

OFFICE OF THE CONTRACTOR GENERAL

Special Report of Investigation and Monitoring

Conducted into the Procurement Practices of Air Jamaica Limited

(Formerly) Ministry of Finance and Planning

EXECUTIVE SUMMARY

The investigation into the Procurement and Contract award practices of Air Jamaica Limited was initiated by the Office of the Contractor General (OCG) on 2006 May 23.

On 2006 May 16, the Office of the Contractor General received a letter from Mrs. Sharon Weber, who wrote on behalf of the Financial Secretary in the Ministry of Finance and Planning. The letter confirmed that Air Jamaica Limited was a Public Body by virtue of the Government's one hundred percent (100%) ownership as stipulated by Part 1 (Section 2) of the Public Bodies Management and Accountability Act, 2001.

Air Jamaica Limited has been through ownership changes over the last 15 years. Most recently - in 2004 December - the airline was reacquired by the Government of Jamaica following almost a decade of privately managed operations. Consequently, Air Jamaica Limited, as of 2004 December, is deemed to be a 'public body' as defined within the Contractor General Act (1983) and is required to adhere to the Government Procurement Guidelines.

The investigation of the entity focused primarily on procurement activities between May 2005 and August 2008 and incorporated the OCG's monitoring of the airline's procurement activities up to, and including, August 2008. The period under review commences approximately six months after Air Jamaica Limited returned to the ambits of government control. It is perceived that this period should have provided the agency with some amount of

time to acclimatize itself with stipulated government policies, thereby effecting a smooth transition from a private to a public entity as it relates to procurement practices.

The investigation was undertaken in accordance with the discretionary powers which are given to the Contractor General under Section 15 (1) and 16 of the Contractor General Act (1983), and was guided by clearly defined Terms of Reference and Methodologies which were then used to inform the Findings and Recommendations contained herein.

The investigation focused on several key areas of procurement activities within Air Jamaica Limited, specifically:

- i. Staff Transport;
- ii. Uniforms;
- iii. Security Contracts;
- iv. Janitorial Services;
- v. Catering Services;
- vi. Audit Services;
- vii. Contracts involving Directors/Employees.

Procurement documents that related to Air Jamaica Limited's operations, inclusive of contracts dating back to 2005 May, were reviewed to inform the Findings of this report. Additionally, an analysis of the airline's Quarterly Contract Award (QCA) Reports for the period 2006 May to 2008 March was conducted, in order to determine its level of compliance with the Government Procurement Procedures Handbook (GPPH).

It must be noted that Air Jamaica Limited wrote to the Chair of the National Contracts Commission (NCC) on 2007 April 03 listing, inter alia, the many challenges and obstacles the airline faced in its attempts to comply with the GPPH. Significantly, Air Jamaica Limited acknowledged within the body of the letter an awareness of the airline's obligation to comply with the procurement guidelines.

The investigation revealed that the procurement practices of Air Jamaica Limited were not in compliance with the GPPH. The OCG found that there were several breaches of the GPPH, in particular as it relates to Sections 2.1.3.4, 3.5., 4.6 and 5.4.6. Breaches include, but are not limited to:

- i. The award of contracts to entities that were not registered with the NCC;
- ii. The awarding of contracts over the J\$4Million threshold which were not in accordance with the GPPH, and without the requisite endorsement of the NCC, and/or approval from Cabinet;
- iii. The conduct of procurements not in conformity with the GPPH;
- iv. The incorporation of follow-on clauses in contract agreements and the execution of same without the NCC's approval.

In several instances, the services that were being offered to Air Jamaica Limited were not covered by any formal contractual arrangement. There is evidence, however, that efforts have since been made to formalise some of these services.

It has also been observed that Air Jamaica Limited entered into contractual agreements with some of its suppliers, without, apparently, conducting any form of tendering.

During the course of the investigation which spanned from 2006 to present, and recognizing certain issues, concerns and problems pertaining to Air Jamaica Limited's conformance to the GPPH in regard to the procurement of goods, works and services, the OCG increased its hands-on monitoring of the airline.

Air Jamaica Limited has made attempts to regularise its procurement activities in conformance with the requirements of the GPPH as evidenced by an increase in tendering activities and the subsequent endorsement for the award of contracts by the NCC, on behalf of the airline.

Of great import is the fact that for the 2008 calendar year, up to and including 2008 August 13, the NCC Contract Analysis records have revealed that a total of nine (9) contracts have been

endorsed by the NCC for Air Jamaica Limited in all procurement categories of goods, works and services including the procurement of Aviation Insurance, Renewal of Licensing Agreements and Relocation Works and Industrial Maintenance.

In light of the foregoing, and having regard to the Findings and Conclusions detailed in this report, the OCG has made the following Recommendations:

- i. In instances where the airline has no written contracts with suppliers of goods, works and/or services, it is strongly recommended that Air Jamaica Limited tender these contracts in accordance with the stated competitive provisions of the GPPH.
- ii. The Airline must establish properly constituted and functional Procurement Committees in accordance with the GPPH, in its various office locations, where possible. In the event that the establishment of multiple Procurement Committees is untenable, clearly established rules regarding the Procurement Committee's approval must be established in order to remove any probability of a breach of the GOJ procurement guidelines.
- iii. Air Jamaica Limited should immediately be afforded the benefit of a comprehensive series of procurement workshops through the Ministry of Finance and the Public Service, which will inform personnel within the agency's procurement departments of the provisions of the GPPH.
- iv. A revision of Air Jamaica Limited's "General Procurement Procedures" must be undertaken in order to effect the necessary authorisation levels and scrutiny which will harmonize it with the GPPH and the Contractor General Act. The airline's internal procurement policy must also address the management issues that currently impact the procurement of goods, works and services.

- v. Given the nature of some of Air Jamaica Limited's procurements, the airline's procurement personnel should familiarise themselves with the Ministry of Finance Circular No. 3, dated 2006 January 10, entitled *Procedure for Emergency Contracting*, which would significantly assist in lowering the level of breaches of the procurement guidelines.
- vi. Long term framework agreements should also be considered by the airline, with a view to facilitate planning for the procurement of services such as crew accommodation and allow sufficient time for the planning and execution of the procurement of technical services.
- vii. Air Jamaica Limited should commit to undertaking internal procurement and financial audits on a quarterly basis, to ensure that the agency's finances and procurement practices are regularly monitored and to ensure compliance as efforts are made to streamline Air Jamaica Limited's operations.
- viii. Finally, the Permanent Secretary should take a more proactive and aggressive role in developing, implementing and enforcing effective risk management systems, checks and balances and other appropriate management systems at Air Jamaica Limited, in order to preclude the possibility of deviations from the GPPH and the Contractor General Act by the airline's management and procurement staff. This is with the intention of promoting good governance within the Public Sector by enhancing transparency and accountability.

INTRODUCTION

On 2006 May 23, the Office of the Contractor-General (OCG), acting on behalf of the Contractor General, initiated an investigation into the procurement practices for goods, works and services and the subsequent award of contracts, by Air Jamaica Limited.

The investigation commenced after the OCG received a letter from Mrs. Sharon Weber, dated 2006 May 16, on behalf of the Financial Secretary, in the Ministry of Finance and Planning. The letter stated that Air Jamaica Limited was a Public Body by virtue of the Government's one hundred percent (100%) ownership as stipulated by Part 1 (Section 2) of the Public Bodies Management and Accountability Act, (2001).¹

The Terms of Reference of the OCG's Investigation into the procurement practices of Air Jamaica Limited were primarily developed in accordance with the mandate of the Contractor General as stipulated in Section 4 (1) and Section 15 (1) (a) to (d) of the Contractor General Act (1983).

The Terms of Reference for the Air Jamaica Limited's investigation were established taking into account the airline's 2004-2005 period of transition and its prior modus operandi.

The primary means of data collection utilised throughout the investigation were the conduct of interviews, meetings and the review of contract documents. Procurement documents relating to various aspects of Air Jamaica Limited's operations, inclusive of contracts, were reviewed in order to unequivocally determine the airline's level of compliance with the GPPH as of 2005 May. This information was also supplemented by an analysis of the data which is contained in the OCG's Quarterly Contract Award Reporting System, for the airline, for contracts between J\$250,000 and J\$4M over the period 2006 May to 2008 March.

¹ Letter dated 2006 May 16 from the Ministry of Finance and Planning to the OC-G

TERMS OF REFERENCE

The primary aim of the Investigation was to ascertain whether there was compliance with the requirements of the Government Procurement Procedures Handbook (GPPH) and the Contractor General Act (1983). The following specific objectives were targeted:

- i. Identify the procurement process and practices which were employed by Air Jamaica Limited in the procurement of goods, works and services for the period 2005 May to 2008 August;
- ii. Determine whether the procurement practices of Air Jamaica Limited conformed to the GPPH;
- iii. Make recommendations for appropriate actions where necessary.

BACKGROUND

The OCG, by way of a letter dated 2006 May 23, commenced an investigation into the procurement practices of Air Jamaica Limited in accordance with Section 15 (1) and 16 of the Contractor General Act, which empowers the Contractor General to conduct investigations into any or all of the following matters, among others:

- i. The tender procedures relating to contracts awarded by public bodies;
- ii. The award of any Government contract;
- iii. The implementation of the terms of any government contract.

The investigation of Air Jamaica Limited was initiated after receiving confirmation from the Ministry of Finance and Planning from Mrs. Sharon Weber, by way of a letter dated 2006 May 16, on behalf of the Financial Secretary, which stated that Air Jamaica Limited was a Public Body by virtue of the Government's one hundred percent (100%) ownership as

stipulated by Part 1 (Section 2) of the Public Bodies Management and Accountability Act, 2001.

The letter also confirmed that Air Jamaica Limited's procurement activities were not in conformity with the Government Procurement Procedures Handbook.

METHODOLOGY

As was previously indicated, the Terms of Reference of the OCG's Investigation into the procurement practices of Air Jamaica Limited, were primarily developed in accordance with the mandates of the Contractor General as stipulated in Section 4 (1) and Section 15 (1) (a) to (d) of the Contractor General Act (1983).

The following methodologies were used to inform the Findings and Conclusions of the investigation:

1. Review of the procurement procedures, inclusive of Air Jamaica Limited's internal procurement guidelines.
2. Review of the files of the procurement of the following types of contracts:
 - i. Staff Transport;
 - ii. Uniforms;
 - iii. Security Contracts;
 - iv. Janitorial Services;
 - v. Catering Services;
 - vi. Audit Services;
 - vii. Contracts involving Directors/Employees;
3. Interviews were conducted with the following persons:
 - i. Mr. Michael Conway, Former President and Chief Executive Officer, Air Jamaica Limited;

- ii. Ms. Odette Hudson, Controller, Budget and Planning, Air Jamaica Limited.
4. Analysis of the QCA reports for the period 2006 May to 2008 March.
5. Review of the NCC Contracts Analysis Database for the period 2006 January to 2008 August.

FINDINGS

Air Jamaica Limited has an internal procurement procedural document entitled “General Procurement Procedures” which governs its procurement activities. A review of the agency’s internal document for procurement indicated that Air Jamaica Limited had a policy to invite bids and quotes from prospective suppliers. There were, in fact, established authorisation levels and the requirement for the solicitation of quotations and competitive bidding within defined value bands. The latter, however, deviated from those established in the GPPH.

Air Jamaica Limited’s General Procurement Procedures does not have a requirement to use NCC registered and/ or tax compliant contractors nor did it include a requirement for invitations to tender to be advertised either locally and/or internationally.

In summary, Air Jamaica Limited’s internal procurement guidelines are not consistent with the requirements of the GPPH. Therefore, procedurally, Air Jamaica Limited was not in a position to be compliant with the GPPH.²

It must also be noted that Air Jamaica Limited wrote to the Chair of the National Contracts Commission (NCC) on 2007 April 03 listing, inter alia, the many challenges and obstacles the airline faced in its attempts to comply with the GPPH. Significantly, Air Jamaica Limited

² Copy of Air Jamaica’s Procurement Procedures

acknowledged within the body of the letter an awareness of the airline's obligation to comply with the procurement guidelines.

The airline outlined the restrictions it currently faces with regard to aircraft repair and maintenance, such that in many instances, Air Jamaica Limited is restricted to suppliers that are approved by the aircraft manufacturer and/or the Civil Aviation Authority and/or Federal Aviation Authority. Notwithstanding these very real constraints in the airline industry, the principles of the GPPH can still be applied, particularly via utilisation of the Sole Source procurement methodology.

The correspondence to the NCC also highlighted the airline's longstanding relationships with its suppliers that it had utilised whilst privately owned, and with whom, contracts still existed. The investigation takes account of this fact and acknowledges that the airline would not be held in breach of the applicable procurement guidelines for those contracts which were in place while under private ownership.

However, the airline must be advised that these contracted services, once approaching the scheduled contract completion date, are now subject to the requirements of the GPPH, particularly as it regards the principles of competitive tendering, fairness and the merit in the award of contracts.

Another concern raised by the airline in its correspondence of 2007 April 03, is the difficulty associated with procurement at its overseas offices. The argument presented by the airline is that the services at the overseas offices cannot be provided by local suppliers for 'obvious logistic reasons' and without incurring significant costs both in terms of time and money.³

Substantive knowledge of the GPPH would significantly reduce the concerns raised by Air Jamaica Limited. Through the application of the various procurement methodologies, requirements and procedures, the airline could have adhered to the GPPH by exercising due care in applying the relevant guidelines. These guidelines are not, in and of themselves,

³ Letter dated 2007 April 3 from Air Jamaica Limited to the NCC

framed with such rigidity such as to limit application to procurement by a GOJ Public Body at its overseas locations.

NCC Contract Analysis- Ending December 2006

A review of the National Contracts Commission (NCC) files and the NCC Contract Analysis records have revealed that there is no evidence of any contract being endorsed by the NCC on behalf of Air Jamaica Limited up to 2006 December.

Review of Files at Air Jamaica Limited.

Staff Transport

During the period 2005 May to August 2006, it was found that only two formalised contracts were seen for the provision of staff transport. Details of the contracts are listed below:

Limo Tours Limited Entered into on 2005 September 9. It is a two year agreement in the first instance, with provision for follow-on from year to year.⁴

Chin's Transport and Tours Entered into on 2006 May 1. It is a two year agreement in the first instance, with provision for follow-on from year to year.⁵

The aforementioned contracts did not have a stated contract value and would appear to be agreed upon based on the rates per trip completed. The rates charged were based on regular and round-town trips.

The OCG finds that there is a breach of Section 3.5 of the GPPH in regard to the aforementioned contracts, as the estimated contract value of each contract would have exceeded J\$15M, and therefore, would have required the approval of Cabinet, subsequent to

⁴ Copy of Contractual Agreement between Air Jamaica Limited and Limo Tours Limited

⁵ Copy of Contractual Agreement between Air Jamaica Limited and Chins Petroleum Services Limited

the endorsement of the NCC. However, there is no documentary evidence to indicate that such approval was sought and/or received from the NCC and Cabinet.

Furthermore, the incorporation of a follow-on clause in the contracts is not in conformity with the GPPH as NCC's approval is required. A request for a contract extension was never submitted to the NCC for endorsement or for subsequent approval; nor was there any evidence of a timeline being set for the contract to be put to tender.

Up to June 2008, the OCG had seen no material evidence to indicate that Air Jamaica Limited had put to competitive tender any of these services nor was there any evidence to suggest that permission had been sought from the NCC and Cabinet to continue the utilization of any agreement which had been in existence while the entity was privately managed.

It should be noted that had Air Jamaica Limited sought the relevant permission from the NCC and Cabinet, it is conceivable that the airline would have been allowed to extend the existing contracts with the service providers while the airline made attempts to regularise the procurement of those services.

Without prejudice to the aforementioned, the OCG, in the conduct of its ongoing monitoring of the airline has seen evidence of Air Jamaica Limited publicly tendering for the procurement of Transport Services for Employees.

Air Jamaica Limited, by way of a Request for Proposal issued on 2008 July 29, placed on its website the tender document pertaining to the referenced procurement of Transport Services for Employees.

The competitive tendering of the Transportation Services is indicative of the attempts being made by Air Jamaica Limited to achieve compliance with the GPPH.

Audit Services

Information presented by Air Jamaica Limited revealed that the firm Mair Russell Grant Thornton were appointed auditors by the Board of Directors by way of a letter dated 1996 March 15. The services of the company have continued to be utilised up to the present.⁶

In a meeting at Air Jamaica Limited on Thursday 2007 August 23, while conducting the review of files, Ms. Paula Brown, the Chief Financial Officer of the airline, indicated that the Audit Services at Air Jamaica Limited had never been tendered nor did the airline consider it necessary to tender these services.

The reason proffered by Air Jamaica Limited was that Auditing is considered to be a specialized service which is regulated and would therefore not require tendering. Of particular concern was the timeframe required for Auditors to familiarise themselves with the operations of the airline.

Catering Services

The review of the Catering contracts and files was undertaken at Air Jamaica Limited on 2007 August 28. Four catering contracts were identified. They are as follows:

- i. CLS: To provide catering services in Toronto.
- ii. Gate Gourmet: To provide catering services in London.
- iii. Flying Food Group: To provide catering services at the Newark International Airport (EWR).
- iv. Versair: To provide catering services in Kingston and Montego Bay, Jamaica.

⁶ Letter dated 2006 January 26 from Mair Russell Grant Thornton to Air Jamaica Limited

Information on each of the reviewed contracts is stated below:

CLS Catering Services Limited: Entered into on 2004 March 12, with a contract period from 2004 April 1 – 2007 March 31. This is a three year agreement.⁷

Gate Gourmet London Limited: Entered into on 2006 April 1. The Contract is described as a three year agreement initially, and continues thereafter until terminated by either party.⁸

Versair In-Flight Services: No signed contract seen.⁹

Flying Food Group- (Newark International Airport EWR): No contract was seen.

The contract for Gate Gourmet London Limited was executed subsequent to Air Jamaica Limited becoming a Public Body and the contract was only signed by a Gate Gourmet representative, no signature was seen from an Air Jamaica Limited representative.

There is no evidence to indicate that any of these services were competitively tendered. The contractual agreement with Gate Gourmet London Limited had no expiry period.

Janitorial Services

These services were contracted to Minott Services Limited and Manpower & Maintenance Services Limited. No contractual agreement or documentary evidence of how these services were procured was seen. Similarly, the lack of documentary evidence did not allow for an estimate of the contract values. Information received from Mr. Scharschmidt, Manager,

⁷ Copy of Contractual Agreement between Air Jamaica Limited and CLS Catering Services Limited

⁸ Copy of Contractual Agreement between Air Jamaica Limited and Gate Gourmet London Limited

⁹ Copy of Contractual Agreement between Air Jamaica Limited and Versair In-Flight Services Limited

Compensation & Administration, indicates that these services were procured while Air Jamaica Limited was privately managed.

Subsequently, Air Jamaica Limited has put to competitive tender the procurement of Janitorial and Related Services for the Norman Manley International Airport and/or Sangster International Airport by way of an RFP dated 2008 July 31.

Security Services

Five contract files were reviewed for security services provided to Air Jamaica Limited. The contracts reviewed included Marksman Limited, Security Advisory & Management Services Limited (SAMS), Protection and Security, McKay Security and Haynes Security.

Marksman Security Limited

The contract for Marksman Limited was entered into on 2005 February 19. The contract duration is for 36 months, ending on 2008 February 18, with the provision for a follow-on from year to year until terminated by either party.¹⁰ This service was procured subsequent to Air Jamaica Limited becoming a public body; The OCG has seen no evidence that the service was procured on a competitive basis.

Further, the total contract sum was not stated in the contract. The contract, however, made reference to an agreed rate of J\$ 168.00 per hour. In the event the value of this contract exceeded the J\$4 Million and J\$15 Million thresholds, it would have required NCC endorsement and Cabinet approval respectively.

¹⁰ Copy of Contractual Agreement between Air Jamaica Limited and Marksman Limited.

S.A.M.S. Limited

The contract with SAMS Limited was first entered into on 2002 December 31, when Air Jamaica Limited was privately managed¹¹. The procurement of the service was to comply with, *inter alia*, the requirements of the United States Transport Security Administration (TSA). These additional security measures were brought about due to the events of 2001 September 11 in the United States and to reduce the fines which were being incurred by Air Jamaica Limited in relation to the transportation of contraband.

The initial contract was for a period of 2 years, valued at J\$50,000,000.00 per annum with an option to renew. The contract was duly renewed on 2005 January 1 for a further period of 3 years expiring on 2007 December 31. The contract was valued at J\$50,000,000.00 per annum with a provision to review. This renewed SAMS contract was executed after Air Jamaica Limited reverted to being a Public Body on 2004 December 1.¹²

In response to the OCG's requisition for information on contracts awarded to SAMS Limited, Mr. Michael Conway, then President and CEO of Air Jamaica Limited, wrote in a letter dated 2007 June 12 that the contract was not put to competitive tender because of the sensitive and confidential nature of the procurement and that the present Government Procurement Procedures would prove unsuitable for such procurement.

Moreover, SAMS was not registered with the NCC at the time of the award of the contract in 2005 January. The OCG's Contract Monitoring System (CMS) has indicated that SAMS was first registered with the NCC on 2005 June 29. However, the OCG does not agree with the stated position as the GPPH provides a suitable and applicable provision in the form of the Sole Source method of procurement which requires prior written approval from the Accounting Officer and the NCC.

¹¹ Copy of Contractual Agreement between Air Jamaica Limited and Security Advisory & Management Services Limited.

¹² Copy of Contractual Agreement between Air Jamaica Limited and Security Advisory & Management Services Limited.

In accordance with Section 3.5 of the GPPH, the value of the contract, J\$50,000,000.00 required the NCC's endorsement and Cabinet's approval. However, there is no evidence showing that these requirements were met.

Protection and Security Limited.

Protection and Security Limited were contracted in 2005 May 1, to provide Security Cash Services. This came into effect after Protection and Security Limited entered into an agreement with the incumbent, Securicor Jamaica Limited to take over the services.

The contract with Protection and Security Limited was enacted subsequent to Air Jamaica Limited becoming a public body. The evidence suggests that the contract was not awarded on a competitive basis^{13 14}. Records have revealed that Protection and Security Limited was not registered with the NCC at the time of the contract award - the OCG's CMS has indicated that Protection and Security Limited's NCC registration had expired on 2004 September 2.

McKay Security

Whilst reviewing security contract files, Mr. Howard Morrison, Director of Corporate Security, at Air Jamaica Limited, revealed that no formal contract was in existence for the security services provided by McKay Security. Mr. Morrison further indicated that McKay Security was a part of the Strata Plan Security, and could therefore be considered an inherited service. The arrangement with McKay Security was in existence while Air Jamaica Limited was privately managed. McKay Security was first registered with the NCC on 2006 September 6.

¹³ Letter from Mr. Emery Woodstock, Chairman, Protection and Security Limited dated 2005 April 22 addressed to Major Phillip Campbell, Director of Corporate Services, Air Jamaica Limited

¹⁴ Letter from Major Phillip Campbell, Director of Corporate Services, Air Jamaica Limited dated 2005 May 4 addressed to Mr. Emery Woodstock, Chairman, Protection and Security Limited

Haynes Security.

Similarly, the airport security services provided by Haynes Security were effected on 2005 September 1. This service, as stated by Mr. Morrison, was a mandatory requirement at the John F. Kennedy International Airport and therefore Air Jamaica Limited had no other alternative but to use the airport security services. The method of contracting could therefore be considered that of Sole Source/direct contracting. However, there is no evidence that Air Jamaica Limited requested prior written approval for the use of the Sole Source procurement methodology from the NCC in accordance with Section 2.1.3.4 of the GPPH. Accordingly, Air Jamaica Limited violated the referenced requirement of the GPPH.

Uniforms

The OCG has seen no material evidence that Uniform contracts were formalised and there was also no documentation supporting the selection processes employed in the engagement of the contractors. In an effort to ascertain the methods by which contractors were procured and the means of assessment, the OCG was provided with letters from the airline requesting several contractors to manufacture uniforms on behalf of the airline. The letters reviewed included details on the specifications of the uniforms. There was, however, nothing in these letters indicating the basis upon which contractors would be selected and/or assessed to complete the job on behalf of Air Jamaica Limited.

The arrangements between the uniform manufacturers and Air Jamaica Limited were in existence while the airline was privately managed.

Contracts Involving Directors/Employees

By way of letter dated 2007 October 10, the OCG requested information from the then President and CEO of Air Jamaica Limited, Mr. Michael Conway, in regard to contracts involving directors and/ or employees of Air Jamaica Limited.

Information received from Air Jamaica Limited indicated that there was only one contract of this nature involving a then Director of Air Jamaica Limited, Senator Noel Sloley and the company, Jamaica Tours Limited, in which Mr. Noel Sloley was also a Director. Mr. Sloleys' tenure with Air Jamaica Limited was from 1998 January 28 to 2007 September 13.

The contract between Air Jamaica Limited and Jamaica Tours Limited was awarded on 2005 September 1, in the sum of approximately US\$ 762,978.43 and was terminated on 2007 May 31. This particular contract was for the provision of general services to customers of Air Jamaica Vacations, inclusive of meet and greet services, transportation from the Sangster International Airport to the customers' hotels and other tour services.

It was revealed by Air Jamaica Limited that JTL Tours Limited was required to be tax compliant and met this criterion at the time of contract award. The company, however, was not registered with the National Contracts Commission at the time of the award.

As it regards the application of the Government Procurement guidelines, Air Jamaica Limited indicated that, "No formal Government Procurement method was used. The contract was approved through the company's internal approval process following queries as to the quality and cost of similar service offered by competing suppliers".¹⁵ It is also understood that the contract awarded in 2005 September was a renewal of the previous contract which existed between the parties since 2003 September 1.

The contracts with Jamaica Tours Limited would have required approval from the National Contracts Commission as well as the Cabinet. No evidence was provided to show that these requirements were satisfied in the award of these contracts.

¹⁵ Attachment to letter from William B. Rodgers- President & CEO, Air Jamaica (Acting) dated November 7, 2007.

Interviews

In an interview which was conducted with Ms. Odette Hudson, Controller, Budget and Planning, Air Jamaica Limited, on 2007 September 7, Ms. Hudson acknowledged that Air Jamaica Limited did not have a Procurement Committee. Instead, Air Jamaica Limited had a Contracts Committee. However, the purview and functions of Air Jamaica Limited's Contracts Committee do not accord with the guidelines established by the GPPH as only contracts valued at US\$250,000 and above, went to this Committee.

Ms. Hudson was asked if any contracts above US\$250,000 were sent to the NCC and/or Cabinet as is required by the GPPH. Ms. Hudson stated that she was not aware of any contracts within the aforementioned value range being sent to the NCC within the last 3 years.

It was also established from interviewing Ms. Hudson, that Air Jamaica Limited became aware of the requirements of the GPPH in 2006 May.

Mr. Michael Conway, former President & CEO, of Air Jamaica Limited, in an interview which was conducted at the offices of the OCG on 2007 September 7, stated that he recalled 'some notice' being received which indicated that the airline is a public body as defined under the FAA Act but he could not definitively say when the airline was informed of this designation.

Mr. Conway stated that Air Jamaica Limited did not have a centralised procurement unit in place and that tendering procedures were conducted through a Contract Review Committee which encapsulated varying levels of approval to govern Air Jamaica Limited's procurement procedures.

Analysis of QCA Reports for the Three (3) Quarters ending 2006 December.

An analysis of the Quarterly Contract Award Reports for the 2006, 2nd, 3rd and 4th Quarter, for contracts in the value range of \$250,000 to \$3,999,999,99, has revealed that for the 2006 2nd Quarter, none of the eight (8) contracts reported as being awarded by Air Jamaica Limited went through its Procurement Committee.

Given the fact that Air Jamaica Limited did not have a Procurement Committee at the time, the agency accurately reported its practices in this regard. However, the non-existence of a Procurement Committee is a breach of the GPPH, as this Committee is mandated to ensure adherence of the Public Body to the rules of the GPPH.

The 2006 3rd Quarter QCA Report revealed that the agency awarded a total of thirty one (31) contracts, all of which were subjected to the approval of a Procurement Committee. However, a footnote appended to the QCA Report revealed that, *“with regards to the Procurement Committee Approval section JM has an internal procedure whereby contracts are reviewed and approved by a team of persons comprising the respective department VP, our internal Legal Counsel, Finance, and the CEO in this order. The legal dept is excluded from contracts involving the acquisition of capital items.”*

Therefore, as at the end of the 2006 3rd Quarter, Air Jamaica Limited was still in violation of the GPPH as the airline still did not have a properly constituted Procurement Committee.

Further to the aforementioned, none of the contracts were reported as being awarded to contractors with a Contractor ID. This, in and of itself, is a further breach of the GPPH, except in situations where foreign contractors are not physically conducting work in Jamaica and consultancy services.

The 2006 4th Quarter QCA Report revealed that a total of nine (9) contracts were awarded by Air Jamaica Limited. All of the reported contracts were approved in a similar manner to the 3rd Quarter contracts, that is, by a team of persons comprising the Vice President of the respective

department and other officers of Air Jamaica Limited. None of the nine contracts were reported as being awarded to contractors with a Contractor ID.

It must be noted that a Sole Source contract in excess of J\$ 1.695 Million was awarded by the airline during this period. According to Section 2.1.3.4 of the GPPH, this contract would have required prior approval of the National Contracts Commission to utilise the procurement methodology. There is, however, no evidence to support that this was actually done.

Attempts at Regularisation

By way of letter dated 2007 October 9, Mrs. Andrea Wilson-Messam, former Chief Financial Officer of Air Jamaica Limited, wrote to Mr. Richard Dowie, Director Technical Services, at the OCG, informing him that the airline was attempting to regularise its operations in order to be compliant with the Government's procurement guidelines by 2008 January.

Included in the letter of 2007 October 9 was a brief outline of Air Jamaica Limited's strategy to fulfil its obligations to be compliant with the GPPH. It must also be noted that the airline has been advertising various tenders in the national newspaper as is required by the GPPH. Air Jamaica Limited must be encouraged to continue its efforts to achieve compliance at the earliest possible date.

During the course of the investigation which spanned from 2006 to present, and recognizing certain issues, concerns and problems pertaining to Air Jamaica Limited's conformance to the GPPH in regard to the procurement of goods, works and services, the OCG increased its hands-on monitoring of the airline.

Consequently, advice on procurement related matters and the review of tender documents has been advanced by the OCG Inspectorate. As a course of action, OCG Inspectors have attended several tender opening ceremonies undertaken by the airline with a view to ensuring a higher level of compliance by the entity and also to strengthen the OCG's monitoring activity.

Of great import is the fact that for the 2008 calendar year, up to and including 2008 August 13, the NCC Contract Analysis records have revealed that a total of nine (9) contracts have been endorsed by the NCC for Air Jamaica Limited in all procurement categories of goods, works and services including the procurement of Aviation Insurance, Renewal of Licensing Agreements and Relocation Works and Industrial Maintenance.

The airline has also shown marked improvement in adherence to the requirements of the GPPH as evidenced by the numerous requests to the NCC for permission to use the Sole Source Methodology which have been considered and approved by the NCC.

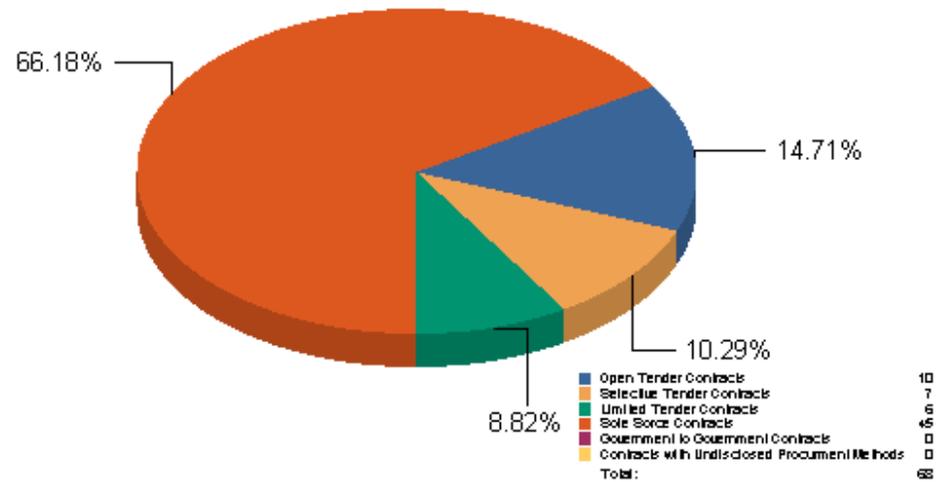
Below is a graphical representation and analysis of Air Jamaica Limited's compliance with the GPPH as demonstrated by the content of the QCA Reports submitted for the five (5) quarters between 2007 January and 2008 March.

Public Body Quarterly Contract Award (QCA) Report
(Contracts between \$250,000 and \$3,999,999 in value)

For 2007 Covering The 1st, 2nd, 3rd and 4th Quarters

(1) Public Body		(2) QCA Reports Approved for Electronic Upload	(3) Total Number of Contracts Awarded	(4) Total Value of Contracts	(5) Number and Percentage of Contracts Awarded (Classified by Procurement Method)						(6) Value of Sole Source Contracts	(7) Contracts Not Approved by Public Body's Procurement Committee		(8) Contracts Reported, Not Awarded to NCC Registered Contractors		(9) Contracts over \$1 Million Procured by Sole Source Methodology	
					Open Tender	Selective Tender	Limited Tender	Gov. to Gov	Sole Source	Not Stated		Num.	% of Total Contracts	Num.	% of Total Contracts	Num.	% of Total Contracts
1	Air Jamaica Ltd.	1	16	\$13.67M	2	0	0	0	14	0	\$12.53M	0	0%	11	69%	4	25%
		2	26	\$44.30M	3	3	0	0	20	0	\$35.75M	1	4%	26	100%	10	38%
		3	12	\$11.97M	0	4	3	0	5	0	\$6.08M	0	0%	12	100%	3	25%
		4	14	\$11.65M	5	0	3	0	6	0	\$4.60M	0	0%	8	57%	1	7%
	Total for period	4 Qtrs	68	\$81.59M	10	7	6	0	45	0	\$58.97M	1	1%	57	84%	18	26%
					15%	10%	9%	0%	66%	0%	72%						
TOTALS			68	\$81.59M	10	7	6	0	45	0	\$58.97M	1	1%	57	84%	18	26%
					15%	10%	9%	0%	66%	0%	72%						

Pie Chart Comparing Procurement Methods



An analysis of Air Jamaica Limited's QCA reports for the four (4) Quarters of 2007 revealed that the airline reported the award of a total of sixty eight (68) contracts with an approximate value of J\$ 81.59 Million. For the referenced reporting period, forty five (45) contracts valuing J\$ 58.9 Million were reportedly awarded via the Sole Source Procurement Methodology. Of the forty five (45) Sole Source contracts, eighteen (18) of the contracts were in excess of J\$ 1 Million and would have required prior written approval from the NCC.

Importantly, only one (1) contract for the 2007 calendar year was reported as not having been approved by Air Jamaica Limited's Procurement Committee.

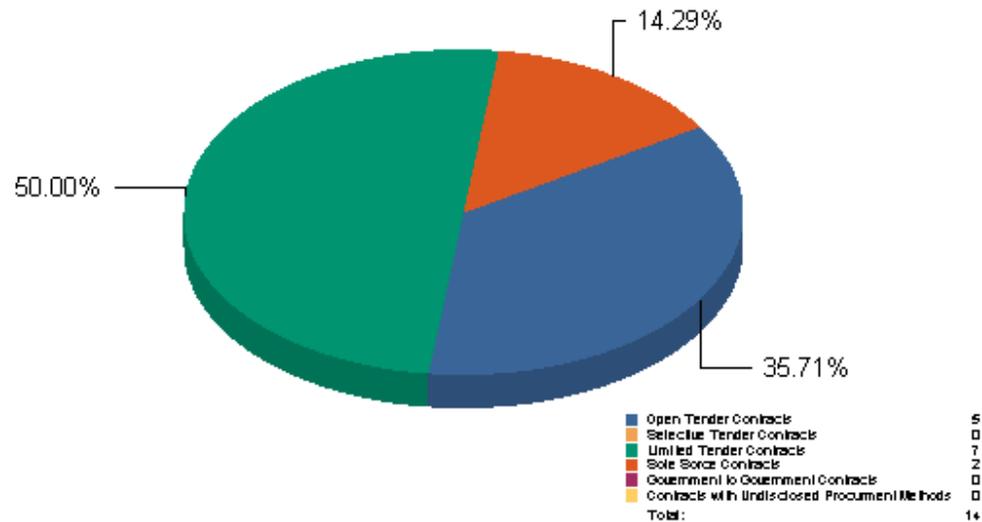
It is also important to note that for the 2007 period, Air Jamaica Limited reported that fifty seven (57) of the sixty eight (68) contracts were awarded to contractors who were not registered with the NCC. The OCG finds it necessary to reiterate that the airline must use registered suppliers of goods, works and services except in the instances of the procurement of consultancy services and overseas suppliers who are not required to physically fulfil their contractual obligations in Jamaica.

Public Body Quarterly Contract Award (QCA) Report
(Contracts between \$250,000 and \$3,999,999 in value)

For 2008 Covering The 1st Quarter

(1) Public Body	(2) QCA Reports Approved for Electronic Upload	(3) Total Number of Contracts Awarded	(4) Total Value of Contracts	(5) Number and Percentage of Contracts Awarded (Classified by Procurement Method)						(6) Value of Sole Source Contracts	(7) Contracts Not Approved by Public Body's Procurement Committee		(8) Contracts Reported, Not Awarded to NCC Registered Contractors		(9) Contracts over \$1 Million Procured by Sole Source Methodology	
				Open Tender	Selective Tender	Limited Tender	Gov. to Gov	Sole Source	Not Stated		Num.	% of Total Contracts	Num.	% of Total Contracts	Num.	% of Total Contracts
1	Air Jamaica Ltd.	1	\$9.08M	5	0	7	0	2	0	\$2.35M	0	0%	12	86%	1	7%
	Total for period	1 Qtrs	\$9.08M	5	0	7	0	2	0	\$2.35M	0	0%	12	86%	1	7%
				36%	0%	50%	0%	14%	0%	26%						
TOTALS				5	0	7	0	2	0	\$2.35M	0	0%	12	86%	1	7%
				36%	0%	50%	0%	14%	0%	26%						

Pie Chart Comparing Procurement Methods



The 2008 QCA 1st Quarter Report for Air Jamaica Limited revealed that the airline reported the award of fourteen (14) contracts with a total value of J\$ 9.08 Million. Of the fourteen (14) contracts which were awarded, two (2) were awarded via the Sole Source Procurement Methodology. For the referenced reporting period, Air Jamaica Limited reportedly awarded only one (1) Sole Source contract in excess of J\$ 1 Million. All the contracts reported in the 1st Quarter of 2008 were listed as having received the approval of Air Jamaica Limited’s Procurement Committee. It must be noted that for the 1st Quarter of 2008, Air Jamaica Limited reported that twelve (12) of the fourteen (14) contracts were awarded to contractors who were not registered with the NCC.

A comparative analysis of Air Jamaica Limited's procurement methodology for the 2007 and 2008 reporting period indicates that the airline uses the Sole Source Procurement methodology quite extensively. An amalgamation of the data reveals that of the eighty two (82) contracts awarded over the 2007 through to 2008 March reporting period, forty seven (47) of the contracts were awarded via the Sole Source Method. Given the frequency of the use of the Sole Source method, the airline is encouraged to ensure that in instances where the value of the contract will exceed J\$ 1 Million, prior written approval is sought from the Accounting Officer and the NCC.

**** Report Caveats**

All contracts reported with a value outside the JMD \$250,000.00 to JMD \$3,999,999.99 range, are not included in this report.

All contracts reported with a contract award date outside the corresponding quarter for that report submission, are not included in this report.

All figures are displayed in millions of dollars. This may lead to loss of precision in group totals and other summary values.

A contractor is considered 'Reported as Registered' once a value had been entered in the Contract ID column of the Q.C.A. report. This is not a true indication of the registration status of the contractor.

Contracts are considered **not** to have obtained procurement committee approval, if the information entered in the related column eleven (11) of the Q.C.A. report is not 'Y'

CONCLUSIONS

The Conclusions which have been arrived at are based on the files reviewed, meetings and interviews conducted with Air Jamaica Limited personnel, who would have been intimately involved in the day to day operations of Air Jamaica Limited .

All of these factors have revealed that Air Jamaica Limited's procurement practices were not in conformity with the requirements of Government Procurement Procedures Handbook and several aspects of the Government of Jamaica Procurement Procedures were breached. These include, but are not limited to:

- i. The award of contracts to entities that were not registered with the NCC;
- ii. The award of contracts over the \$4Million threshold which was not in accordance with the GPPH, and without the requisite endorsement of the NCC, and/or approval from Cabinet;
- iii. The conduct of procurements not in conformity with the GPPH;
- iv. The incorporation of follow-on clauses in contract agreements and the execution of same without the NCC's approval.

In several instances, the services that were being offered to Air Jamaica Limited were not covered by any formal contractual arrangement. However, there is evidence that efforts have since been made to formalise some of these services.

Additionally, it has been observed that Air Jamaica Limited has entered into contractual agreements with some of its suppliers but there is no indication that any form of tendering had occurred.

Some services were procured while the entity was under private sector management and the duration of these contracts would extend, up to and beyond, the time it was reacquired by the Government of Jamaica. These contracts, at the end of the contractual period, will eventually

be subject to the tender process as outlined in the GPPH and must form a part of remedial action undertaken at Air Jamaica Limited.

The OCG's monitoring of Air Jamaica Limited has revealed that the airline has made attempts to regularise its procurement activities in conformance with the requirements of the GPPH as evidenced by an increase in tendering activities and the subsequent endorsement for the award of contracts by the NCC on behalf of the airline.

RECOMMENDATIONS

The OCG has considered and reviewed all of the information which has been disclosed to it by the referenced respondents as well as the information contained in documents that have been requisitioned and submitted.

There is evidence which suggests that the GPPH has been contravened in the procurement practices of Air Jamaica Limited.

In the circumstances, it is the OCG's considered and respectful opinion that the following remedial measures and/or corrective actions should be taken by Air Jamaica Limited:

- i. In instances where the airline has no written contracts with suppliers of goods, works and/or services, it is strongly recommended that Air Jamaica Limited tender these contracts in accordance with the stated competitive provisions of the GPPH.
- ii. The Airline must establish properly constituted and functional Procurement Committees in accordance with the GPPH, in its various office locations, where possible. In the event that the establishment of multiple Procurement Committees is untenable, clearly established rules regarding the Procurement

Committee's approval must be established in order to remove any probability of a breach of the GOJ procurement guidelines.

- iii. Air Jamaica Limited should immediately be afforded the benefit of a comprehensive series of procurement workshops through the Ministry of Finance and the Public Service, which will inform personnel within the agency's procurement departments of the provisions of the GPPH.
- iv. A revision of Air Jamaica Limited's "General Procurement Procedures" must be undertaken in order to effect the necessary authorisation levels and scrutiny which will harmonize it with the GPPH and the Contractor General Act. The airline's internal procurement policy must also address the management issues that currently impact the procurement of goods, works and services.
- v. Given the nature of some of Air Jamaica Limited's procurements, the airline's procurement personnel should familiarise themselves with the Ministry of Finance Circular No. 3, dated 2006 January 10, entitled *Procedure for Emergency Contracting*, which would significantly assist in lowering the level of breaches of the procurement guidelines.
- vi. Long term framework agreements should also be considered by the airline, with a view to facilitate planning for the procurement of services such as crew accommodation and allow sufficient time for the planning and execution of the procurement of technical services.
- vii. Air Jamaica Limited should commit to undertaking internal procurement and financial audits on a quarterly basis, to ensure that the agency's finances and procurement practices are regularly monitored and to ensure compliance as efforts are made to streamline Air Jamaica Limited's operations.

- viii. Finally, the Permanent Secretary should take a more proactive and aggressive role in developing, implementing and enforcing effective risk management systems, checks and balances and other appropriate management systems at Air Jamaica Limited, in order to preclude the possibility of deviations from the GPPH and the Contractor General Act by the airline's management and procurement staff. This is with the intention of promoting good governance within the Public Sector by enhancing transparency and accountability.