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## CONTRACTOR GENERAL'S INTRODUCTORY REMARKS

### OPENING COMMENTS

In keeping with the requirements of Section 28 (2) of the Contractor General Act, it is my privilege to submit to the Honourable Houses of the Parliament of Jamaica, the 23<sup>rd</sup> Annual Report of the Commission of the Contractor General for calendar year 2009 – the fourth full year of my Commission as Contractor General.

As the holder of the Independent Parliamentary Anti-Corruption Commission of the Contractor General of Jamaica, I am mandated by Section 4 (1) of the Contractor General Act to monitor the award and the implementation of Government of Jamaica contracts to ensure, among other things, that they are awarded impartially and on merit and in circumstances which do not involve impropriety or irregularity.

A similar obligation, with respect to the issue of prescribed Government licences, is also imposed upon me by the same provision of the Act.

In addition to the foregoing, a Contractor General is also empowered by Sections 15 (1) and 16 of the Contractor General Act, at his discretion, to conduct formal Investigations into matters that are associated with the award of Government contracts, the issue of Government licences, tender procedures, the registration of Government contractors, and the like.

In consequence of an amendment that was effected to the Contractor General Act in 1999, the Office of the Contractor General (OCG) is also mandated to provide the National Contracts Commission (NCC) with the requisite technical and administration support resources which it requires, to enable it to execute its contractor registration and Government contract endorsement functions.

The OCG discharges its mission and core operating functions through four (4) operating Divisions. They are the Construction Contracts Division, the Non-Construction Contracts, Licenses and Permits Division, the Special Investigations Division and the Technical Services Division. The functions of these Divisions receive critical administrative and other support through the operations of the OCG's two (2) other divisions, the Information Systems Division and the Corporate Services Division.

In looking back over 2009, I am especially pleased to report that the OCG, with its 2009 staff complement of approximately 58 persons, and despite the tremendous challenges which it continues to face, primarily due to the failure of the Executive and the Legislative arms of the State to implement the OCG's many considered Recommendations, did in fact discharge the mandate of the Commission in a highly satisfactory and creditable manner throughout the reporting year.

Not unlike my previous three (3) years in office, many new ground-breaking operating initiatives were implemented by the OCG in 2009. Additionally, and very importantly, significant improvements and achievements were secured overall in the OCG's monitoring, auditing and investigative activities despite the OCG's limited financial and human resources.

It is my sincere belief that these attainments, all of which are amply detailed in this Report, have rebounded substantially to the benefit of the People and Taxpayers of Jamaica, primarily through heightened levels of compliance on the part of Public Officers with the Government's Procurement Procedures, the further elimination of corruption, waste, fraud, impropriety and irregularity in the award and execution of Government contracts, and visibly increased standards of transparency and accountability in the country's public procurement and contracting processes.

However, and despite the foregoing, there is much work to be done before probity, integrity and public confidence can be restored in the Government of Jamaica contract award and licence issue processes.

For another year, the members of staff of the OCG, for whom I have the greatest of respect, have once again championed the cause of the OCG by going beyond the call of duty to serve the interests of the People and Taxpayers of Jamaica. I am proud to have them as my Team.

As they were in 2008, the OCG's operating attainments in 2009 were driven primarily by its strategic and operating objectives of (a) transforming itself into a 'best in class' organization, (b) preventing corruption in Government procurement and contracting, (c) ensuring compliance with the Government's Procurement Procedures and Guidelines and (d) significantly enhancing transparency, accountability and probity in the Public Sector contract award process.

I have outlined below some of the major operating attainments which were secured by the OCG during the reporting period.

As would be expected, the OCG, in 2009, was also faced with several challenges, as well as a number of ongoing issues and new developments, all of which were cause for concern. I have also attempted to outline, herein, some of these. Most of them, however, are associated with the problem of corruption – a matter in respect of which I must be forthright and briefly comment upon even in the opening paragraphs of my Report.

Having now served for four (4) years as Contractor General, I must confess that I have become very concerned about what appears to be our failure, to date, as a Nation, to come to grips with the realization that corruption in Jamaica may have already condemned a large percentage of our fellow men and women to a dismal winter of relative poverty.

Regrettably, the perception is that this pervasive scourge is likely to continue, at an increasing and potentially alarming rate, to undermine our hopes and aspirations as a People unless, of course, bold, assertive and decisive steps are taken by the State to stop it dead in its tracks, even if the corrective measures which must be brought to bear will be deemed by some to be unpalatable or unpopular.

Economic development and growth, and prosperity, and the creation of wealth for its people, are all noble ideals for any country.

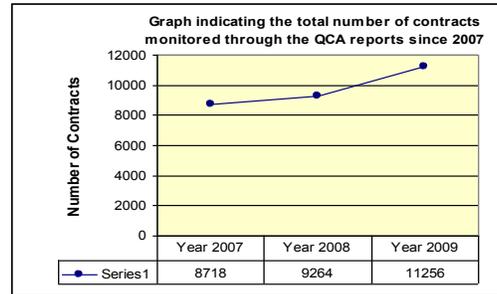
However, none of these can be realized in a Public or Private Sector which is perceived to be mired in corruption, or which facilitates its own exploitation by providing room for those who are bent on criminally enriching themselves at the expense of the majority.

It is also undeniable that none of these ideals can thrive in an environment which is bereft of (a) the political will on the part of the State to do what is right; (b) good governance structures which assure, among other things, transparency and accountability in Government; (c) strong, independent and effective anti-corruption institutions; and (d) powerful anti-corruption laws which, in keeping with the Rule of Law, are aggressively policed, prosecuted and enforced, without fear and without favour, against **all** transgressors irrespective of their social standing or economic means.

**CONTINUED IMPLEMENTATION AND DEVELOPMENT OF THE OCG'S QCA REPORT REGIME**

In the year 2009, the OCG continued with the successful implementation of its Quarterly Contracts Award (QCA) Report Regime. The Regime was first initiated, commencing with contracts which were awarded as at May 1, 2006, to enable the OCG to scrutinize Government of Jamaica contracts which fell beneath the NCC's then contract endorsement value threshold of \$4 Million. The NCC's contract endorsement threshold was adjusted upwards to \$10 Million as at September 22, 2008.

The QCA Report Regime has now enabled the OCG to generally monitor the more than 11,000 Government contracts which are awarded each year by the country's 190+ Public Bodies in the value range of \$275,000 to \$10 Million. Before the implementation of the OCG's ground-breaking QCA initiative, the OCG's capacity to monitor Government contract awards was limited to less than 350 contracts per year.



The OCG's staff has been relentless in its efforts to ensure compliance on the part of Public Bodies in their reporting of QCA Report based contract awards and, as the graph above suggests, 2009 marked a major accomplishment in comparison to the submissions which were made over the previous years. The Public Bodies must be commended for their timely responses which have led to the achievement of this unprecedented feat. It is anticipated that, in the upcoming year, we will see the same or an improved level of compliance.

The OCG's major initiative for its QCA programme for 2009 was the launch of Phase II of the programme. Phase II of the programme involves the computerized assessment of the QCA Reports for compliance with the provisions of the Government Procurement rules. The assessment is also critically instrumental in its role as an indicative test for the OCG's routine contract monitoring and investigation activities.

Particulars of the QCA reported contract awards for 2009 are discussed in the section of this Report which is entitled **Monitoring of Non-Construction Contracts, Licences, Permits and Concessions**. Further details regarding same are also outlined in **Appendix VII** to the Report.

**CONTINUED ENFORCEMENT OF THE OCG'S ZERO TOLERANCE POLICY**

The OCG's implementation in 2006 of a Zero Tolerance Policy against Public Bodies and Public Officials who fail to comply with the OCG's QCA Requisitions resulted, in 2009, in an unprecedented 100% compliance rate for the four quarters of 2009.

The Policy requires Public Bodies to file their QCA Reports, in arrears, within 30 days of the ending of each calendar year quarter. A failure to comply with the requirement results in the automatic referral of the Public Body and its Chief Accountable Officer, to the Director of Public Prosecutions, for criminal prosecution for failing to comply with a lawful requirement of a Contractor General.

Before the Policy was first implemented effective with the 2006 4<sup>th</sup> Quarter QCA Reports, the Public Body QCA reporting compliance rate was a mere 13% of the roughly 190 Public Bodies that were and are required to file QCA Reports with the OCG.

The Policy, which took full root in 2007, resulted in the OCG making 95 formal referrals to the DPP in respect of 68 delinquent Public Bodies and Public Officials for that year. In respect of the 2008 reporting period, the OCG made another seventeen (17) formal referrals to the DPP covering fourteen (14) delinquent Public Bodies.

No exceptions, to date, have ever been made by me in my application of the Policy.

The continued and unrelenting enforcement of the OCG's Zero Tolerance Policy has literally transformed the pervasive culture of non-compliance which previously existed in the Jamaican Public Sector to one of virtual and complete compliance.

### **OCG GOVERNMENT CONTRACT MONITORING ACTIVITIES**

In the year 2009, the OCG monitored, **on a sustained basis**, 795 contracts – 394 construction contracts and 401 goods and services contracts – in their Pre and Post Contract Award Phases. This reflects an increase of approximately 64% in the total number of contracts – 485 – which were monitored by the OCG, on a sustained basis, in 2008.

It is imperative that I outline at this juncture, that the foregoing performance objectives were attained notwithstanding the fact that the staffing of the OCG's Construction and Non-Construction Contracts Inspectorate Divisions, at a total of 12 Inspectors, has remained virtually the same for at least the past 10 years.

The OCG's monitoring activities during 2009, and in particular, its monitoring of construction contracts, revealed instances of poor contract administration which, in turn, resulted in variations and costs overruns.

In point of fact, some thirty (30) contracts were identified as having been impacted by relatively significant variations. The monetary cost of these variations amounted to J\$1.383 Billion, or some 3.6 percent of the value of the contracts which were endorsed by the NCC throughout the year.

However, the aforementioned overruns represent a significant reduction over the previous year's cost overrun figure which stood at J\$3.14 Billion.

Other material issues which were identified by the OCG in 2009, during the course of its contract monitoring activities, included the poor performance of contractors on works projects and the lack of adequate oversight of the implementation of Government construction contracts. This has been a continuing problem. The OCG has sought to be more proactive in identifying the referenced issues and has, as in previous years, posited the requisite recommendations to ensure enhanced efficiency and value for money in the administration of these contracts.

Also included in the OCG's 2009 contract monitoring activities, were the contracts which were awarded by the five (5) entities which were exempted in September 2008, by the Administration, from the all or a part of Government's Procurement Procedures. The entities are Jamaica Vacations Limited, the Jamaica Tourist Board, the Port Authority of Jamaica, Petrojam Limited and Air Jamaica Limited.

In addition to its regular contract monitoring activities, the OCG, in 2009, implemented an internal Constituency Development Fund (CDF) project monitoring framework. This was undertaken in an effort to more closely monitor the CDF process and the funds which were approved for disbursement by the CDF Parliamentary Committee. In consequence, the OCG, in 2009, pursued the monitoring of two hundred (200) randomly selected CDF projects out of a total of approximately six hundred and ninety (690) projects.

I am also happy to report that the OCG, in 2009, commenced the systematic review of Consultant and associated Consultancy services contract awards, particularly in light of the fact that Consultants are exempted from being registered with the NCC. Two hundred and twenty-seven (227) consultancy contracts which were issued in 2009 were reviewed by the OCG.

All told, when the OCG's QCA Reporting system is taken into consideration, together with the contracts which were the subject of the OCG's sustained and general monitoring in 2009, over 11,800 Government contracts, each exceeding \$275,000 in value and totalling more than \$88 Billion, were subjected, in one way or the other, to the OCG's scrutiny during the 2009 calendar year.

In the interest of public transparency, particulars of all of the referenced contract awards have been published on the OCG's website at [www.ocg.gov.jm](http://www.ocg.gov.jm). Particulars of these contract awards are fully discussed in this Report in four (4) of the main sections which follow this section. They are also further detailed in the relevant Appendices to the Report, namely **Appendices II to VII**.

### **OCG PROCUREMENT AUDITS**

During the 2009 reporting period, the OCG elected to increase the scope of its contract monitoring activities by conducting random and selective Procurement Audits of Public Bodies. Eighteen (18) such Procurement Audits were initiated by the OCG during 2009.

The Audits, which were designed to test the veracity of the information which was provided to the OCG by the audited Public Bodies, via their QCA reports, involved, among other things, a detailed review of the associated procurement documents that were prepared by the Public Bodies. In certain specified cases, the OCG's Audits were extended to include a review of the licences and permits which were issued by the respective Public Bodies.

Particulars of the referenced Audits are discussed and detailed in the section of this Report which is entitled **Procurement Audits**.

### **OCG'S FACILITATION AND SUPPORT OF THE NCC, ITS MEETINGS, ITS CONTRACT ENDORSEMENTS AND ITS CONTRACTOR REGISTRATIONS**

The Technical Services Department (TSD) of the OCG, which partly serves as the NCC's Secretariat, continued, in 2009, to fully support the NCC in its efforts by providing it with the requisite administrative and technical resources to facilitate its registration of Contractors and its weekly review and endorsement of the recommendations for the award of Government contracts which emanate from the country's more than 190 Procuring Public Bodies.

In providing the referenced support and resources to the NCC in 2009, the OCG's TSD assisted the NCC to register 2,335 Contractors and to conduct a total of 49 weekly meetings. Additionally, TSD representatives attended 138 meetings of the NCC's seven (7) Sector Committees in 2009.

The referenced meetings enabled the NCC to review and to endorse 630 recommended contract awards having an aggregated value of \$73.6 Billion.

The foregoing compares with 48 and 132 meetings, respectively, which were convened by the NCC and the NCC Sector Committee meetings in 2008. During the referenced meetings, an aggregated total of 928 contract award recommendations, valuing \$42.2 Billion, were reviewed, evaluated and endorsed.

Full particulars of the TSD's activities throughout 2009 are comprehensively presented in the section of this Report which is entitled **Technical Services Division**. Additionally, the 2009 particulars of the NCC's 630 contract endorsements are outlined in **Appendix III**.

### **THE LAUNCH OF THE OCG'S PRESCRIBED LICENCES INFORMATION DATABASE (PLID)**

The OCG, on November 27, 2009, successfully launched its ground-breaking comprehensive Internet Database Portal which contains information on 198 Public Bodies and more than 600 different kinds of Prescribed Government Licences.

The Database, which was designed as a central electronic repository for the storage of information on Government of Jamaica Public Body Prescribed Licences, will be utilized by the OCG in its soon to be commenced systematic monitoring of the licensing activities of the country's Public Bodies.

Government entities and members of the public and media fraternity, who are interested in obtaining information and guidance on Government licensing processes and requirements, are allowed free and unlimited access to the new OCG Database which is located on the OCG's official website at [www.ocg.gov.jm](http://www.ocg.gov.jm).

Searches of the system are easily executed by selecting, from a drop down list, either the name of a listed Public Body or the name of a specified Prescribed Licence, or both.

The successful development of the Database by the OCG's Inspectorate and Information Technology personnel is a monumental one for the OCG. It marks the first time in the 24 year existence of the OCG that deliberate and decisive steps have been taken by the organization to position itself to monitor the licensing activities of Public Bodies and, in so doing, to effectively discharge one of its principal but outstanding mandates under the Contractor General Act.

Unknown to most persons, in addition to monitoring and investigating Government contracts, a Contractor General is also expressly mandated by Section 4 (1) (b) of the Contractor General Act *"to monitor the grant, issue, suspension or revocation of any prescribed licence ..."*

The Act defines a 'Prescribed Licence' as *"any licence, certificate, quota, permit or warrant issued or granted pursuant to any enactment by a public body or an officer thereof"*. However, despite the clear provisions of the Contractor General Act, the OCG has never fully discharged its licensing monitoring mandate.

The in-house design and development of this unique facility, within pre-existing budgetary and resource allocations, speaks in definitive terms to the unparalleled competence and commitment of the OCG's staff. It represents another major mile-stone in the realization of the OCG's strategic objectives to not only push the limits of the OCG's productivity and efficiency levels, but to be held accountable to the People and Taxpayers of Jamaica for the effective delivery of the organization's statutory mandates.

The OCG's Prescribed Licence Information Database (PLID) has its genesis in a formal Requisition of the Contractor General, dated May 7, 2009. At that time, 195 Public Bodies were required to submit full particulars of their licensing processes and requirements to the OCG. The requisitioned information, together with other pertinent data that was retrieved by the OCG from the Internet, was, over a 5-month period, painstakingly analyzed, collated and then input into the PLID to form the system's Database.

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Now that the OCG's PLID has been formally launched, every Public Body is required to verify, update and maintain, on an ongoing basis, the accuracy of the information which is contained in the Database. Formal notification of the development and launch of the OCG's PLID, to all relevant Public Bodies and to several State officials, inclusive of all Ministers of Government and Parliamentarians, was undertaken by me, by way of a letter which was dated November 27, 2009.

Additional particulars regarding the OCG's PLID initiative and the Public Bodies whose licensing activities will be monitored by the OCG are detailed in the section of this Report which is entitled **Monitoring of Non-Construction Contracts, Licences, Permits and Concessions**.

### **CONDUCT OF OCG SPECIAL INVESTIGATIONS**

In furtherance of the OCG's mandate to cultivate, among other things, transparency and accountability in the Public Sector and, more particularly, to maintain the integrity of the country's procurement and public contracting processes, the OCG's Special Investigations Department concluded five (5) Special Investigations in 2009 into a number of procurement, license issue and contract award matters.

The Special Reports of Investigation, which were all formally submitted by me to the Parliament of Jamaica, are available for viewing and or download from the OCG's website at [www.ocg.gov.jm](http://www.ocg.gov.jm). The Executive Summaries of the Reports have also been reproduced in **Appendix I** of this Annual Report for ease of reference.

The Special Investigation performance of the OCG, in 2009, continues from the 11 Special Investigations which were completed by the OCG in both 2008 and 2007, and the record 15 Investigations that were completed in 2006.

These performance numbers contrast strikingly with the three (3) year period of 2003, 2004 and 2005, which preceded the commencement of my tenure as Contractor General, when only two (2) Special Investigations, in totality, were completed by the OCG.

The fact that the OCG completed only 5 Special Investigations in 2009 must be viewed against the background of the unprecedented work load which was brought to bear upon the OCG's then 2 to 3 member Special Investigations Team, and myself, by the record 19 other OCG Special Investigations that were at various stages of completion at the end of 2009 and which all required simultaneous attention and prosecution.

The focus of the 5 above-referenced Special Investigations was far-reaching as the OCG's enquiries delved into a surfeit of issues which marred the GOJ's procurement and contract award processes. The scope of the aforesaid Investigations involved matters which were connected with the issue and/or revocation of Government licences, irregularities in the divestment of State assets as well as suspicions of impropriety, corruption and irregularity in the award of Government of Jamaica contracts, licenses and permits.

It must also be stated that the publication of the abovementioned Reports of Investigation took place amidst tumultuous challenges, some of which involved suspicious charges as to the jurisdiction of the OCG and unfounded, uninformed and unsubstantiated accusations which imputed an abuse of power and authority on the part of the OCG.

The 5 Special Investigations in question were initiated to enquire into the following matters:

1. Allegations of Irregularity surrounding an alleged proposal by SportsMax Limited to supply satellite services for Simulcast Racing from South Africa and the United Kingdom to Caymanas Track Limited;
2. The circumstances surrounding the divestment of Air Jamaica Limited's London, Heathrow Slots to Virgin Atlantic Airways Limited;
3. Licences issued under the Telecommunications Act to Index Communications Network Limited, trading as GOTEL;
4. Allegations of impropriety and irregularity in the award of contracts to be performed in the North-East St. Catherine Constituency by the National Works Agency (NWA) and the Rural Agricultural Development Authority (RADA), and;
5. Allegations of corruption and irregularity in relation to certain Government of Jamaica Bridge Building contracts which were awarded to the British Firm of Mabey and Johnson Limited.

Among the more than 40 Special Investigations which have been conducted and completed by the OCG since I assumed office as Contractor General on December 1, 2005, and in respect of which formal written Reports of Investigations have been submitted by me to the House of Representatives and the Senate, are the following:

1. Kingston and St. Andrew Corporation (KSAC) (April 2006)
2. Social Development Commission (SDC) (April 2006)
3. Portmore Municipality (April 2006)
4. Social Development Foundation (SDF) (April 2006)
5. Sandals Whitehouse Hotel (June 2006)
6. Petroleum Company of Jamaica (PETCOM) (December 2006)
7. National Solid Waste Management Authority (NSWMA) (January 2007)
8. Government Employees Administrative Services Only (GEASO) Insurance Scheme (October 2007)
9. Jamaica Tourist Board (December 2007)
10. Jamaica Fire Brigade (December 2007)
11. Highway 2000 Concession Agreement (December 2007)
12. University Hospital of the West Indies (December 2007)
13. 4M Light Bulb (Cuban Light Bulb) Project (February 2008)
14. Petrojam Divestment (June 2008)
15. Betting, Gaming & Lotteries Commission (September 2008)

16. Air Jamaica Limited (September 2008)
17. Universal Access Fund (September 2008)
18. Development Bank of Jamaica (October 2008)
19. Jamaica Urban Transit Company (JUTC) (November 2008)
20. Caymanas Track Limited (CTL) (January 2009)
21. GOTEL (March 2009)
22. Air Jamaica London Heathrow Slots (March 2009)
23. N.E. St. Catherine Constituency (July 2009)
24. Mabey and Johnson Bridge Building Corruption Allegations (October 2009)

Copies of all of the foregoing Special Reports of Investigation can be freely perused on, or downloaded from, the OCG's official website at [www.ocg.gov.jm](http://www.ocg.gov.jm).

### **PUBLIC BODY SENSITIZATION PROGRAMME**

In a proactive effort to forge a more effective working relationship with the Public Procuring Bodies which fall under its contract monitoring jurisdiction, the OCG, in March 2009, embarked upon an extensive 'GET TO KNOW YOU AND US' Presentation programme which was directed at the country's 190+ Public Procuring Bodies.

The OCG presentations, which were conducted by OCG Inspectors at the location of each Public Body, lasted for approximately one and one-half hours. They were structured primarily to secure the following strategic objectives:

- (1) To formally introduce OCG Inspectors to the principal officer, the senior management staff and the procurement staff of the Public Body to which the relevant Inspectors were/are assigned;
- (2) To formally inform Public Bodies of the respective functions, roles and responsibilities of the OCG and the NCC;
- (3) To explain how the OCG executes its contract monitoring and investigation functions; and
- (4) To provide an opportunity for each Public Body to highlight to the OCG any significant procurement challenges, issues or problems that it might have been experiencing.

I must also record that, during the reporting year, in an effort to ensure that Permanent Secretaries were kept fully informed of the procurement and contract award related issues which were the subject of monitoring communications between the country's Public Bodies and the OCG, I implemented a revised OCG External Communications Protocol. The Protocol essentially mandates that **all** written OCG outgoing contract monitoring correspondence, to any of the country's Public Bodies, must be formally copied to the relevant Permanent Secretary who has 'Accounting Officer' responsibilities for the Public Body in question.

## **CONTINUED IMPROVEMENTS IN THE OCG'S ANNUAL REPORTS TO PARLIAMENT**

The OCG has continued its tradition, of the past five years, of completing its Annual Reports within eight (8) months or less of the ending of the year to which they relate.

And again, and as was the case with the OCG's 2008 Annual Report, the OCG's 2009 Annual Report broke new ground as the organization continued to explore innovative ways of improving the depth and substance of the information which it provides to the Parliament and the People of Jamaica in its Annual Reports.

Each year, under my watch, the OCG has been steadily increasing the volume and quality of information which it has been presenting in its Annual Reports. This has substantially enhanced the probative value of the Reports.

For example, the current 2009 Annual Report will provide more than 1,000 pages of information (despite the utilization of a smaller font size than preceding Reports), compared to 570 pages of information for the 2008 Annual Report, 446 pages for the 2007 Report, 397 pages for the 2006 Report and 380 pages for the 2005 Report. The page content of OCG Annual Reports, prior to my appointment as Contractor General on December 1, 2005, typically ranged between 10 and 160 pages.

What is particularly distinctive about the current Report, however, is that it has been totally revamped.

Apart from the provision of the regular Departmental over-view narratives, a substantial and commendable effort was undertaken by the OCG's staff to significantly improve the depth and substance of the information that is presented, particularly with respect to the data which relates to the individual construction and non-construction contracts which received sustained and general monitoring by the OCG throughout the year.

Extensive particulars of these contract monitoring activities, inclusive of actual photographs of Government works projects site activity, are outlined in the main section of the Report and in as many as four (4) different Appendices to the Report.

Additionally, there are extensive Appendices covering, for example, particulars of (a) the 630 contract award recommendations that were endorsed by the NCC in 2009, (b) 165 CDF projects, and (c) the 2009 QCA contract award activities of 196 Procuring Public Bodies.

## **THE OCG'S DISSEMINATION OF INFORMATION TO ITS STAKEHOLDERS AND ITS UTILIZATION OF MEDIA RELEASES**

The OCG's official website, which can be accessed at [www.ocg.gov.jm](http://www.ocg.gov.jm), continues to be the primary portal through which a wide variety of information regarding the operations of the OCG and the NCC can be accessed by the OCG's stakeholders at any time.

The website, which was revamped by me in mid-2006, is updated on a continuous basis and, together with the utility of OCG Media Releases, constitutes the main planks upon which the OCG's public communications programme is supported.

The OCG, in 2009, issued 4 Letters to the Editors of the Print Media and 49 official OCG Media Releases, inclusive of the OCG's monthly Press Releases of NCC contract endorsements. This compares with 2 Letters to the Editors of the Print Media and 40 Media Releases, which were issued by the OCG in 2008. Once they are issued, OCG Media Releases are typically registered on the OCG's website within minutes.

The timely, uniform and regular dissemination of information to the Media, via **written** OCG Media Releases, is a strategic and deliberate initiative of the OCG. The initiative was specially designed to educate, update and/or to inform the Nation about certain OCG issues, initiatives, positions and concerns – inclusive of matters that are related to OCG Special Investigations and Public Sector procurement related issues – which the OCG has deemed to be of sufficient public interest to warrant immediate publication to its stakeholders.

In keeping with the afore-stated objective, since being appointed Contractor General effective December 1, 2005, I have, as at December 31, 2009, issued 106 official OCG Media Releases and written 18 letters to the Editors of the Jamaica Print Media.

The Media has a critical, if not indispensable, role to play in ensuring that the operations and work of the OCG, it being an Independent Anti-Corruption Commission of Parliament, is subjected to constant public scrutiny. I not only welcome, but must also openly encourage this scrutiny in the public interest.

I must also, again, seize this opportunity to formally convey my deep gratitude to the members and institutions of the local Media fraternity for the invaluable assistance which they have so kindly afforded to the OCG, during my tenure as Contractor General, to make public the OCG's work and its concerns about critical matters which are related to public procurement and Government contracting.

### **FORMAL STATUTORY RECOMMENDATIONS AND REFERRALS MADE BY THE OCG**

In my last Annual Report to the Parliament of Jamaica, I was compelled to convey a previously expressed sentiment and concern regarding the formal and considered Recommendations that emanate from the OCG pursuant to its Statutory obligations, particularly those which are mandated by Section 20 (1) of the Contractor General Act. Section 20 (1) of the Act empowers a Contractor General to make Recommendations to the State after his conclusion of any Investigation which is conducted by him under the Act.

I had expressed the following considered comments then. They are still equally valid as I write this Report.

*"It would be remiss of me, however, if I did not place upon record the OCG's continued disappointment regarding the unacceptable levels of attention which the Government and the Parliament of Jamaica continue to pay to the considered Recommendations of the OCG, most of which are typically communicated in (a) official OCG correspondence (b) OCG Investigation Reports and (c) OCG Annual Reports.*

*Several of these Recommendations, whether made in 2007 or before, or by myself or by other Contractors General, have, again, for another year, gone wholly un-heeded. If this is to become a continuing trend, then it may very well provide the basis upon which the OCG, itself, might become forced to question its own relevance".*

Unfortunately, the OCG, in 2009, was faced with very similar concerns regarding its documented Positions and Recommendations. As such, I am also compelled to restate, hereunder, again, the following statements which were made by me in my 2008 Report to the Parliament of Jamaica:

*"If the OCG's many Recommendations over the past two decades were given priority attention and speedily and comprehensively implemented, I daresay that much would have already been gained in combating, reducing and even eliminating corruption and the repeated breaches of the Government Procurement Rules, and related legislation, which have become so commonplace in the Public Sector and which continue to cost the Jamaican Taxpayers millions, if not billions, of dollars each year.*

*Some of the referenced OCG Recommendations have been repeated ad infinitum and ad nauseam but to no avail. In Investigation after Investigation, whilst the fact circumstances and/or allegations may change, the same types of failures and/or breakdowns in compliance levels, probity, accountability and transparency in Government contracting are too often evident. As a consequence, and in an effort to address these persistent issues, the same or similar Recommendations are stressed over and over again.*

*It is important to point out that Sections 20 (1), 21 and 28 (2) of the Contractor General Act oblige a Contractor General to submit formal Reports to Parliament and/or to a variety of other State authorities, containing his Recommendations and/or Findings. These Reports include the Contractor General's Annual Reports as well as his Reports of Investigation. Clearly, then, the presumed intent of these provisions is that Parliament and the relevant State authorities, will act upon the referenced Recommendations and/or Findings or, at a minimum, give due consideration to them.*

*I would respectfully submit that should the OCG's Recommendations be comprehensively implemented, they would radically reshape the landscape of the Jamaican Public Sector procurement process."*

The OCG continues to be gravely concerned about what appears to be a failure on the part of certain State institutions, to which formal OCG Statutory Investigation-based Referrals are made, to either act upon or respond to the said Statutory Referrals in a timely and/or effective manner, or at all. In many instances, not even an acknowledgement of the receipt of the OCG's Referrals is received from some of the subject institutions.

These institutions include the Attorney General's Department, the Office of the Director of Public Prosecutions (ODPP), the Corruption Prevention Commission and the Auditor General's Department. Elsewhere in this Report, in the section which is entitled **Summary of Special Investigation Referrals**, we have sought to present, in a tabular format, an overview of the matters which have been referred by the OCG to the referenced State Authorities and the reported consequential actions, if any, which have been taken, as at December 31, 2009, by the said institutions.

It is the OCG's belief that the OCG has been discharging its Government contract monitoring and investigative mandates, under the Contractor General Act, precisely in the manner that Parliament had intended for it to do.

But, having done so, the question must now be asked – What becomes of those of the OCG's formal Section 20 (1) Recommendations, and its formal Section 21 Referrals, that are made to the relevant State Authorities pursuant to the expressed dictates and requirements of the law itself? And if nothing becomes of the OCG's Referrals or Recommendations, then what good purpose does the OCG really serve?

### **FORMAL OCG REFERRALS MADE TO THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS (ODPP) – ISSUES REGARDING THE ENFORCEMENT OF THE LAWS OF JAMAICA**

As was previously noted, the OCG's Zero Tolerance Policy requires Public Bodies to file their QCA Reports, in arrears, within 30 days of the ending of each calendar year quarter.

A failure to comply with the requirement results in the automatic referral of the Public Body and its Chief Accountable Officer, to the Office of the Director of Public Prosecutions, for criminal prosecution in respect of the said failure to comply with a lawful requirement of a Contractor General.

A person who fails to comply with a lawful requirement of a Contractor General, without lawful justification or excuse, commits a criminal offence under Section 29 (b) (ii) of the Contractor General Act. The offence is punishable by a fine not exceeding \$5,000 or imprisonment for a term not exceeding 12 months, or both such fine and imprisonment.

The following are verbatim comments which are taken from an official OCG Media Release, which was issued on February 8, 2010. The Release was issued after the OCG's rigidly enforced Zero Tolerance Policy produced an unprecedented and record 100% compliance rate for the four consecutive quarters of 2009 in respect of the submission of QCA Reports, to the OCG, by the country's 190+ Public Bodies.

*"While the OCG wishes to recognize the demonstrated efforts of the country's senior Public Officials to comply with the OCG's lawful Requisitions, the OCG nevertheless believes that there are important lessons to be learnt from the success of its Zero Tolerance Policy. The following are the comments of Contractor General, Greg Christie, regarding the matter:"*

*"It is an incontrovertible fact that the criminal laws of Jamaica will continue to be broken, wantonly and with impunity, unless and until those who are responsible for enforcing the law do just that".*

*"The OCG's experience also demonstrates that there is no such thing as 100% voluntary compliance with any law. There will always be transgressors who must be forced into compliance. And the way to do that is to send a strong, unequivocal and unmistakable signal that no matter who you are, what your station in life is, or how minor your transgressions may be, if you violate the criminal laws of our country, you will pay. That was the signal which was sent by the OCG's Zero Tolerance Policy".*

*"It is for this reason that the OCG wishes to place upon record its gratitude to the former DPP, Mr. Kent Pantry, CD, QC and Mr. Dirk Harrison, the then Acting Deputy DPP, without whose courage and fearlessness, the OCG's Zero Tolerance Policy would not have been successful".*

*"It was Mr. Pantry, in February 2008, just before he demitted office, who took the unprecedented step to initiate criminal prosecution proceedings against the Accounting or Senior Accountable Officers of 17 of the Public Bodies that had failed to comply with the lawful Requisitions of the OCG. (The OCG was advised of Mr. Pantry's decision by way of letter which was dated February 14, 2008). The prosecutions were eventually marshalled in the Half Way Tree Resident Magistrate's Court by Mr. Harrison after the incumbent DPP, Ms. Paula Llewellyn, QC, had assumed office".*

The incumbent Director of Public Prosecutions, Ms. Paula Llewellyn, CD, QC, who succeeded Mr. Kent Pantry, was appointed into office on March 5, 2008.

Since then, and up to December 31, 2009, the OCG has made over 30 formal criminal offence Referrals to the ODPP. However, as far as the OCG is aware, none of these Referrals, as at December 31, 2009, has given rise, whether directly or indirectly, to a criminal charge, arrest or prosecution.<sup>1</sup>

The following is intended to provide an outline of some of the referenced matters which have been formally referred to the ODPP, by the OCG, between March 5, 2008 and December 31, 2009.

<sup>1</sup> *OCG's Referrals in the Cuban Light Bulb Matter* – The OCG's Referrals in this matter were formally directed to DPP Kent Pantry and not to DPP Paula Llewellyn. The OCG's Special Report of Investigation into the matter was formally submitted to Mr. Pantry and Commissioner of Police, Rear Admiral Hardley Lewin, on February 8, 2008. Mr. Kern Spencer, Mr. Rodney Chin and Ms. Coleen Wright were subsequently arrested and taken into custody on February 26, 2008. Ms. Llewellyn assumed office on March 5, 2008.

A. Formal Criminal Offence Referrals Made Pursuant to Section 21 of the Contractor General Act

As at December 31, 2009, the OCG had made five (5) formal Statutory Referrals to the ODPP pursuant to and in compliance with the expressed provisions of Section 21 of the Contractor General Act.

Section 21 of the 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".*

The five (5) Mandatory Statutory Referrals, which pointed to a Statutory "finding" or "findings" by "a Contractor General" of "evidence of a ... criminal offence on the part of an officer or member of a Public Body", were each made under cover of a formal letter which was addressed to the DPP and the Commissioner of Police on the following dates and in respect of the following formal OCG Special Investigations:

- (1) JUTC Investigation – November 26, 2008 (Multiple Referrals/Recommendations Made)
- (2) Caymanas Track Limited Investigation – January 22, 2009 (Multiple Referrals Made)
- (3) GOTEL Investigation – March 17, 2009 (Multiple Referrals/Recommendations Made)
- (4) Air Jamaica London, Heathrow Slots Investigation – March 31, 2009 (Multiple Referrals Made)
- (5) Mabey and Johnson Corruption Allegations Investigation – October 8, 2009 (Multiple Referrals Made)

It should be emphasized that in support of all of the above-referenced Referrals, and in addition to the formal provision of the OCG's written Reports of Investigation into the said matters, the ODPP was formally furnished, by the OCG, with the sworn written statements and documentary exhibits which were given and tendered by the relevant witnesses pursuant to the provisions of Section 18 (2) of the Contractor General Act, Section 29 (a) of the Contractor General Act, Sections 2 (1) and 7 of the Voluntary Declarations Act and Section 8 of the Perjury Act.

As is well known, it is on the basis of these sworn written witness statements and documentary evidence that the OCG's Findings, Conclusions, Referrals and Recommendations in the said Investigations are based.

However, and although the ODPP has advised or publicly reported that a number of the referenced matters have been passed by it to the police for further investigations to be carried out, the fact remains that as at December 31, 2009, and as far as the OCG is aware, no criminal charge, arrest or prosecution, arising out of any of the said matters, has been made or initiated.

B. Formal Referrals Made for Criminal Breaches of Section 29 of the Contractor General Act

In addition to the foregoing Referrals, the OCG has also made several other formal criminal offence Referrals to the ODPP, arising out of breaches of Section 29 (b) (ii) of the Contractor General Act by a number of Public Officers who have failed to comply with a lawful Statutory Requisition of a Contractor General.

Among the formal Referrals which have been made, by the OCG, to the ODPP, since March 5, 2008, in the foregoing regard, are the following (with an indication of the respective dates on which they were made):

- (1) March 27, 2008 – 5 Referrals
- (2) May 30, 2008 – 7 Referrals
- (3) August 19, 2008 – 4 Referrals
- (4) November 17, 2008 – 3 Referrals
- (5) February 16, 2009 – 3 Referrals

However to date, as far as the OCG is aware, no prosecutions have been commenced in respect of any of the referenced matters and neither has the ODPP formally advised the OCG of its considered positions regarding the said matters.

It is also instructive to note that while no prosecutions regarding OCG Referrals for breaches of Section 29 (b) (ii) of the Contractor General Act have ever been initiated by DPP Llewellyn, DPP Kent Pantry did in fact initiate such prosecutions on the strength of similar and/or identical evidence to that which was provided by the OCG to DPP Llewellyn (*See the opening paragraphs in this section*). It is also worthy of note that DPP Kent Pantry also initiated the prosecution of the said matters without reference to the Jamaica Constabulary Force.

The OCG acknowledges, accepts and respects the fact that the Director of Public Prosecutions is an independent Authority which is established under the Constitution of Jamaica and that, in the exercise of the powers that are conferred upon him/her by the Constitution, a Director of Public Prosecutions is not subject to the direction or control of any other person or authority.

Notwithstanding, and with the deepest of respect to the ODPP and to the holder of the Office, the OCG is nevertheless obliged to express its concerns regarding the matter. The OCG is also obliged to track and to formally place upon record, via its Statutory Annual Reports to the Parliament of Jamaica, the aforementioned fact circumstances as they relate to the outcomes of the Statutory Criminal Referrals which it has made pursuant to the provisions of the Contractor General Act.

### **THE CONSEQUENCES OF THE FAILURE OF THE JAMAICAN STATE TO DEAL DECISIVELY WITH CORRUPTION – THE PERCEPTION OF THE INTERNATIONAL COMMUNITY**

Transparency International (TI), the Global Anti-Corruption Watchdog, which ranks countries in terms of the degree to which corruption is perceived to exist among their public officials, politicians, and public institutions, in 2009, and for the third consecutive year, downgraded Jamaica in its Annual Corruption Perceptions Index (CPI) Rankings.

In the referenced Rankings, which were released in November 2009, TI scored Jamaica at 3.0 out of a possible 10 and ranked the country 99th in a list of 180 countries. Only Guyana, with a CPI score of 2.6 and a country ranking of 126, was ranked worse in the English Speaking Caribbean.

Since 2006, Jamaica has slipped significantly in TI's Annual Corruption Perception Rankings. In that year, the country had received a 3.7 CPI score and was ranked as high as 61 out of a total 163 countries.

**Transparency International Annual Corruption Perception Index – Jamaica Rankings**

Transparency International Annual Corruption Perception Index – Jamaica Rankings				
Year	CPI Score	Country Rank	Total Countries Ranked	Independent Surveys Used
2009	3.0	99	180	5
2008	3.1	96	180	5
2007	3.3	84	180	5
2006	3.7	61	163	5
2005	3.6	64	159	6

Jamaica’s consistent decline in TI’s Annual Corruption Perceptions Index ratings, over the past three years, comes as no surprise to the OCG.

It is the OCG’s considered view that enough is not being done by the State to aggressively, proactively and decisively combat corruption within its borders. Much has been said, but very little has been done.

Indeed, in an official Media Release which was issued by the OCG in November 2009, the OCG was moved to make the following observations and recommendations, namely that the time had come for the Parliament of Jamaica to urgently examine its current anti-corruption institutional and legislative framework to secure the following strategic objectives:

- (1) To significantly strengthen the capacity of the anti-corruption institutional framework in a deliberate effort to substantially enhance its effectiveness in the fight against the scourge of corruption;
- (2) To ensure that the sanctions that are legislated to punish acts of corruption are adequate, effective, proportionate and dissuasive in nature. Where necessary, appropriate steps should be taken to impose more severe sanctions, inclusive of the seizure of bribes and the proceeds of acts of corruption, in addition to other powerful punitive criminal sanctions; and
- (3) To insulate the State’s anti-corruption institutions from any possible interference, obstruction or direction from the Executive arm of the State;

The OCG was also moved to express the view that the Corruption Prevention Commission (CPC) should take a more proactive and aggressive approach in (a) the investigation of matters which involve alleged acts of corruption against the State and (b) its review and investigation of the Declaration of Assets, Income and Liability Statements that are required to be filed each year by Public Servants, pursuant to the provisions of the 2000 Corruption Prevention Act.

To the extent that the CPC lacks adequate resources to effectively discharge its mandate under the law, we had also recommended that immediate steps should be taken by the State to address same, failing which the State’s ability to win the fight against corruption would be significantly threatened and undermined.

The Executive and Legislative arms of the State must come to realize that unless immediate, decisive and courageous steps are taken to address, head-on, the problem of corruption in Jamaica, we should expect Jamaica's ranking on the International Corruption Perception Index to continue to suffer progressively worsening blows.

### **A PROPOSED NEW APPROACH IN THE FIGHT AGAINST CORRUPTION IN JAMAICA**

The OCG is committed to the faithful and vigorous discharge of its anti-corruption mandates under the Contractor General Act. There are also other State entities which are involved in the fight against corruption in Jamaica but which are entrusted with different, though complementary, statutory or constitutional mandates to that of the OCG.

However, and without prejudice to the recommendations which I have previously made, it is fast becoming my considered view that, in so far as the State's anti-corruption drive is concerned, a combined and consolidated approach, together with a significantly enhanced and sustained effort, would be the more cost-effective and efficient route to take over the longer term if, as a country, we are to stand any chance whatsoever of successfully tackling the seeming endemic corruption which is now literally gripping Jamaica by its throat.

Consequently, it is my intention, in 2010, to publicly propose the establishment of an all-encompassing Independent National Anti-Corruption Agency. The proposed new single Anti-Corruption State Agency would possess the requisite investigatory and prosecutorial resources, and **independent** powers, to deal with all corruption offences in a novel, focused, professional, aggressive and significantly more efficient and cost-effective approach to that which now obtains.

I will propose that the Parliamentary Integrity Commission, the Corruption Prevention Commission and the Commission of the Contractor General should be merged, and that the resultant agency should be adequately resourced with the requisite specialist assets.

The suggested Agency should be comprehensively staffed to include a highly trained cadre of criminal investigators and special ops team members (who will bear arms and have special police powers of arrest as is the case with the Singapore Corrupt Practices Investigation Bureau), specialist attorneys, criminal prosecutors, forensic auditors, accountants, IT professionals, Government contract and licence inspectors and investigators, data analysts, researchers and a full complement of 'back-office' administrative and other support staff. Their job, collectively, would be to investigate and to prosecute corruption related offences, as well as to generally perform all of the other statutory functions which are presently required to be discharged by the three (3) named Commissions.

Additionally, it will also be proposed that consideration should be given to the establishment of a special 'Corruption Court', or that the adjudication of corruption offences be given special and/or preferential treatment within the present Court system.

It is perceived that the proposed streamlined and consolidated effort would, among other things, eliminate the overlaps and duplicity of resources which are now a feature of the present framework – an institutional framework which, although it looks good on paper, has proven to be inadequate, ineffective, under-resourced and non-responsive in combating the increasing levels of corruption which have permeated Jamaica's Public and Private Sectors.

But what are some of the other reasons which literally compel us to revamp the system which currently obtains for fighting corruption in Jamaica?

There is no one who could reasonably contend that Jamaica's primary law enforcement and criminal investigative agency, the Jamaica Constabulary Force (JCF), and its sole prosecutorial agency, the Office of the Director of Public Prosecutions (ODPP), are in any way near possessed with the requisite resources and technical assets to effectively investigate and prosecute the massive volume of criminal cases which are currently languishing, particularly those which involve offences against the person.

The enormity of the issue becomes glaringly obvious when one considers that it was recently estimated that there are some 7,000 unsolved murders which were committed just during the past 6 years alone, and an estimated 400,000 cases which are currently awaiting prosecution or adjudication before the courts. It must also be recalled that a record 1,600 murders were committed in Jamaica in 2009.

The experience of the OCG, with respect to the criminal referrals which it has formally conveyed to the ODPP, is another relevant and important point of reference in the debate. The facts will show that after substantial resources, time, intellectual capital and professional effort are invested by the OCG in the conduct of intensive OCG Statutory Investigations, the matters, once formally referred, appear to be either placed in abeyance or, after the passage of several months, are passed on, by the ODPP to the JCF, for the proverbial 'further criminal investigations', following which they then join the long list of thousands of other 'waiting' matters.

If the JCF, the ODPP and the Courts system are so overwhelmed, over-worked, under-equipped and/or under-resourced to satisfactorily deal with the above-referenced deluge of serious crimes, as well as the criminal referrals which emanate from critical State Anti-Corruption Agencies such as the OCG, then the question must be posed as to how likely is it that they can or will be effectively placed in a position, any time soon, to begin to even scratch the surface of the vast and yet to be explored criminal sceptre of corruption which, for years, has been having an unfettered field day in Jamaica and which, for the foreseeable future, will obviously continue to do so, unless something dramatically different is done?

We must also be candid and concede that while much is often heard about the filing of charges against members of the police force for corruption offences, surprisingly very little is heard about the arrest and/or prosecution, on corruption charges, of the so called 'white-collar criminal'. These would include, for example, persons such as members of the privileged classes of society, politicians, public officials and businesspersons who are suspected of involvement in criminal conduct of a commercial and non-violent nature.

Certainly, no one could credibly defend the proposition that police officers are the primary or only category of persons in our society who are involved in such practices. But, curiously, the main focus of the fight against corruption in Jamaica, so far, seems to be directed towards members of the police force.

When last, for example, or how often, has anyone heard of a public official being investigated, charged, arrested or prosecuted for the commission of the corruption offence of Illicit Enrichment which is specified under Section 14 (5) of the Corruption Prevention Act?

Section 14 (5) of the Act provides that *"Where there is a significant increase in the assets of a public servant which cannot be reasonably explained, having regard to his lawful earnings, the significant increase shall be deemed to be an illicit enrichment and that public servant shall be deemed to have committed an act of corruption"*.

The Act further provides that where a public servant owns assets that are disproportionate to his lawful earnings and, upon being requested by the Corruption Prevention Commission or any other person who is duly authorized to investigate an allegation of corruption against him, to provide an explanation as to how he came by such assets, he either fails to provide an explanation, or gives an explanation which is not considered to be satisfactory, he shall be liable to be prosecuted for the offence of Illicit Enrichment.

The foregoing provisions of the Corruption Prevention Act have placed what is obviously an extremely powerful weapon in the hands of the Corruption Prevention Commission, the JCF and the ODPP to effectively fight corruption in the Public Sector by going after public servants who are suspected of complicity in corrupt activities. But is this weapon – which is universally prescribed and provided for in at least two (2) International Treaties to which Jamaica is a signatory – being utilized by the relevant authorities in the manner that it was intended to?

In like form, the OCG also believes that it is timely to raise the question as to why is it that corruption offences, such as that which is specified under Section 14 (1) (b) of the Corruption Act, are not being more widely employed by the investigative and prosecutorial authorities to aggressively tackle corruption right across the board in the Public Sector.

Section 14 (1) (b) of the Corruption Prevention Act provides, in overly simple terms, that a public servant commits an act of corruption “*if, in the performance of his public functions, he does any act or omits to do any act for the purpose of obtaining any illicit benefit for himself or (for) any other person*”.

I would respectfully submit that it is precisely because of the foregoing considerations, amongst others, that a novel, unprecedented and ‘*thinking out of the box*’ approach will be required if we are to stand even a ghost of a chance of successfully combating corruption in Jamaica, over the longer term, in the forthright and aggressive manner which the situation now clearly demands.

As a part of the new dispensation, I will also propose that significantly tougher criminal sanctions, inclusive of mandatory custodial and economic-based penalties, should be imposed in respect of all corruption and related offences. The hammer must be forcefully brought down.

Included among the offences which should attract stiffer sanctions are offences under the Contractor General Act, as well as offences which involve a breach of some of the rules which are related to the award of Government contracts, the issue of Government licences, and the Statutory Declarations which are required to be filed each year by Public Officers and Parliamentarians in respect of their income, assets and liabilities.

The bottom line in all of this is that whatever the new approach is determined to be, it must be one which brings to bear an appropriately structured and adequately resourced anti-corruption institutional framework. We must also be dead certain that the new dispensation will be **effective** in getting the job done by ensuring that the anti-corruption laws which are on the country’s Statute books will be **comprehensively enforced**.

If at the end of the day any of the foregoing deliverables cannot be assured, then we would have squandered valuable time and resources in our attempts at revamping or tweaking the present system.

That said, we must now act strategically and decisively, and with dispatch, so that a clear and unmistakable signal is sent to the corrupt amongst us who, by their voracious and seeming unimpeded criminal conduct, are presently obstructing an entire nation from attaining its full socio-economic potential.

Should we fail to so act, then we must not be heard to complain about the rapidly deepening and pervasive feature of the Jamaican sociological order that corruption has already become. We must also accept that unless we purposefully act, we would have rendered futile, whimsical and fanciful any prospect that we might have otherwise had for extracting Jamaica out of the gaping socio-economic abyss that it is now in.

## **CORRUPTION IDENTIFIED IN THE GOVERNMENT CONTRACTOR REGISTRATION PROCESS**

In April 2009, the OCG uncovered attempts by unscrupulous contractor applicants and other persons to corrupt the National Contracts Commission (NCC) Government contractor registration process.

The matter was promptly made public by me, via the issue of an official OCG Media Release which was dated May 6, 2009. The Release was issued after the police had conducted preliminary investigations and immediately after clearance was received by me, from them, to proceed with my public statement.

To qualify to bid on Government contracts, a prospective contractor must first secure registration with the NCC as a works, goods or services contractor, after filing the appropriate application with the OCG. Existing registered NCC contractors must also seek re-registration with the NCC every year.

Once an application for registration is filed with the OCG, the OCG, on behalf of the NCC, undertakes a due-diligence evaluation of the application form and verifies the contractor's particulars in accordance with the NCC's prescribed procedures. This, in turn, forms the basis for the classification, grading and registration of the contractor by the NCC. A contractor is classified or graded depending upon its resources, experience and competence levels.

If the NCC's contractor registration or re-registration process is in any way corrupted or compromised, contractors could potentially receive Government contract awards for which they are not qualified, competent or adequately resourced to execute. This, in turn, could result in additional costs being borne by the tax-payer arising from poor or defective work on construction projects, costs and time over-runs on works contracts, or the supply of goods or services which do not meet contract specifications.

In late April 2009, a semi-completed contractor re-registration application form was received by the OCG for preliminary due-diligence evaluation and processing, prior to submission to the NCC.

Included among the application supporting documents, was what appeared to be a forged sworn Voluntary Declaration which had purportedly been executed before a Justice of the Peace by the contractor, attesting to the truth of the particulars which were embodied in the application form.

Preliminary investigations, which were carried out by the OCG, found that the application had been allegedly prepared and submitted, on behalf of the contractor, by a former long-serving member of the OCG staff, for a fee of \$10,000. The former OCG staff-member was asked by me to resign from the OCG in April, 2008, on suspicion of her involvement in corrupt activities. The allegations, at the time, were reported, in writing, by me to the Police High Command.

During the course of its investigations, the OCG also discovered that a failed attempt was made by another contractor to bribe an employee of the OCG to assist the contractor in registering his company with the NCC.

The OCG employee was allegedly offered a bribe of \$75,000 by the contractor. The contractor was also reported to have claimed that he knew of another contractor who had paid \$75,000 to the former long-serving OCG staff-member for a similar service.

The OCG employee gave a formal statement in which the employee confirmed that the matter was promptly reported to his/her Manager, in the presence of two other senior officers of the OCG. However, no further action was taken by the Manager or by the other two officers, nor did any of them seek to bring the matter to my attention or the attention of the Director of the OCG Department concerned.

Upon the conclusion of the OCG's preliminary internal investigations on April 23, 2009, the OCG's Findings were immediately reported by me to Mr. Les Green, the Assistant Commissioner of Police in charge of serious crimes. ACP Green, in less than two (2) hours, caused a formal police investigation to be launched into the matter by Superintendent Colbert Edwards, the head of the Fraud Squad of the Jamaica Constabulary Force (JCF).

The employment contracts of the three OCG officers, who failed to report the alleged acts of corruption, were also terminated by me on April 30, 2009, with immediate effect<sup>2</sup>.

The OCG has, since April 23, 2009, intercepted several other contractor registration and re-registration application forms which appeared to be irregular or contain misleading, forged or fraudulent information. Many of the applications seemed to have been completed by the same person and/or attested to before the same Justice of the Peace.

In many instances, interviews were conducted by the OCG with representatives of the implicated contractors and statements were taken. In all cases, the OCG has handed over the affected contractor application forms and files to the Fraud Squad in consequence of which the applications will not be processed by the NCC.

In light of the evidence which the OCG has uncovered and handed over to the police, the OCG is satisfied that at least one former OCG employee has, for years, been colluding and conspiring with several unscrupulous Government contractors (prospective and otherwise) to secure their unlawful registration with the NCC.

Section 15 of the NCC's Works Contractor Application Form provides as follows: "IF THE INFORMATION PROVIDED BY THE APPLICANT ON WHICH EVALUATION AND AWARD(S) WERE BASED IS FOUND TO BE ERRONEOUS THEN THE CONTRACTOR(S) SHALL NOT BE REGISTERED, OR IF ALREADY REGISTERED, THE REGISTRATION WILL BE REVOKED."

In light of the OCG's discoveries and having regard to the provisions which are contained in Section 15 of the NCC's Contractor Registration Form, a Public Statement was issued by me on May 6, 2009 in which the following warning was communicated:

*"If forged, fraudulent or irregular contractor application forms are discovered to have been submitted to the OCG, or approved by the NCC, steps will be taken by the OCG to either hand the forms over to the police, to recommend to the NCC that the applications should be rejected or to recommend to the NCC that the contractors who are implicated be permanently struck from the NCC's list of approved Government contractors".*

*"The OCG further wishes to state publicly that where any past, present or future act is uncovered on the part of any person or contractor to bribe an OCG officer, or on the part of any person or OCG employee to corrupt the NCC Government contractor registration process, the matter will be dealt with swiftly and decisively and referred forthwith directly to the Fraud Squad for criminal investigation and prosecution".*

<sup>2</sup> The three employees, in June/July 2009, instituted *ex parte* civil proceedings in the Supreme Court against the OCG and myself "to quash their dismissals". It is instructive to note that the applications of the employees were made by attorneys who included Mr. Derrick McKoy, the former Contractor General who demitted office in July 2005. Upon learning of the initiation of the proceedings on July 4, 2009, I immediately made public the OCG's positions on the matter as well as its intention to vigorously resist the claims of the three employees and any attempt by them to be reinstated as officers of the OCG. The OCG's preliminary positions regarding the matter are outlined in an official OCG Media Release which was issued on July 5, 2009. The Release can be reviewed on the OCG's website at [www.ocg.gov.jm](http://www.ocg.gov.jm). As at December 31, 2009, the applications of the three employees had not been determined. However, on April 30, 2010, Supreme Court Judge Mr. Justice Andrew Rattray handed down a ruling striking out the court actions which had been instituted by the three employees. Costs were awarded by the court against the employees and in favour of the OCG. The three employees have since served notice of their appeal of the Judge's ruling. The OCG and I are represented in the matter by eminent counsel Mrs. Jacqueline Samuels-Brown, QC.

Since its calling in of the Fraud Squad in April, 2009, and its termination of the contracts of engagement of the three employees on April 30, 2009, (and amidst a death threat which was subsequently issued on January 5, 2010 to the Senior Director of the OCG, just after the ending of the reporting period), the OCG has taken several decisive and deliberate steps in its continuing effort to root out the scourge of corruption from its midst and from the Government contractor registration process. These have included:

- (1) The re-organization of the staffing structure of the OCG's Technical Services Department (TSD), the interim revision of the critical operating and process functions of the Department, and the re-assignment of the said functions to new staff members.
- (2) The conduct of an exhaustive and comprehensive evaluation of the OCG's TSD functions and processes to re-assess its strengths and weaknesses and to develop recommendations for the revamping of the said processes – all in an effort to enhance efficiency and effectiveness in the processes, whilst insulating same from criminal acts of corruption and impropriety. The Report was completed and handed over to the NCC.
- (3) The handing over of suspicious information, together with tainted contractor files, to the Fraud Squad.
- (4) The implementation of more stringent security measures to protect the OCG's official documentation and information from unlawful use or disclosure, inclusive of the re-organization and re-staffing of the OCG's Registry.
- (5) The formal issue of Anti-Corruption and Associated Disciplinary Warnings to all existing OCG staff members and the erection of no less than six (6) laminated Anti-Corruption Warning and Prosecution Signs throughout the public areas of the OCG's offices.

The referenced heightened anti-corruption mechanisms and procedures which were implemented by the OCG, did in fact bear fruit as several other irregular, forged and fraudulent contractor re-registration applications have been identified and pulled from the system during the year.

Some of the irregularities which have been identified by the OCG, and particularly those which were associated with works contractors' applications, are indicative of the magnitude of fraud and corruption that has permeated Government contracting in Jamaica. They include:

- (1) Forged contractor re-registration applications, supporting documentation and certification;
- (2) Falsified information regarding the human, physical, financial and technical resources of contractors;
- (3) Falsified information about construction projects which contractors allege that they have executed;
- (4) Irregular and forged Voluntary Declarations attesting to the veracity of application forms; and
- (5) Contractor representatives who are unable to accurately verbalize to the OCG the information which is stated on the application forms which they themselves have submitted to the OCG.

In a Media Statement which was issued by me on December 16, 2009, and in commenting upon the extensive irregularities which had been uncovered by the OCG, I expressed the view that I was confident that the OCG will be successful in its efforts to rid the country's public contracting process of unscrupulous contractors, but only if the OCG receives the tacit, substantive and unequivocal support of the State.

The following was my closing remark at the time:

*“The OCG’s efforts will (however) prove futile if the Administration, the Opposition and other State functionaries fail to give tangible and visible support to the OCG in its fight against the scourge of corruption – a cancer which continues to eat away at the very capacity of our country and its people to achieve their full socio-economic potential. One vital element of this support must be a strengthening of the OCG’s institutional capacity to ensure that it is ably resourced to secure probity, accountability, transparency and value for money in the award of Government contracts and the issue of Government licences”.*

### **DEFICIENT PUBLIC SECTOR PROCUREMENT PROCEDURES HANDBOOK**

The OCG, in the conduct of its Special Investigation **Concerning the Allegation of the Award of Contracts to be Performed in the North East St. Catherine Constituency by the National Works Agency (NWA) and Rural Agricultural Development Authority (RADA) Investigation**, which was among the first that was being undertaken by the OCG pursuant to the Revised Handbook of Public Sector Procurement Procedures which became effective 2008 December 10, was faced with a number of challenges which surrounded the application of the rules which are contained in the Revised Handbook.

In the OCG’s Report of Investigation into the matter, which is dated July 2009, the following verbatim comments were made:

*“The ambiguities which are referenced in this Report of Investigation have made it difficult to definitively establish breaches of the Procurement Guidelines and/or to recommend any of the applicable sanctions which are embodied in the new and interim Public Sector Procurement Regulations of 2008.*

*The ambiguities, anomalies and contradictions which have been identified by the OCG in the interim Procurement Guidelines, underscore those of the OCG’s prior documented representations which have been formally made to the Government of Jamaica, that the Guidelines are in a “draft, rudimentary and widely admitted gestative state” and that steps should, therefore, be urgently taken, inter alia, to:*

- (1) Speedily complete the revision process;*
- (2) Make the guidelines simple in construct, easy to read and easy to interpret; and*
- (3) Ensure that the guidelines are so structured and are easily identified by chronological numeric assignment to facilitate, inter alia, their promulgation as regulations.*

*The OCG believes that it is untenable, unacceptable and unjust that Procurement Guidelines which are rudimentary in nature, ambiguous in import and which have been formally classified by the State as having been put into force “for an interim period pending revision by the team and final approval by the Cabinet”, should constitute the basis upon which criminal sanctions can be imposed upon unsuspecting Public Officers should the said Guidelines be deemed to have been “contravened” by them.*

*Further, given the fact that more than seven (7) months have elapsed since the interim Guidelines have been promulgated, the OCG is now gravely concerned about the negative and adverse impact that the said ambiguities, anomalies and contradictions, which are contained in the Guidelines, could potentially pose – not just for Public Sector procurements – but for the many well meaning and well intentioned Public Servants who are called upon each day to administer the rules.*

*It is primarily for these reasons, therefore, that the OCG is now obliged to respectfully call upon the Cabinet, and the Parliament of Jamaica, to urgently prosecute the outstanding revisions to the Guidelines to give effect, inter alia, to the prior recommendations of the OCG and, by so doing, to make the Guidelines complete, lucid, intelligible, certain and more congruent with the 1983 Contractor General Act and the new 2008 Public Sector Procurement Regulations.*

*Finally, the OCG feels constrained to express, again, its dissatisfaction with the unbelievably paltry and relatively infinitesimal criminal sanction of "a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three months or to both...", which has been imposed by Section 40 of the new 2008 Public Sector Procurement Regulations, to deter and to criminally punish breaches of the Procurement Guidelines.*

*The OCG would respectfully submit that the referenced criminal sanction has made a mockery of the attempts by the State to curtail breaches of its Procurement Guidelines.*

*Consequently, the OCG recommends that, in completing the revision to the interim Guidelines – a process which is now long over-due, every effort should be made to ensure that the subject sanction is significantly strengthened both in terms of its provisions for the imposition of a monetary fine as well as in respect of its provisions regarding incarceration".*

I am happy to report that almost immediately following upon the publication of the referenced OCG Investigation Report in mid-year, the Prime Minister, the Hon. Bruce Golding, instructed the Handbook Working Group to expedite the revision of the Guidelines. As at December 31, 2009, the revisions to the Handbook were still in progress.

The OCG will continue to insist that the requisite revisions are indeed effected to the Guidelines.

### **ATTEMPTS BY THE ADMINISTRATION TO CURTAIL THE OCG'S JURISDICTION**

Finally, I must now turn to a matter which arose in the course of the reporting period which was a cause for grave concern for the OCG and me.

By way of a letter which was dated July 10, 2009, at the hand of Mr. Robert Martin, Deputy Financial Secretary, who signed for the "Financial Secretary", I was furnished with a copy of a Ministry of Finance and the Public Service Cabinet Submission.

The Submission, which was entitled "**Cabinet Submission – Application of Government of Jamaica Procurement Procedures to Commercial Joint Venture Entities and Scope of the Contractor General's Authority**", was dated "July , 2009". Provision was made on the document for it to be signed by "Audley Shaw, MP, Minister of Finance and Public Service".

The Submission expressed that its objective was to solicit the Cabinet to "*approve the amendment of both the Contractor General Act and the Public Bodies Management Act (PBMA) ... with respect to the following:*

- i. redefining the term 'public body' to ensure consistency;*
- ii. establishing more definitive characteristics of a public body in the PBMA.*
- iii. clarifying the meaning of 'government contract' in the CGA"*

The Cabinet Submission, among other things, sought to exclude Joint Venture Entities "*from the scope of coverage of the procurement regulations and procedures.*"

There was also the absurd recommendation to limit the OCG's jurisdiction solely to procurement matters, thereby removing, from the purview of its jurisdiction, the divestment of Government assets, Government of Jamaica joint venture commercial arrangements, contracts entered into by public/private sector joint-venture entities, and other Government of Jamaica commercial agreements which would otherwise be deemed to fall outside of the ambit of a standard "procurement".

The Financial Secretary's letter, together with the Submission, was received by me on July 13, 2009. By way of a letter, which was dated July 16, 2009, I wrote to the Prime Minister, the Hon. Bruce Golding, to express, in unequivocal terms, my strong objections to what was clearly an unprecedented, inexplicable and very worrying attempt, by the Administration, to amend the Contractor General Act to curtail the OCG's scrutiny of Government of Jamaica contractual arrangements.

I have re-produced, hereunder, a verbatim extract of my letter to the Hon. Prime Minister.

*"Honourable Prime Minister, I must respectfully convey to you that the Office of the Contractor General (OCG) and me are gravely concerned about the implications of the proposed amendments and the motives which have driven the draft Cabinet Submission that has emanated from the Ministry of Finance and the Public Service.*

*An initial review of the draft Cabinet Submission reveals that it is inundated with misrepresentations of fact, questionable justifications, an inconceivable assumption that the OCG's jurisdiction should be limited to procurement matters only – as opposed to all Government contracts – and a faulty interpretation of the decision that was handed down by the Supreme Court of Jamaica in the Ashton Wright v Telecommunications of Jamaica Limited case.*

*Consequently, I have taken the considered decision to write to you directly, as I believe that the referenced matter requires measured consideration at the highest levels of our State.*

*It is instructive to note that successive Contractors' General, inclusive of myself, have categorically advanced, in writing, the OCG's considered positions on several of the matters which my Office is now being asked to comment upon. More importantly, as recently as July 2008, the OCG's unequivocal positions on these very matters were formally conveyed to the Parliament of Jamaica in the Twenty-First Annual Report of the Contractor General at pages 15 – 21, a copy of which I have enclosed, herewith, for your review.*

*Given the aforementioned documented positions, the OCG's grave concerns are premised upon the following considerations, amongst others:*

- (1) The proposed Cabinet Submission is based upon misleading representations and patently conflicts with the very imperatives of good governance.*
- (2) The OCG questions the motive behind the Cabinet Submission and its stated objectives.*
- (3) The revisions that are being proposed to the CGA are seemingly diametrically opposed to the current administration's documented principles and intentions of "Enforcing procedures for awarding government contracts" and to "Impose criminal sanctions for violations of the rules governing the award of contracts and make provision that contracts issued without the proper procedures and authorization are rendered null and void and unenforceable."*

- (4) *The OCG was not aware that considerations such as fear for the enforcement of the law and the requirement for public officers to be held accountable for their deeds, could be seriously advanced as credible justifications, by a senior public officer, for the dismantling of a pre-existing good-governance regulatory structure. When does accountability under the law become susceptible to the fears of those for whom it was constructed to govern?*
- (5) *The proposed Cabinet Submission curiously seeks to curtail and limit the regulatory oversight of the Contractor General to matters of procurement only and to excise his jurisdiction in respect of other Government contracts, inclusive of public contracts which involve the divestment of state-owned assets.*

*In the foregoing regard, it should be observed that contracts that are related to the divestment of state-owned assets, such as the recent sale of Air Jamaica's London Heathrow Slots, would no longer be subjected to the scrutiny of the Contractor General. As you would undoubtedly recall, as recently as April 23, 2008, the Minister of Finance and the Public Service called upon the Contractor General to investigate the subject asset sale transaction. Consequently, the draft Cabinet Submission, which is now under consideration, begs the question as to which Independent Authority would now scrutinize these contractual arrangements and whether there has been a shift in official Government policy regarding the matter.*

- (6) *The proposed Cabinet Submission comes at a time when Regulations have been promulgated and appended to the CGA to "more stringently regulate the procurement of general services, goods and works by making the duty to observe procurement procedures legally enforceable and subject to penal sanctions..." There, therefore, seems to be a contradictory environment in which facets of this critical governance mechanism, which are related to government contracting, are being whittled away under the supposition of their being strengthened and fashioned to be more customer-centric.*
- (7) *The proposed revisions to the CGA, which will, in effect, produce a weakening of the jurisdiction of the Contractor General, comes at time when Jamaica's rankings on the leading global transparency and corruption perception indices have reflected a clear need for the strengthening of our country's good governance mechanisms and regulatory oversight structures.*

*The crafters of the Contractor General Act, in their good wisdom, more than 25 years ago, envisioned that a "government contract" would extend above and beyond the procurement of goods, works and services and should, as a matter of course, possess the intrinsic characteristic of being conceptually wide, yet functionally robust, in its interpretation and application. The same reasoning underscores the broad definition which the CGA has accorded to a "public body". The OCG, therefore, does not understand why there is now a deliberate move afoot to curtail these definitions as opposed to extending and strengthening their ambit.*

**As an Independent Commission of Parliament, with an anti-corruption and public contracting oversight mandate, the OCG irrevocably believes that a strong degree of transparency and accountability must be brought to bear in respect of the settlement, award and/or issue of all types and classifications of Government contracts and licences, irrespective of what their descriptions might be, and irrespective of the constitution of the Public Body that is involved – so long as the Taxpayers' money constitutes the substratum of the transaction.**

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**The above considerations underscore, in part, the very reason why the OCG has long recommended that the provisions for the establishment of the Commission of the Contractor General should be embodied and entrenched in the Constitution – this in a deliberate effort to safeguard and insulate the Commission from any effort which is likely to arbitrarily undermine the effective capacity of what is, in essence, one of our nation's most critical anti-corruption and good-governance regulatory institutions.**

*Honourable Prime Minister, the current administration's and your own publicly stated good-governance principles and values, regarding government contracting in Jamaica, are shared by the OCG and by me.*

*It is, therefore, for this reason, and having regard to the OCG's already well documented stance on the matters which are now being contemplated by the proposed Cabinet Submission, that I now humbly submit to you, the OCG's afore-stated positions and opinions.*

*I have, with confidence, respectfully reposed these matters to you, Prime Minister, for your good, considered and measured care, and for such action as you will ultimately deem to be appropriate as you continue to chart your intended course for those of our nation's critical institutions of good-governance and regulatory oversight, not the least of which is the Commission of the Contractor General."*

It is instructive to note that, in a meeting which was convened by the Hon. Prime Minister on August 20, 2009, at which several State authorities were present, the Prime Minister made it clear, among other things, that, as a matter of Government policy, the jurisdiction of a Contractor General over 'Joint Venture' Public Bodies, as well as over contracts involving the divestment of publicly owned assets, should in no way be tampered with.

These positions, as they were then understood by me, were confirmed in writing by me, on September 30, 2009, in a letter which was directed to Ms. Onika Miller, the then Chief Technical Director in the Office of the Cabinet. My letter was copied to the Prime Minister, the Minister of Finance and the Public Service, the Permanent Secretary in the Office of the Prime Minister and the Cabinet Secretary.

Nothing more about the matter was heard by the OCG, from the Government, up to year's end. The OCG will, however, continue to monitor developments regarding this issue.

**CLOSING COMMENT, ASSURANCE AND PLEDGE**

As Contractor General, I, along with the Officers of the OCG, have taken solemn oaths to discharge our statutory responsibilities in keeping with the statutory mandates and mission of the Contractor General Act.

The Contractor General Act, by which I am guided, stresses, *inter alia*, independence and the requirement that I must act, at all times, on behalf of the Parliament of Jamaica. I, therefore, fully appreciate, understand and accept that my responsibilities and functions are to be discharged, by extension, on behalf of the People and Taxpayers of Jamaica.

Having regard to the requirements of my mandates, I can unreservedly assure the Parliament and the People of Jamaica, that, during 2009, the year which is under review, I did perform my functions, as Contractor General, in good faith, in the manner which is prescribed by the Contractor General Act.

For the future, I pledge that for as long as I shall hold the Commission of the Contractor General of Jamaica, I will, to the best of my ability, continue to fearlessly serve the collective interests of the People of Jamaica, whilst faithfully discharging my functions as Contractor General.

I will do so forthrightly, fairly and impartially and I will do so responsibly and in a manner which is in keeping with the highest standards of integrity and ethical conduct.

Greg Christie  
Contractor General