCG has found that the actions of the St. Thomas Parish Council, in awarding construction related contracts to the entity, One Touch Tours and Equipment Limited, an Approved Supplier, in the category of Transportation and Haulage (specializing in garbage collection and disposal), amounts to a breach of Sub-section S-2080 of the then applicable GHPPP.

The award of the referenced contracts to One Touch Tours and Equipment Limited also impacts upon the credibility and integrity of the contract award process as well as that of the contract implementation process.



The Quality and Performance of Works executed by One Touch Tours and Equipment Limited

The OCG, by way of statutory Requisition by a letter dated March 10, 2014, Mr. Errol Greene was required to provide responses to the following:

“Did the company, One Touch Tours and Equipment, provide details of relevant job experience in construction, which qualified them as being competent Contractors to execute works, as it regards the ‘building of retaining walls’ and the ‘erection of a Footbridge’? If yes, please provide a copy of the relevant job experience, which was provided by the entity and which qualified them for the award of the above stated contracts. Please also provide any other relevant documentation necessary to substantiate your response.”¹⁸

In relation to the aforementioned Requisition, Mr. Errol Greene, by way of his response of August 7, 2014, provided the OCG with the following response:

“Unable to locate record.”¹⁹

In an effort to ascertain whether the referenced project was successfully completed the OCG posed the following question:

“Please indicate whether the contract which was awarded to ‘One Touch Tours and Equipment’ to “...re-erect Footbridge at Mount Lebanon”, St.

¹⁸ OCG Requisition dated March 10, 2014 that was sent to Mr. Errol Greene, Secretary Manager of the St. Thomas Parish Council. (Question 4).

¹⁹ Response of Mr. Errol Greene dated April 7, 2014. (Response No. 4)



Thomas, in 2009, was successfully completed. In the event that your answer is 'yes', please provide the relevant Certificate(s) of Completion. If your response is 'no', kindly provide an Executive Summary comprehensively explaining the extent to which the stated Project was not completed successfully.”²⁰

Mr. Errol Greene, by way of his response dated August 7, 2014 to the OCG stated as follows:

“Unable to locate record; however, kindly see memorandum dated August 13, 2009 from Superintendent to Secretary/Manager with respect to retention....”²¹

The OCG notes that the referenced Memorandum of August 13, 2009, that was sent to the Secretary Manager by the Superintendent Roads and Works Department, outlined that **“The attached claim for Retention from One Touch Tours and Equipment Limited is recommended for approval as the site was visited and wall constructed remains the same.”²²** (OCG Emphasis)

In a similar manner, the OCG posed the following question to Mr. Errol Greene:

“Please indicate whether the contract which was awarded to ‘One Touch Tours and Equipment’ to “...build retaining wall at Bongo Gully Foot Bridge”, St. Thomas, in 2008, was successfully completed. In the event that your answer is ‘yes’, please provide the relevant Certificate(s) of

²⁰ OCG Requisition Letter dated March 10, 2014 that was to Mr. Errol Greene, the Secretary Manager of the St. Thomas Parish Council. (Question 5).

²¹ Response of Mr. Errol Greene which was dated August 7, 2014. (Response No. 5.)

²² Inter-Office Memorandum dated August 13, 2009 to the Secretary Manager from the Superintendent Roads and Works Department.



Completion. If your response is 'no', kindly provide an Executive Summary comprehensively explaining the extent to which the stated Project was not completed successfully.”²³

Mr. Errol Greene by way of his response dated August 7, 2014 to the OCG stated as follows:

“Unable to locate record.”²⁴

The OCG also posed the following question to Mr. Errol Greene by way of its statutory Requisition of April 7, 2014:

“Please indicate whether the contract which was awarded to ‘One Touch Tours and Equipment’ to ‘Build retaining wall at Mount Lebanus’, St. Thomas, in 2008, was successfully completed. In the event that your answer is ‘yes’, please provide the relevant Certificate(s) of Completion. If your response is ‘no’, kindly provide an Executive Summary comprehensively explaining the extent to which the stated Project was not completed successfully.”²⁵

Mr. Errol Greene by way of his response which was dated August 7, 2014, informed the OCG as follows:

“Unable to locate record; however, kindly see memorandum dated April 16, 2009 from the Former

²³ OCG Requisition dated March 10, 2014 that was to Mr. Errol Greene, Secretary Manager, St. Thomas Parish Council. (Question 6.)

²⁴ Response that was received from Mr. Errol Greene that was dated April 7, 2014. (Response No. 6.)

²⁵ OCG Requisition dated March 10, 2014 that was sent to Mr. Errol Greene, Secretary Manager, St. Thomas Parish Council. (Question 7.)



*Superintendent to Secretary/Manager with respect
to retention... ”²⁶*

The OCG notes that the referenced Inter-Office Memorandum that was sent to the Secretary/Manager by the Superintendent Roads and Works Department informed that the “...*claim for Retention from One Touch Tours and Equipment is recommended for approval as the site was visited and the wall constructed remained the same.*”²⁷

Having regard to the foregoing responses that were provided by Mr. Greene, the St. Thomas Parish Council was unable to account for and provide details of the relevant construction related job experience which qualified One Touch Tours and Equipment Limited, as a competent Contractor, capable of executing the works required as it regards the three (3) contracts that were awarded by the St, Thomas Parish Council and noted herein.

The OCG highlights at this juncture that based upon its review of the NCC’s Category and Grade Assessment Criteria for the Registration of Contractors, the NCC categories that would be most appropriate, as it regards the works that were to be performed are Civil Engineering and/or General Road Works. Based upon the said Assessment Criteria, the category of Civil Engineering is recommended for such works which require the “...*construction, alteration and repair of infrastructure and public utility works...*” In the case of General Road Works, the Assessment Criteria indicates that this category is recommended for such works which require the “*construction, alteration and repair of highways, roads, streets, parking lot and other public ways used for vehicular traffic, including any drains, tunnels, bridges and other appurtenances to the construction.*”

Additionally, the criteria also denotes the professional and technical staff required, the financial requirements, inclusive of current and fixed assets, as well as a track record of the number of projects completed by the contractor within the last ten (10) years.

²⁶ Response of Mr. Errol Greene that was dated August 7, 2014 to the OCG. (Response No. 7.)

²⁷ Inter-office Memorandum dated April 16, 2009 to the Secretary/Manager from Superintendent Roads and Works Department.



In the premise, a contracting entity, registered with the NCC as an Approved Supplier, in the category of Transportation and Haulage (specializing in garbage collection and disposal), was, in no way, competent, based upon the assessment criteria, to satisfy the requirements and/or meet the standards required by the NCC to execute construction related works.



Payments Made to One Touch Tours and Equipment by the St. Thomas Parish Council

The OCG by way of its statutory Requisition required the St. Thomas Parish Council to provide responses to the following questions:

“Please provide a copy of the Final Accounts, reflecting all payments that were made by the St. Thomas Parish Council to the entity, ‘ One Touch Tours and Equipment’, in respect of the following contracts:

- a) Contract which was awarded to “...re-erect Footbridge at Mount Lebanon”, St. Thomas, in 2009;*
- b) Contract which was awarded to “...building retaining wall at Bongo Gully Foot Bridge”, St. Thomas in 2008; and*
- c) Contract which was awarded to “Building retaining wall at Mount Lebanon”, St. Thomas in 2008.*

Please note that your response should also include (a) a copy of all approved Payment Certificates that were issued by the St. Thomas Parish Council and (b) a copy of all approved Payment Vouchers that were issued by the St. Thomas Parish Council.”²⁸

In this regard, Mr. Errol Greene, by way of his response of August 7, 2014, provided the OCG with a copy certain payment records that were made to One Touch Tours and Equipment Limited, in relation to the aforementioned contracts.

²⁸ OCG Requisition dated March 10, 2014 that was sent to Mr. Errol Greene, Secretary Manager, St. Thomas Parish Council. (Question 8)



Mount Lebanon Retaining Wall 2008

In relation to the contract for the construction of a retaining wall at Mount Lebanon, the OCG was provided with a document which was entitled “*Parish Council of Saint Thomas Agreement Form*”, which provided a description of the works and the Schedule of Rates. The said document also indicated a total of \$2,324,250.00, and was stamped “**PAID**”. The referenced document was also signed by the “*Superintendent Parish Council*”, the “*Secretary Parish Council*” and the representative of One Touch Tours and Equipment Limited.

A copy of a document which was prepared by the St. Thomas Parish Council also represented the following in relation to the foregoing contract:

“Amount payable to the above mentioned as per detail shown on Agreement Form and contract...”

Collector of Taxes

<i>2% Levy</i>	<i>\$46,485.00</i>
<i>10% Retention</i>	<i>\$232,425.00</i>
<i>One Touch Tours...</i>	<i>\$2,045,340.00”</i>

The OCG also observed a copy of a document which was prepared by the St. Thomas Parish Council, in relation to the construction of a retaining wall at Mount Lebanon, which indicated that the amount of \$2,850,000.00 was paid. The said document also represented the following information:

“Three cheques to be drawn

<i>One Touch Tours</i>	<i>\$2,508,000.00</i>
<i>10% Retention</i>	<i>\$285,000.00</i>
<i>Contractor levy</i>	<i>\$57,000.00”</i>

The stated document was duly signed by officers identified as the Head of Department, the Accounting Officer, the Chairman, and the Secretary.

Further, the OCG was provided with a copy of a Contract Agreement which was dated December 15, 2008, and which indicated that a contract was entered into between the St. Thomas Parish Council and One Touch Tours and Equipment Limited for the construction of a retaining wall at “*Trinity Ville*”. Notably, the contract sum was in the amount of \$2,850,000.00, and the stated



contract commencement date was December 15, 2008. The referenced contract was also duly signed by the representative of the St. Thomas Parish Council and the representative of One Touch Tours and Equipment Limited.

Instructively, there is no evidence that the St. Thomas Parish Council had reported a contract fitting such a description, via its QCA submissions to the OCG. In the premises, the failure of the St. Thomas Parish Council to appropriately report the referenced contract amounts to a breach of Section 29 (a) and (b) (ii) of the Contractor General Act.

The OCG also observed glaring similarities between the above noted contracts, specifically as it regards the contract description and the location of the works. These observations are discussed later in this Report.

Additionally, the St. Thomas Parish Council also provided the OCG with a copy of an Estimate from One Touch Tours and Equipment Limited in the amount of \$2,850,000.00, as well as a document entitled “*Parish Council of Saint Thomas Agreement Form*”, which provided a description of the works and the Schedule of Rates. The said document also indicated a total of \$2,850,000.00 and was signed by officers of the St. Thomas Parish Council identified as the Superintendent Parish Council, the Secretary Parish Council, Chairman Parish Council and the Contractor, One Touch Tours and Equipment Limited.

Re-erection of the Mount Lebanus Footbridge 2009

A copy of a document which was prepared by the St. Thomas Parish Council, in relation to the re-erection of the Mount Lebanus Footbridge, and which was dated May 28, 2009, and which indicated that the amount of \$2,341,100.00 was paid. The said document also represented the following information:

<i>“Four cheques to be drawn</i>	
<i>One Touch Tours & Equip</i>	<i>\$1,837,838.00</i>
<i>Contractor Levy 2%</i>	<i>\$46,822.00</i>
<i>Retention 10%</i>	<i>\$234,110.00</i>
<i>Admin Exp. 5%</i>	<i>\$222,330.00”</i>



The referenced document was duly signed by officers identified as the Head of Department, the Accounting Officer, the Chairman, and the Secretary.

The OCG evidenced a similar document which was prepared by the St. Thomas Parish Council, in relation to the re-erection of the Mount Lebanon Footbridge, and which was dated May 14, 2009, indicated that the amount of \$2,105,500.00 was paid. The said document also represented the following information:

<i>“Three cheques to be drawn</i>	
<i>One Touch Tours</i>	<i>\$1,852,840.00</i>
<i>Contractor Levy 2%</i>	<i>\$42,110.00</i>
<i>Retention 10%</i>	<i>\$210,550.00”</i>

The stated document was duly signed by officers identified as the Head of Department, the Accounting Officer, the Chairman, and the Secretary. In the premises, the total payment evidenced in relation to the re-erection of the Mount Lebanon Footbridge is in the amount of \$4,446,600.00.

Bongo Gully Footbridge / U Drain

A copy of a document which was prepared by the St. Thomas Parish Council, in relation to the Bongo Gully Footbridge, indicated that the amount of \$855,220.00 was paid. The said document also represented the following information:

<i>“One Touch Tours & Equipment</i>	<i>\$752,539.00</i>
<i>Less Retention 10%</i>	<i>\$ 85,522.00</i>
<i>Contractor Levy 2%</i>	<i>\$17,104.00”</i>

The said document was duly signed by officers identified as the Head of Department, the Accounting Officer, the Chairman, and the Secretary.

The OCG was also provided with a Statement which was entitled *“INCOME AND EXPENDITURE STATEMENT FOR MOUNT LEBANUS AND BONGO GULLY PROJECTS*



FOR 2008 TO 2009.”²⁹ The referenced Statement indicated that the following amounts were made payable:

Table 1

<i>Revenue</i>			<i>Expenditure</i>			
<i>Name of Project</i>	<i>Receipt #</i>	<i>Allocation Received</i>	<i>Payee</i>	<i>Amount Paid</i>	<i>Admin Expense</i>	<i>Total Expense</i>
Mount Lebanus Foot Bridge	249208 & 249217	J\$4,668,930.00	One Touch Tours & Equipment Ltd	J\$2,341,100.00	\$233,446.50	
			One Touch Tours & Equipment Ltd	J\$ 2,105,500.00		
				J\$ 4,446,600.00	J\$233,446.50	J\$4,680,046.50
Bongo Gully Foot Bridge	249202 & 249204	J\$ 902,220.00	One Touch Tours & Equipment	J\$ 855,220.00	J\$45,111.00	J\$ 900,331.00
Mount Lebanus Retaining Wall	249201	J\$5,805,700.00	One Touch Tours & Equipment	J\$2,324,250.00	J\$ 290,285.00	
			One Touch Tours & Equipment	J\$2,850,000.00		
				J\$5,174,250.00	J\$ 290,285.00	J\$ 5,464,535.00

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

²⁹ Income and Expenditure Statement for Mount Lebanus and Bongo Gully Projects for 2008 to 2009.



Table 2

Name of Project	Payee	Amount Paid	Contract Sum	Variation/Cost Overrun
Mount Lebanus Footbridge	One Touch Tours and Equipment Limited	\$4,446,600.00	\$4,224,270.00.	\$222,330.00
Bongo Gully Footbridge / U Drain	One Touch Tours and Equipment Limited	\$855,220.00	\$855,220.00	Nil
Mount Lebanus Retaining Wall	One Touch Tours and Equipment Limited	\$5,174,250.00	\$2,324,250.00.	\$2,850,000.00

Having regard to the foregoing, the OCG highlights that the GHPPP outlines the following circumstances under which variations resulting in an increase in the contract sum may be allowed:

“(a) Technical

- i. Where there is need for additional goods, services or works to address unforeseen, unavoidable difficulties encountered during the contract implementation that, in the judgement of the relevant Accounting Officer, could not conceivably have been foreseen during the planning and pre-contract phase(s).*
- ii. Where the total conditions are not known, e.g., site or structure conditions in renovations and/or restoration works.*



(b) Functional

- i. Where changes that, in the opinion of the Accounting Officer and/or relevant consultant (provided same is agreed by the Accounting officer) would enhance the achievement of the project/contract objectives and overall effectiveness.*

(c) New Works

- i. Where, in the determination of the Accounting Officer, the incorporation of new, but related, work in the existing contract would enhance the achievement of over-arching value for money objectives.”*

Further, the GHPPP (2008) stipulates the following Approval Requirements in respect of contract variations:

“a) The Accounting Officer/Head of Entity must give initial written approval for the issuance of all contract variations. No other public officer or project consultant shall approve a variation of a contract unless so authorized by the Accounting Officer /Head of Entity. This Authorization must be in writing.

Notwithstanding any delegation of authority, accountability for variations remains with the Accounting Officer/Head of Entity...



Reporting Requirement for Procuring Entities

a) Increases/ decreases to contract sums resulting from variations shall be reported to the Contractor General pursuant to Section 4(2) of the Contractor General's Act 1983...

The Accounting Officer/ Head of shall implement systems to ensure that the above reports are made ad shall advise the portfolio Minister(s) within seven (7) days of any change in in contract values whether resulting from variations, price fluctuations or other factors.

All reports made to the Cabinet, NCC and Contractor General ...must include as relevant:

- i. Description of and justification for the variation including the root cause(s).*
- ii. Details of price adjustments necessitating increase in contract sum.*
- iii. Description of any other factors responsible for the cost overruns...*

Reports to the Cabinet, Contractor General and NCC shall be made on a quarterly basis and within fourteen (14) working days of the end of the quarter."

The OCG, by way of its statutory Requisition of January 6, 2015, sought justifications from the St. Thomas Parish Council in relation to the variations highlighted in Table 2 above. In this regard, the OCG requested as follows:



- (a) Please provide the description of and the justification for the cost overrun/ variation in each instance;
- (b) Please provide a copy of the **written** approvals that were received for the costs overrun/ variation in each instance;
- (c) Kindly comprehensively detail the factors responsible for (a) the increase in the contract sum and/or (b) the cost overruns/ variations;
- (d) Please also indicate whether the referenced increase to contract sums was reported to the Contractor General pursuant to Section 4(2) of the Contractor General's Act. If "yes", kindly provide evidence of the submission that was made in each instance. In the event that your response is "no" kindly provide the rationale for same.

*Please provide documentary evidence, where possible, to substantiate your responses and/or assertions.*³⁰

Mr. Errol Greene, Secretary Manager, St. Thomas Parish Council, provided the OCG with the following response:

"Mount Lebanon Footbridge

- a) Unable to locate record*
- b) Unable to locate record*

³⁰ OCG Requisition which was dated January 6, 2015. (Question 1)



- c) *Not able to respond to (a) and (b) due to the unavailability of record*
- d) *No record seen that it was reported*

... After doing an analysis of the Bills that were prepared for the Mount Lebanon Footbridge, it appeared as if the Council paid the Contractor based on the in-house estimate and not based on the contract sum. We note, however, that the Contractor did not benefit from this error, as the Council deducted the amount of 5% for admin expenses on the second payment made.

Mount Lebanon Retaining Wall

- a) *Unable to locate record*
- b) *Unable to locate record*
- c) *Not able to respond to (a) and (b) due to the unavailability of record*
- d) *No record seen that it was reported.*

...The Council notes that the cost of \$2,850,000.00 was the subject of a query by the Contractor General in 2010...

*Please be informed that the Council at its best is trying to provide the necessary justification for the above requests, but the officers who were integral to this project are no longer with the Council.*³¹(OCG Emphasis)

³¹ Response dated January 28, 2015, which was received from Mr. Errol Greene, Secretary Manager, St. Thomas Parish Council



Further, in relation to the disclosure by the Secretary Manager that the Contractor was paid based upon the “*in-house estimate*”, instead of the approved contract sum, reflects an egregious flaw which is tantamount to gross negligence and/or mismanagement and an infraction of Section 19 B of the Financial Administration and Audit Act (FAA-Act) . The OCG highlights that Section 19 B of the Financial Administration and Audit Act (FAA-Act) outlines as follows:

“19B.-(1) All agreements for the supply of goods or services to, or the carrying out of any work for any department shall be on such terms and subject to such conditions as the Minister may, by regulations, prescribe.

(2) Without prejudice to the generality of subsection (1) regulations made under that subsection may prescribe-

(a) the extent to which an officer is authorized to enter into the agreement;

(b) procedures relating to-

(i) the offer and acceptance of tenders;

(ii) the signing of such agreements;

(c) the form of agreements and the conditions to be stipulated therein;

(d) measures relating to the execution of agreements and the making of payments thereunder.”



OCG Audit of Procurement and Contract Award Practices at the St. Thomas Parish Council

Pursuant to the OCG's monitoring mandate, an audit of the procurement records of the St. Thomas Parish Council was undertaken for the period May 1, 2006 to September 30, 2009. Instructively, the OCG's Audit was conducted in accordance with the stipulations of the GoJ Procurement Procedures and the Contractor General Act. The audit involved the use of performance tests and verification procedures, in order to obtain reasonable assurances that the procurement practices of the St. Thomas Parish Council were undertaken in accordance with relevant procurement guidelines.

Of significant import is the fact that the OCG's audit revealed an unacceptable level of compliance, and reporting practices of the referenced Council, as unreported contracts, inaccurate data and *prima facie* evidence of contract splintering were identified. The OCG wishes to make specific note of the following, *inter alia*, which was found during its audit:

"Splintering of Contracts"

Instances were identified where the procurement activities of the Council may be construed as splintering of contracts:

Two (2) contracts awarded to One Touch Tours and Equipment Limited. The initial contract for the erection of retaining walls at Mount Lebanon was awarded on November 24, 2008 ...The contract was valued at \$2,324,250.00. The contract value, net of 2% Contractor's Levy and 10% Retention was reported in the QCA 4th Quarter 2008 Report.

The second contract dated December 15, 2008, commenced on even date. Notably, the start date for this project was the completion date for the initial



project. The contract for the erection of retaining walls at Mount Lebanon, was valued at \$2,850,000.00. The latter contract was not reported on the QCA Report.”

Subsequent to the completion of its audit, the OCG under cover of letter which was dated August 17, 2010, provided Ms. Fay Neufville, the Secretary Manager, St. Thomas Parish Council with a copy of the findings of the audit and required that the Council respond to findings noted therein.

The St. Thomas Parish Council, by way of its response which was dated September 16, 2010, informed the OCG, *inter alia*, as follows:

“Retaining walls at Mt. Lebanon were dealt with as two separate contracts as they are at two different places.”



CONCLUSIONS

Based upon the documents which have been reviewed, as well as the written statements that have been received from the St. Thomas Parish Council, the OCG has arrived at the following considered Conclusions:

1. The OCG has concluded that the award of contracts to One Touch Tours and Equipment Limited, by the St. Thomas Parish Council, were in breach of Section 4 of the Contractor General Act and the then applicable GHPPP (November 2008).

The OCG is of the considered opinion that the process which was undertaken by the St. Thomas Parish Council, to award contracts to One Touch Tours and Equipment Limited, was severely flawed and involved gross infractions of the then applicable GHPPP.

2. The breaches of the GHPPP included, *inter alia*, the following:
 - a. The St. Thomas Parish Council acted in contravention of Sub-section 2050 of the then applicable GHPPP 2008, which stipulates the requirements in relation to the preparation of Bidding Documents for goods, works and general services.

Notwithstanding the argument put forward by the St. Thomas Parish Council that the records of the Tender Specifications and the Tender Document could not be located, the OCG remains unconvinced that any such document was drafted, prepared and/or issued to prospective Bidders.

This is primarily based upon (a) the manner and language of the Parish Council's Letters of Invitations which were dated October 15, 2008 and April 2, 2009, and substantially detailed herein, and (b) the inability of the said Parish Council to produce the records.



- b. The failure of the St. Thomas Parish Council to obtain and/or furnish the approvals required for the award of the referenced contracts amounts to a breach of the then applicable GHPPP. In the instances where the St. Thomas Parish Council provided the OCG with (a) copies of the letter to the contractor advising of the award of contract and (b) the CDF Submission Form, the OCG posits that such documents cannot, in any way, suffice as the approvals required.

In point of fact, the GHPPP expressly stipulates the mandatory approvals and/or endorsement of the Accounting Officer / Head of Entity and the Procurement Committee.

- c. The failure of the St. Thomas Parish Council to locate and produce certain procurement records relating to the award of contracts to One Touch Tours and Equipment Limited amounts to a breach of Sub-section 2150 of the then applicable GHPPP. The referenced Section establishes the structure and content of record keeping for the procurement of general services, goods and works. Consequently, the failure of the St. Thomas Parish Council to properly file and record the procurement records relevant to the subject awards of contracts amounts to a contravention of Sub-section 2150 of the GHPPP.
- d. The actions of the St. Thomas Parish Council, in awarding four (4) separate construction related contracts to the entity, One Touch Tours and Equipment Limited, an Approved Supplier, in the category of Transportation and Haulage (specializing in garbage collection and disposal), amounts to a breach of Sub-section S-2080 of the then applicable GHPPP. The said contractor did not possess the requisite NCC certification, which qualified the entity to execute and/or implement construction related contracts. The St. Thomas Parish Council was also unable to furnish the OCG with any other documentation which substantiated the named entity as a competent contracting entity in the field of civil engineering and/or General construction.



- e. The St. Thomas Parish Council acted in contravention of Sub-section 1020 of the then applicable GHPPP, when it failed to report the contract awards in the amounts of (a) \$4,224,270.00 and (b) 2,850,000.00 to the OCG by way of its QCA submission.

The OCG's perusal of its QCA Consolidated Database as well as the hard copy submissions that were made by the Parish Council yielded no evidence that contracts fitting those noted above were reported to the OCG.

3. Four (4) contracts were awarded to One Touch Tours and Equipment Limited by the St. Thomas Parish Council, with a cumulative value of \$10,253,740.00. The contract which was entered into for the construction of the Footbridge at Mount Lebanon was in the amount of \$4,224,270.00. The contract which was entered into for the construction of the Bongo Gully Footbridge/ U Drain was in the amount of \$855,220.00, and two (2) contracts, in the amounts of \$2,324,250.00 and \$2,850,000.00, which were entered into in relation to a retaining wall at Mount Lebanon and "*Trinity Ville*", respectively.
4. Despite the cumulative contract value of \$10,253,740.00, as per the Contract Agreements, the total payments that were actually made by the St. Thomas Parish Council for the referenced four (4) contracts was \$10,476,070.00. The referenced variation is attributed to a payment in the amount of \$4,446,600.00, for the contract which was awarded in relation to the construction of the Footbridge at Mount Lebanon.
5. There is a discrepancy between the account of the Secretary Manager, Mr. Errol Greene and the representations made by the St. Thomas Parish Council, by way of its QCA submission and in relation to the procurement methodology that was utilized in the award of the three (3) contracts. The OCG notes that the Secretary Manger informed by way of his response of August 7, 2014 that the Limited Tender procurement methodology was



utilized, however, based upon the OCG's perusal of the QCA Report, the OCG notes that the Selective Tender was stated.

Having regard to the process which was used to solicit bids, the OCG is of the considered opinion that the procurement methodology utilized by the St. Thomas Parish Council appeared to have been the Limited Tender methodology. Instructively, the OCG highlights that based upon the contract values, and the requirements of Sub-section 2040 of the GHPPP, the use of the Limited Tender procurement methodology was, in fact, required.

6. The variances between the information submitted by the St. Thomas Parish Council by way of its QCA Reports, and those revealed upon the OCG's scrutiny of the Contract Agreements, the substance of which have been noted extensively, herein, is one which is of grave concern. The OCG is of the considered opinion that both sets of information cannot be true, and therefore, consideration must be given as to whether same amounts to a contravention of Section 29 (a) and (b) (ii) of the Contractor General Act.
7. The OCG concludes that the actions of the St. Thomas Parish Council in awarding construction related contracts to a contracting entity that was registered by the NCC in the category of Transportation and Haulage, specializing in garbage collection and disposal, was not only irregular, and a breach of the GHPPP, but further had the potential to cause great and inordinate danger to human life. In this regard, the action of the Parish Council amounts to an egregious disregard for public safety and welfare.
8. Whether the St. Thomas Parish Council achieved value for money as it regards the referenced contract awards is indeed questionable. This is based upon the fact that the contractor, One Touch Tours and Equipment Limited, did not possess the requisite NCC certification to qualify the entity to be capable of executing and/or implementing construction related contracts. In point of fact, the said entity was only qualified by the



NCC as a Supplier of Goods and Services, and, particularly, in the category of Transportation and Haulage – Garbage Disposal.

The OCG posits that the NCC registration process serves to ensure, *inter alia*, that **ONLY** qualified, competent and suitable contractors are selected for the performance and execution of government contracts. In more practical terms, the registration process stands to ensure, *inter alia*, the structural integrity of government contracts and as such, provide some level of assurance and guarantee as it regards the standard of the project and by extension value for money.



REFERRALS

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

Section 21 of the Contractor General Act provides as follows:

“If a Contractor-General finds, during the course of his Investigations or on the conclusion thereof that there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body, he shall refer the matter to the person or persons competent to take such disciplinary or other proceeding as may be appropriate against that officer or member and in all such cases shall lay a special report before Parliament.”³² (OCG Emphasis)

1. Having regard to those of the Findings and Conclusions and concerns of the OCG which have been set out, herein, and, having regard, in particular, to, *inter alia*, (a) the highly irregular contract awards, by the entity, to One Touch Tours and Equipment Limited; (b) the St. Thomas Parish Council’s flagrant breaches of the GHPPP (November 2008) and the Contractor General Act; (c) the absence of transparency and merit in the Parish Council’s award of the subject contract to One Touch Tours and Equipment Limited; (d) the absence of appropriate or satisfactory documentation to substantially evidence the process which led to the award of the subject contract to One Touch Tours and Equipment Limited; and (e) the subjective means by which contractors were invited to participate in the procurement opportunity; the matter is one which, pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor General Act, warrants the immediate attention of the Auditor General, on the basis that there is evidence which is recorded, herein, which would suggest that there was a breach of duty on the part of the Accountable Officer, and/or on the part of one or more Public Officers, of the St. Thomas Parish Council, and that one or

³² Contractor General Act. 1983



more of the said Officers may have contravened, *inter alia*, the provisions of the Financial Administration and Audit Act. The matter is being referred to the Auditor General's Department and the Financial Secretary, particularly, in light of the provisions which are contained in Sections 2, 16, and 19, of the Financial Administration and Audit Act.

2. Having regard to the absence of appropriate or satisfactory documentation to substantially evidence the process which led to the award of the subject contract to One Touch Tours and Equipment Limited and the arising issues of transparency, accountability and merit, the OCG deemed it prudent to refer this matter to the Auditor General's Department and the Procurement and Asset Policy Unit (PAPU) of the Ministry of Finance (MOF).

The OCG is also making this Referral to PAPU, MOF specifically for it to (a) take such follow-up action as either or both of them may deem to be appropriate having regard to all of the circumstances of the matter and, (b) to conduct a follow-up assessment of the procurement activities of the St. Thomas Parish Council, with a view to ensuring that the Council becomes compliant with the current and applicable GOJ Policy and Procurement Procedures.

3. Having regard to the failure of the St. Thomas Parish Council to report, by way of its QCA Report, the contracts which were awarded in the amount of \$4,224,270.00 and \$2,850,000.00 for the re-erection of the Footbridge at Mount Lebanon, and the construction of a retaining wall at "Trinity Ville", the OCG is hereby referring a copy of its Report of Investigation to the Office of the Director of Public Prosecutions (ODPP) for such action as the ODPP may deem to be applicable, against the then Accountable Officer of the St. Thomas Parish Council, Ms. Fay Neufville, for her failure to comply with a lawful requisition of a Contractor General, contrary to the provisions of Section 29 (b) (ii) of the Contractor General Act.



RECOMMENDATIONS

Section 20 (1) of the Contractor General Act mandates that “*after conducting an Investigation under this Act, a Contractor-General shall, in writing, inform the principal officer of the public body concerned and the Minister having responsibility therefore of the result of that Investigation and make such Recommendations as he considers necessary in respect of the matter which was investigated.*” (OCG’s Emphasis)

1. Having regard to the breaches of the GOJ Procurement Procedures highlighted herein, the OCG feels compelled to recommend that the Accounting and Accountable Officers of the St. Thomas Parish Council should ensure scrupulous compliance with the Handbook of Public Sector Procurement Procedures (March 2014), particularly with respect to the following:
 - (a) Enforcing and administering the mandate, roles and responsibilities of the Procurement Committee and, in particular, the oversight which it provides to the evaluation of tenders, and the proper maintenance of procurement records, in light of the provisions which are stipulated under Sections 2.2.5 and 2.2.5.1, Volume 1 of 4 of the GoJ Handbook of Public Sector Procurement Procedures (GHPPP) March 2014;
 - (b) Promoting the utilization of competent and specialized personnel with adequate knowledge and training in procurement as is mandated under Section 2.3, Volume 1 of 4 of the GHPPP;
 - (c) Observing and conforming to the provisions which govern the utilization of the Limited Tender Procurement Methodology as is laid out in Section 1.1.3 Volume 2 of 4 of the GHPPP;
 - (d) Recognizing the responsibility of the Procuring Entity in preparing and communicating Tender Specifications and Requirements, which the bidder must fulfil



- in order to demonstrate the ability to meet the standard required to execute the contract;
- (e) Observing the provisions which highlight the eligibility and qualification requirements which ought to be satisfied to validate the participation of a contractor in the GOJ procurement process, which are detailed in Section 1.3, 1.3.1 and 1.3.3 of Volume 2 of 4 of the GHPPP;
 - (f) Observing and conforming to the provisions which govern the preparation and submission of a Tender Report, disclosing the invitation for bids; the tender submission, the tender opening and the tender evaluation;
 - (g) Recognizing the oversight and functional responsibilities of, *inter alia*, the OCG, the NCC, the Procurement Committee and the Accounting and Accountable Officers, pursuant, *inter alia*, to Section 2.1 of Volume 1 of 4 of the GHHP, and adhering to the requirements thereof; and
 - (h) Promoting competition in the procurement process, whilst ensuring that the St. Thomas Parish Council's procurement opportunities are open to all appropriately registered and qualified contractors, in conformance with the requirements which are detailed in Section 1.1.2 of Volume 2 of 4 of the GHPPP.
2. The OCG strongly recommends that the Accounting and Accountable Officers of the St. Thomas Parish Council ensure that adequate procedures, systems, checks and balances are not only implemented but are aggressively enforced to secure a radically improved level of compliance with the Public Bodies Management and Accountability Act and the GOJ Public Sector Procurement Procedures.



3. The OCG recommends that the St. Thomas Parish Council, in preparing its Bidding Documents, ensure that clear and unambiguous instructions are given to prospective Bidders to ensure amongst other things, that all necessary information is furnished and to avoid any ambiguities and obscurities.
4. The OCG encourages the St. Thomas Parish Council to exercise greater diligence in undertaking procurement activities, in an effort to ensure that the award and implementation of government contracts are awarded impartially and on merit and that the circumstances in which each contract is awarded does not involve any level of impropriety or irregularity.
5. It is recommended that an immediate review of the accounting, procurement and public administration management practices at the St. Thomas Parish Council be undertaken by the Auditor General and the PAPU, MOF. It is also recommended that frequent compliance reviews of the accounting, procurement and public administration management practices at the ST. Thomas Parish Council be undertaken by the Auditor General and the PAPU, MOF.
6. The OCG strongly recommends that the Accounting and Accountable Officers of the St. Thomas Parish Council should be more proactive in the procurement activities with a view to ensuring that contracts which are awarded are done so in a manner which is consistent with the full application of the Procurement Guidelines and that same are awarded fairly, impartially and without any form of irregularity and/or impropriety, pursuant to Section 4 of the Contractor General Act.
7. The OCG recommends that the St. Thomas Parish Council implements an effective and efficient records keeping/filing system which will address the entity's inefficiencies in maintaining proper documentation. This will further facilitate greater levels of transparency in the entity's use of public funds and public administration.