



OFFICE OF THE CONTRACTOR GENERAL OF JAMAICA

Special Report of Investigation

Allegations Regarding the Proposal for the Financing, Development, Ownership and Operation of a FSRU LNG Re-Gasification Terminal and Natural Gas Transportation System

Office of the Prime Minister (OPM) /

Ministry of Energy and Mining (MEM) / Petroleum Corporation of Jamaica (PCJ)

Executive Summary.....	4
Terms of Reference.....	121
Methodology.....	124
Findings.....	134
- <i>Brief History of the LNG Project</i>	<i>134</i>
o <i>Other Possible Alternatives to LNG.....</i>	<i>138</i>
- <i>Front-End Engineering Design (FEED) Studies.....</i>	<i>141</i>
- <i>The LNG Project.....</i>	<i>147</i>
o <i>Alleged Benefits of the LNG Project to Jamaica.....</i>	<i>147</i>
o <i>The Components of the LNG Project.....</i>	<i>148</i>
o <i>Planning and Conceptualization of the LNG Project.....</i>	<i>151</i>
o <i>LNG Meetings and other forms of Assemblies.....</i>	<i>163</i>
o <i>Confirmation of Meetings with Potential Bidders.....</i>	<i>171</i>
▪ <i>Golar LNG.....</i>	<i>172</i>
▪ <i>Hoegh LNG.....</i>	<i>173</i>
▪ <i>Exmar Marine NV.....</i>	<i>174</i>

- *Timeline of Events*..... 183
- *Roles and Responsibility of the MEM and the PCJ in the LNG Project*..... 190
- *The Public Officers and Officials who had a key role in the LNG Project*..... 194
- *Established Committees, Sub-Committees, Task Forces and Other Groups for the LNG Project*..... 213
 - *PCJ Procurement Committee*..... 224
 - *Conflicting Positions as a result of the Established Committees*..... 225
- *Identification of Land for the 'FSRU LNG Project'*..... 237
- *The 'FSRU LNG Project'*..... 244
 - *Pre-Qualification Exercise for the 'FSRU LNG Project'*..... 244
 - *The 2009 Procurement Process for the 'FSRU LNG Project'*..... 248
 - *The RFP*..... 249
 - *Tender Closing and Opening*..... 253
 - *Issues with the RFP*..... 255
 - *Evaluation Process*..... 273
 - *Evaluation Criteria*..... 274
 - *Evaluation Results*..... 282
 - *The Approval Process*..... 294
- *The Preferred Bidder - The Exmar Consortium*..... 308
 - *Caribbean LNG (Jamaica) Limited (CLNG)*..... 317
- *Issues Identified with the Evaluation of the Bids*..... 324
 - *The Partnership between Excelerate Energy and Exmar Marine NV*..... 330
- *The Consultants for the LNG Project and the 'FSRU LNG Project'*..... 337
 - *Role of Merrill Lynch in the LNG Project*..... 361
- *Financing of the LNG Project and the 'FSRU LNG Project'*..... 379
- *Negotiations*..... 398
 - *Implementation Agreement*..... 401
- *Procurement for the 480MW of Base-load Generating Capacity on a Build, Own and Operate (BOO) Basis*..... 409
- *Evidence of Insider Information*..... 418
- *Possible Conflict of Interest*..... 441
 - *Mr. Stephen Wedderburn, LNG Project Coordinator*..... 441
 - *The LNG Technical Advisors*..... 443
- *Evidence of Impropriety and Irregularity*..... 463
- *Alleged Associations between Minister James Robertson and Mr. Ian Moore*..... 468
- *LNG Final Assessment Report by the Independent Consultants*..... 482
- *Recent Developments in regard to the 'FSRU LNG Project'*..... 505

Timeline of Significant Events..... 533

Conclusions..... 549

Referrals	576
Recommendations	586
Special Note and Recommendation.....	591
Appendix I.....	598
- <i>OCG's 'Notice of Enquiry' that was addressed to Mrs. Hillary Alexander, Permanent Secretary, MEM, and which was dated 2010 June 22.....</i>	<i>599</i>
- <i>OCG's 'Notice of Enquiry' that was addressed to Mr. Nigel Logan, Acting Group Managing Director, PCJ, and which was dated 2010 June 22.....</i>	<i>605</i>

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EXECUTIVE SUMMARY

On 2010 September 15, the Office of the Contractor General (OCG), acting on behalf of the Contractor General, and pursuant to Sections 15 (1) and 16 of the Contractor General Act, formally initiated an Investigation into the circumstances surrounding the recommendation by the Petroleum Corporation of Jamaica (PCJ), to enter into negotiations with the selected ‘preferred bidder’, the Exmar Consortium, for the proposed Financing, Development, Ownership and Operation of a FSRU LNG Re-gasification Terminal and Natural Gas Transportation System in Jamaica (‘hereinafter referred to as ‘FSRU LNG Project’).

Section 15 (1) of the Act provides that “... a Contractor-General may, if he considers it necessary or desirable, conduct an investigation into any or all of the following matters –

- (a) the registration of contractors;
- (b) tender procedures relating to contracts awarded by public bodies;
- (c) the award of any government contract;
- (d) the implementation of the terms of any government contract;
- (e) the circumstances of the grant, issue, use, suspension or revocation of any prescribed licence;
- (f) the practice and procedures relating to the grant, issue, suspension or revocation of

prescribed licences”.

Section 16 of the Contractor General Act expressly provides that “*An investigation pursuant to section 15 may be undertaken by a Contractor-General on his own initiative or as a result of representations made to him, if in his opinion such investigation is warranted*”.

It is instructive to note that prior to the initiation of the OCG’s Investigation on 2010 September 15, the OCG was in the process of monitoring the referenced project. In this regard, the monitoring of the proposed ‘FSRU LNG Project’ was prompted by the receipt of a letter from a ‘*Concerned Citizen of Jamaica*’, which was dated 2009 September 8. In the referenced letter, the ‘*Concerned Citizen of Jamaica*’ stated, *inter alia*, the following:

“There has been much talk recently about Government moving from oil to liquefied natural gas (LNG). From my own checks it seems that the Minister of Energy and Mining has unilaterally appointed someone to lead the charge in this direction. Unfortunately my checks have also revealed that the person so selected is a good friend of the Minister and only last year was fired from the PCJ.

Kindly use your good office to investigate the procurement procedures which led to this person being assigned such an important role and whether this appointment can stand the tests of probity and transparency. I believe it was the same LNG that this individual was in charge of at the PCJ and he seemed to have gone off with substantial intellectual property which belongs to the Government of Jamaica as no one in the PCJ appears to know what he was about...”¹

Subsequent to the foregoing allegation, the OCG wrote to the Permanent Secretary in the Ministry of Energy and Mining (MEM), Mrs. Hillary Alexander, on 2009 September 25, in the interest of probity, to ascertain the veracity of the allegations which were detailed in the aforementioned letter.

¹ Letter from a “Concerned Citizen”, which was dated 2009 September 8.

It is instructive to note that the Permanent Secretary responded to same on 2009 October 1, at which time she indicated, *inter alia*, that “...there is no truth to any of the allegations in the 2009 September 8 letter.”²

Subsequently, on 2009 December 9, an article was published in the Daily Gleaner, which was entitled “*Four vying for LNG project – Bids due Jan 5 – Jamaica seeking ‘BOT’ investors for floating platform*”, and in which it was reported, *inter alia*, as follows:

“Four foreign energy companies are now vying for the job to develop a floating natural gas platform for Jamaica, under an arrangement that requires the selected investor to ‘build, own and operate’ the system.

Jamaica has opted to develop an offshore platform – earmarked for Port Esquivel in St. Catherine, saying it could be more than 40 per cent cheaper than a land-based facility – at US\$400 million...

Joint venture partners Korea Gas Corporation and Samsung Corporation of Korea, Hoegh LNG and BW Gas both of Norway, as well as Belgian firm Exmar, are expected to submit proposals by the January 5, 2010 deadline to finance, construct and operate the LNG Floating Storage and Regasification Unit (FSRU) for the Jamaican Government.

“The limited tender process for identification of the infrastructure provider is already under way,” Stephen Wedderburn, project coordinator for LNG...said via email...

*A request for proposal was, he said, sent to nine companies on November 12, but five declined to participate...”*³

Consequently, the OCG, by way of a letter which was dated 2009 December 21, wrote to Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, requesting a copy of certain pre-tender

² Letter from Mrs. Hillary Alexander, Permanent Secretary, MEM, which was dated 2009 October 1.

³ Daily Gleaner article entitled “Four vying for LNG project – Bids due Jan 5 – Jamaica seeking ‘BOT’ investors for floating platform” which was dated 2009 December 9.

documents inclusive of: a) a copy of the Request for Proposal (RFP); b) copies of the letters of invitation which were sent to the nine (9) companies; and c) a Status Report.

During the course of the OCG's monitoring of the referenced project, the OCG received another complaint by way of an email, on 2010 May 6, from a concerned individual who was purportedly involved in the LNG process from 2007. The referenced email, which was captioned the "Jamaica LNG Project" stated, *inter alia*, the following:

*"...the RFP and the evaluation of the existing bids are under way. We see that there are several postponements and i wish to say that...almost all the invited companies, chose to decline participation...Needless to say we have all put a lot of work into this project and...are disappointed with the way things have turned out, **especially with the background were we were asked to come up with solutions and did so.** We were in the [sic] Jamaica on july 09 and after that we were asked to tailor a solution to the spec given...the process has been somewhat strange and hard to understand.*

*The reason for this is that...**the RFP...was not very well founded. There was no technical and FEED studies done, also no technical consultant was engaged to assist in the development.** This is the first and so far the only time that has been the case. **This means that there was no real spec and that made it difficult to develop a bid that was accurate on financial and technical planning.** There was a clause that the ship/FSRU must be 10 years or younger. There was a requirement that said the bidder must bear all the investments, also for the infrastructure onshore... The reasons mentioned here are why most invited companies did not participate. Industry sources more than once mentioned that **this RFP is tailormade to the Belgian company that chose to participate.** We have **also heard rumours about very close ties between this company and officials high up in the MOE & Mining** as well as the business community...Our sources in the industry, as well the [sic] press, points out that the credibility of Jamaica is at stake here and that is needed if this is going to be a success. No supply of LNG will be contracted to Jamaica as long as there is no formal project, this everybody know [sic] for sure. This in*

spite of Mr. Wedderburns [sic] optimistic statements in the press.”⁴ (OCG’s Emphasis)

The OCG’s concerns were further heightened upon the receipt of another anonymous complaint on 2010 June 16, regarding the alleged ‘*preferred bidder*’ for the ‘FSRU LNG Project’, that is, the Exmar Consortium.

The referenced complaint asserted the following:

“...So who are the local player [sic] in Exmar, who the government announced as the preferred bidder for LNG. What is their personal and professional relationship with the current energy minister. how much did they donate to him in the last campaign. How much support did he provide to their bid. Have they been in business with him before in providing international bypass facilities. You are worried about the bauxite deal. This one is worse”.

Upon receipt of the foregoing allegation, the OCG, by way of a Statutory Requisition which was dated 2010 June 18, requisitioned the Hon. James Robertson, Minister of Energy and Mining, and asked him to respond to certain interrogatories which were related to the said allegation.

The OCG’s concerns were further heightened on 2010 June 18, by certain media reports and public disclosures and pronouncements, regarding the ‘*Liquid Natural Gas (LNG) Deal*’, which were made, *inter alia*, on the Nationwide News Network (NNN) during its 5:00 PM News broadcast and its 5:30 PM News Commentary Programme.

In particular, the media reports and associated pronouncements alleged that Caribbean LNG (Jamaica) Limited was a part of the ‘*Exmar Consortium*’ and has as one of its majority Shareholder and Directors, one Mr. Ian Moore, the former Chairman of the Board of Directors of the PCJ, whose tenure was terminated in 2008 November by the then Minister of Energy, Mr. Clive Mullings.

⁴ Email received from a concerned citizen on 2010 May 6.

The OCG's concerns were further compounded when a review of the records of the Office of the Registrar of Companies, Jamaica, (ORC) did not corroborate the reports and disclosures, which were made in the media, with respect to Mr. Ian Moore's shareholder status in Caribbean LNG (Jamaica) Limited – a company which the Registrar's records indicated, *inter alia*, was incorporated in Jamaica on 2009 June 19, approximately seven (7) months after Mr. Moore demitted office as the Chairman of the Board of Directors of the PCJ.

The records indicated that the company, Caribbean LNG (B.V.I) Limited, which was organized and registered in the British Virgin Islands, was the majority shareholder, of the company Caribbean LNG (Jamaica) Limited, with 5.2 million shares or approximately 80% of the indicative issued share capital. Other listed shareholders of the referenced company included, *inter alia*, A.C. Kerr LLC (800,000 shares), Andrew Bogle (197,827 shares), Old Harbour Estates Ltd., (47,826 shares), Maritime & Transport Services Ltd. (47,826 shares), and Albert Donaldson (50,001 shares).

The records of the ORC also indicated that whilst Mr. Ian Moore and one Mr. Paul East were listed as Directors of the company, Caribbean LNG (Jamaica) Limited, they were not listed amongst the shareholders.

Based upon the referenced records, the OCG was unaware of the identity of the majority beneficial owner(s) of Caribbean LNG (Jamaica) Limited and the true relationship(s) which subsist(s)/subsisted, if any, between that entity and any person and/or entity which is/was a party to, or which is/was or has been involved in the 'FSRU LNG Project'.

Having regard to the foregoing, several concerns were raised for the OCG in light of, *inter alia*, the following:

- (a) The possibility of a potential conflict of interest, taking into consideration Mr. Ian Moore's former position as the Chairman of the Board of Directors of the PCJ and his now documented position as a Director of the 'local' company, Caribbean LNG

(Jamaica) Limited, which was alleged to be a partner of the prospective PCJ contract awardee, the Exmar Consortium;

- (b) Mr. Moore's probable prior involvement in (i) the underlying considerations which would have informed the current procurement process, a process which was initiated in 2007 April and which overlapped with Mr. Moore's tenure as the PCJ Board of Directors Chairman, (ii) the prospective contract award to the Exmar Consortium as the selected '*preferred bidder*' and/or (iii) Mr. Moore's probable exposure to and use of '*sensitive*' information by virtue of his former position as the Chairman of the PCJ Board of Directors;
- (c) The OCG's suspicions, *inter alia*, about the possibility of 'bid rigging', the use of proprietary insider information, and/or the consequential potential for a *prima facie* finding of corruption in the underlying processes which would have informed the Bid(s) which was/were submitted in response to the PCJ's Procurement Process; and
- (d) The fact that because the majority shareholder of Caribbean LNG (Jamaica) Limited is an off-shore company, which was registered in the British Virgin Islands, and whose current human shareholders were unknown, there was the unknown factor of whether there were any 'connected persons' or Public Officers who, by virtue of their being beneficial shareholders of Caribbean LNG (Jamaica) Limited, could improperly benefit from the contract which was to be prospectively awarded to the Exmar Consortium.

In light of the foregoing, the OCG, by way of two (2) separate letters⁵ which were dated 2010 June 22, and which were addressed to Mr. Nigel Logan, Acting Group Managing Director, PCJ, and Mrs. Hilary Alexander, the MEM Permanent Secretary, issued a written '*Notice of Enquiry*' concerning the tender and contract award processes for the 'FSRU LNG Project'.

⁵ For the full text of both letters, please see Appendix 1.

In the referenced letters, the OCG advised both Mr Logan and Mrs. Alexander that the OCG had taken the decision to secure, without delay or reservation, certain documents and associated correspondence which would inform its Enquiry.

The OCG's Enquiry, into the referenced tender and contract award processes, was undertaken pursuant to the powers which are vested in a Contractor General, by the Contractor General Act (1983) and, in particular, pursuant to the provisions which are contained in Sections 4, 15 (1) and 18 of the Act.

On 2010 June 22, the date of the OCG's two (2) Letters of Enquiry, the OCG took into custody a number of files, both hardcopy and electronic, from the PCJ and the MEM, which were related to the 'FSRU LNG Project'. The OCG's actions were undertaken pursuant, *inter alia*, to Sections 4 (2) (b) and 4 (3) of the Contractor General Act, which empower a Contractor General "...to have access to all books, records, documents, stores or other property belonging to government, whether in the possession of any officer of a public body or a contractor or any other person" and to "...require any public body to furnish in such manner and at such times as may be specified by the Contractor-General, information with regard to the award of any contract and such other information in relation thereto as the Contractor-General consider desirable".

The OCG's decision to proceed as it did was fortified and deemed necessary by, among other things, the following considerations:

- (a) The referenced anonymous complaint of 2010 June 16, which appeared to have originated from a seemingly knowledgeable source and which made certain allegations with respect to impropriety and irregularity in the selection of the Exmar Consortium as the '*preferred bidder*';
- (b) Certain then identifiable and pronounced concerns which were predicated, *inter alia*, upon certain recent disclosures, allegations and/or reports which were disseminated through the local print and electronic media;

(c) A review of the unedited Hansard of the Sitting of the House of Representatives of 2010 June 15 at which time the Hon. James Robertson formally announced the selection of the Exmar Consortium as the *'preferred bidder'*; and

(d) A review of the official documents, which were disclosed as having being entered upon the official records of the ORC, in relation to Caribbean LNG (Jamaica) Limited, as at 2010 June 21.

It is instructive to note that documentation, which was retained from the MEM and the PCJ, was comprehensively reviewed by the OCG prior to the commencement of its Investigation.

Further, it is instructive to note that several other complaints, pronounced concerns, disclosures and reports were received and reviewed, by the OCG, which further compelled the OCG to undertake a more comprehensive investigation into the matter. These included, *inter alia*, the following:

A. A complaint which was received on 2010 June 23, in which the following information was provided:

“LNG FSRU Contract - Exmar Consortium Questions to consider LNG Coordinator Who is the LNG Coordinator? Was he engaged iwth [sic] the full support of the Board and the then Permanent Secretary? Is or was hen [sic] connected to Exmar? Did he prepare the RFP? Did he receive and answer queries from the bidders? Was he at the tender opening? Did he and how many times did he meet with the Evaluation Committee? Did he attend any meetings of the Sector Committee, NCC and Infrastructure Committee? LNG Task Force Who chairs the LNG Task Force? What is the role of this body? Where do they fit into PCJ's corporate governance framework? Did the OCG receive minutes of the meetings of the Task Force? Should the Task Force be giving instructions to the PCJ? Evaluation Committee Who were the members of the Evaluation Committee? Were any of them also members of the PCJ Board? Were any of them also members of the Task Force? Did the Committee highlight the ownership structure of CLNG? There should be

much information in the minutes of the various meetings. Please note carefully the contents of these minutes.”

B. An email which was received on 2010 June 25, from a concerned citizen, which stated, *inter alia*, as follows:

*“...Of the preapproved 9 bidders, 7 were from the previous tender for a land-based facility. Board expressed concerned but it was advised that it wasn’t much difference and that the opinion of the ministry and that the minister had cabinet approve such list. **This was done purposely knowing that over half of the bidders were not providers of FSRU as it is a new technology and would not bid on the process.***

*Limited time was given for submission of tenders. **The BOD made continuous argument against the timeline and which the minister himself came to a gathering of the board members clearly stated that there will be no extensions and basically threatening the Board for changes.** Not until the Chair brought it to the attention of the prime minister that a [sic] extension was provided for **it was clear that the minister was not advising the cabinet accordingly.** After which on numerous occasions bidders requested additional extensions and to be discovered Stephen wedderburn was responding to the bidders, which it was clearly stated at the board level that he should not be part of the procurement process. Extensions were requested based on Limited information in order to make comprehensive submissions, e.g. weather studies., rejected by the ministry and Wedderburn.*

***There is a requirement in the tender, that clearly states that bidders have to have experience in certain volumes of processing LNG under certain technology.** At a Board meeting it was clearly asked how many bidders has such experience this requirement and Stephen Wedderburn stated 2 bidders, when asked if Exxmar was one of the two he said yes. This brought grave concern to the board and continued to express the process is not being administered properly and simply told by the minister and the PS Aexander [sic] that the task force agreed to wedderburns [sic] recommendations which Minister is the*

Chairman of.

Several correspondences after showed that wedderburn was responding to bidders that the BOD agreed or disagreed to request which was untrue.

Board was being told the urgency of energy to afterwhich find out from JPS that they would not be able to take LNG until minimum 2014 which simply meant the need for a floating facility was untrue and actually moe [sic] expensive. This was simply done to ensure that exmar would get the contract

The board stated that since it was a new technology why limit the age of the ships as brazil had older ships and **even a member of the board knowledgeable in shipping stated that a 20 year old ship retrofitted would not be a concern as it would be refurbished and would be in standstill not at sea moving continuously. This was rejected by the minister.**

Dr. Potopsingh and Director Watson were members of the Task force and members of the board **and continuously the board expressed dissatisfaction that they were not advising the board of the actions of the task force and the task force were advancing without board approval and then asking the board to approve after the fact. Then when the board expressed concerns, being advised by the minister it was being sabotaging.** Several occasions the board made Itself [sic] clear it would not be a rubber stamp for the ministry especially in the case of breaches and that of compromising integrity.

PS Forbe [sic] made it clear to the board that she had concerns re WEdderburn [sic] and after especially issuing a letter instructed by the Minister to have PCJ employ Wedderburn at great resistance by certain members to later find out **that wedderburn has admitted to receiving financial benefit for work done with Exmar in Columbia.** Again expressed to the ministry. Few members withdrew from voting in this decision as against. **Very much so that Director Watson sent an email to the then corporate secretary requesting that such minutes be voided from the minutes as they were**

unsubstantiated, the board felt this was completely inappropriate of Director Watson as this was the Permanent Secretary making a declaration to the board in which she confirms her own conversation directly with Mr. Wedderburn...

Evaluation committee: to my understanding after the procurement committee received the evaluation report from the evaluation committee. It was very much expressed that 2 company were only bidders which one received 70+ points (Exxmar) [sic] Hoegh (38 points). When brought forward to the board. It was expressed by the procurement committee that solely on the view that exxmar [sic] was the only tender based on the following facts:

- *Hoegh response was not compliant to the terms of the RFP therefore technically should not even be considered a bid and being that this is based solely on the recommendation of the evaluation committee the procurement endorses it but makes note of the following pending the following which will have to be submitted and such endorsement was submitted to the ministry to follow with. The conditions were:*

- **CLNG has to disclose the directors**
- **Financials of CLNG**
- **Company profile of CLNG**
- *This was based on information presented in the consortium tender which clearly showed that CLNG placed 1/3 of the tender bond which would have to be assumed they would have a significantly larger portion in the consortium than indicated and that also **letters from several banks included showed CLNG was attempting to the [sic] be LNG supplier therefore attempting to dominate such fuel source***

During Mr Moore term at PCJ he was very proactive in support of LNG versus the previous minister choice of Coal/Petcoke/ CNG vs LNG and also very supportive of Exmar over Golar [sic] at the time.

Mr. Moore on a trip to Bangkok which was solely to meet with Golar for a presentation as they were providing 100% financing. Left the meeting and went with Mr. Wedderburn to meet with Exmar people. Which Mr Wedderburn was directed not to attend the travels and Mr. Moore paid for Mr Wedderburn travels as he was the bridge to Exmar. Inclusive of this many activities are now being discovered where during Mr Moore Term as Chairman he was approving activities without proper board approval.

I highly recommend rather than reading the minutes of the meetings, it may be more suggestive to listen to the tapes of the meetings.” (OCG’s Emphasis)

- C. An email which was received on 2010 June 26, from a concerned citizen, which stated, *inter alia*, as follows:

“Again you will see recent activities copied below in RED demonstrating [sic] the activities of Mr. Wedderburn acting without approval of the board and/or the GM yet working directly with the Ministry.

he is proposing a structure to be presented to off takers, yet the board or executive management has yet to approve such structure. Only the Ministry is aware yet it is suppose to be a PCJ project.

Also 2 recommendations to your case would be the following:

- Timelines between when cabinet submissions were made and pcj approvals. You will find that cabinet was done before PCJ yet cabinet was under the impression that PCJ had signed off. Typical activity would be to tell cabinet pcj [sic] approved it vice versa telling PCJ that cabinet had approved it already therefore being forced to comply.
- *Seizing the Mail server of PCJ, will be much more comprehensive than that of documents seized.” (OCG’s Emphasis)*

Attached to the foregoing emails, were the following correspondence in support of the allegations which were made:

1. An email from Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, which was captioned “*LNG Meeting with Major Propective [sic] Gas Users -- Tuesday 29 June 2010*” and, which was dated 2010 June 25, to prospective Gas Users and copied to, *inter alia*, Mr. Glenford Watson, Legal Counsel, MEM, Mrs. Hillary Alexander, Permanent Secretary, MEM, Mr. Nigel Logan, Acting Group Managing Director, PCJ, Dr. Carlton Davis, Mr. Parris Lyew-Ayee, Jamaica Bauxite Institute (JBI). In the referenced email, Mr. Wedderburn indicated as follows:

“Dear Colleagues,

*As you will be aware from various news reports, **a preferred LNG infrastructure provider, Exmar Consortium, has been identified through the recently conducted tender process.** As we move beyond this important juncture **it is expected that the prospective offtakers of gas will be required to play a much more central and active role in bringing the LNG Project to realization.***

I am inviting you to attend a meeting between gas offtakers and MEM/PCJ to be held in the PCJ Auditorium next week Tuesday 29 June 1:00 - 3:30 p.m. If you are unable to attend personally, please make every effort to ensure that your organization is represented. You are free to bring other representatives from your organization in order to ensure that you have the most appropriate team participating in the meeting.

The agenda items for this meeting will include:

- *Presentation [sic] by Exmar Consortium on their Proposal*
- *Proposed Commercial Structure of LNG Project (see attached)*

- *Proposed Memeorandum [sic] of Cooperation amongst Offtakers (as a precursor to establishment of special purpose vehicle)*
 - *Proposed Strategy for Procuring LNG Supply...*”(OCG’s Emphasis)
2. An email from Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, which was dated 2010 June 25, to Mrs. Hillary Alexander, Permanent Secretary, MEM, and which was copied to Mr. Glenford Watson, Legal Counsel, MEM, and Mr. Nigel Logan, Acting Group Managing Director, PCJ, in which he stated the following:

“Dear PS,

When I sent out this meeting invitation to the offtakers, I saw the meeting as primarily a technical briefing for the offtakers, to bring them up to speed on the Exmar proposal for developing the infrastructure and to discuss cooperation amongst PCJ and the offtakers to deal with the procurement of LNG and the establishment of the special purpose company.

However, with the subsequent announcement of an investigation by the OCG, I think an important aspect of the meeting becomes a policy level matter of instilling confidence amongst the offtakers that the LNG Project is still on track. With this in mind I am asking that the Ministry chair the meeting with the offtakers -- set for 1 - 3:30 p.m. Tuesday.” (OCG’s Emphasis)

3. An email from Mr. Glenford Watson, Senior Legal Counsel, MEM, to a Wahkeen Murray, which was dated 2009 August 31, and which was captioned “*Stephen Wedderburn*”, in which he stated the following:

“It is my understanding that at the Board meeting of Friday last, certain statements, that may have been slanderous, were made in relation to Mr. Wedderburn without any evidence or attempt to substantiate same. To avoid the possibility of the corporation reducing the statements into writing (libel) and

publishing same, may I recommend that the statements be kept out of the minutes of the meeting (at least for the time being) until the next sitting of the Board. At this sitting, we can suspend the agenda to take, as the first order of business, a motion that, "in the absence of any evidence in support of the allegations made, the statements be kept out of the official records (minutes) of the corporation as their inclusion may constitute a libel and make the corporation liable for the publishing of said libel..." (OCG's Emphasis)

The foregoing allegations raised several critical questions and concerns with respect to the pre-contractual stage and the process(es) which led to the identification of the 'preferred bidder', the Exmar Consortium. Further, the allegations inferred, *inter alia*: (a) a lack of transparency; (b) a lack of impartiality; (c) a potential conflict of interest; (d) potential bid-rigging; (e) a potential benefit from insider information; and (f) potential corruption.

These allegations and inferences, amongst others, raised several concerns for the OCG, especially in light of the perceived absence of adherence to the Government contract award principles which are enshrined in Section 4 (1) of the Contractor General Act.

Section 4 (1) of the referenced Act requires, *inter alia*, that GOJ contracts should be awarded "impartially and on merit" and that the circumstances of award should "not involve impropriety or irregularity".

The OCG's Investigation primarily sought to determine, *inter alia*, the merits of the allegations and to ascertain whether there was compliance with the provisions of the Contractor General Act (1983) and the Government Public Sector Procurement Guidelines in relation to the recommended selection of the 'preferred bidder', the Exmar Consortium, for the 'FSRU LNG Project'.

Additionally, the OCG was guided by the recognition of the very important responsibilities which are imposed upon Public Officials and Officers by the Contractor General Act, the 2008 Public Sector Procurement Regulations, the Financial Administration and Audit Act, the Public

Bodies Management and Accountability Act, as well as the Corruption Prevention Act.

The OCG was also guided by the expressed provisions which are contained in Section 21 of the Contractor General Act. Section 21 specifically mandates that a Contractor General shall consider whether he has found, in the course of his Investigation, or upon the conclusion thereof, evidence of a breach of duty, misconduct or criminal offence on the part of an officer or member of a Public Body and, if so, to refer same to the competent authority to take such disciplinary or other proceedings as may be appropriate against that officer or member.

The Findings of the OCG's Investigation into the circumstances which surrounded the recommendation of the PCJ and the MEM to enter into negotiations with the selected '*preferred bidder*', the Exmar Consortium, for the 'FSRU LNG Project', are premised primarily upon an analysis of the sworn statements and the documents which were provided by the Respondents who were requisitioned by the OCG during the course of the Investigation.

In keeping with the OCG's stated intent to initiate an Investigation, the OCG formally requisitioned the Heads of Department and the Accounting/Accountable Officers of the PCJ and the MEM, and other Public Officials, to ascertain the circumstances which surrounded, *inter alia*, the referenced recommendation to enter into negotiations with the selected '*preferred bidder*', the Exmar Consortium, for the 'FSRU LNG Project'.

Summary of Key Findings

Based upon a comprehensive review of the hard copy and electronic documentation which was sequestered from the PCJ and the MEM, and the sworn written statements which were furnished to the OCG by the Public Officials/Officers and other persons of interest who were statutorily requisitioned by the OCG, the following key OCG Findings, amongst others, were identified:

1. Liquefied Natural Gas (LNG) was being considered by the then Minister of MME and the MoFAFT, Mr. Anthony Hylton, since 2001, at which time "...*the Ministry commenced*

the formulation of an energy policy and strategy, which called for the diversification of energy sources to include LNG, coal and renewables i.e. wind, solar, thermal etc.”⁶

2. The OCG found that, up to 2007, the GOJ was uncertain about the preferred and most suitable fuel type for Jamaica. The MEM and the respective Entities were said to have conducted research on several types of fuel to determine which would be more suitable.
3. The OCG found that between the period of 2007 September into early 2009, under the stewardship of the then Minister, Mr. Clive Mullings, coal was being pursued as the alternative energy source and the LNG project was ‘officially’ halted.

However, the OCG found that during the said period, both Mr. Ian Moore and Mr. Stephen Wedderburn were lobbying for the introduction of LNG. In this regard, there were several meetings and correspondence, with various LNG stakeholders, including Merrill Lynch, Hoegh LNG, Golar LNG and Exmar Marine NV.

In point of fact, the OCG found several pieces of correspondence which were shared between Mr. Stephen Wedderburn, Mr. Ian Moore and, primarily, Mr. Bart Lavent of Exmar Marine NV, which demonstrates an attempt by the named parties to promote LNG in Jamaica.

4. By way of an email, which was dated 2008 April 21, Mr. Stephen Wedderburn, the then Group Technical Director, PCJ, informed Mr. Ian Moore, the then Chairman of the PCJ Board of Directors, *inter alia*, as follows:

“...Noel Hylton will meet with Exmar Marine NV in Belgium this week. *I have asked Bart to share Exmar’s views on CNG (Compressed Natural Gas) (which are not very positive) with him.*” (OCG’s Emphasis)

⁶ Response from the former Minister of MME and the MoFAFT, Mr. Anthony Hylton, which was dated 2011 February 4. Response #1

In another email, which was dated 2008 April 23, Mr. Bart Lavent informed Mr. Stephen Wedderburn, *inter alia*, that “*I had the chance to explain to Mr Hylton and Ms Bennett the LNG project and the dangers of coal and CNG...*”⁷

By way of another email, which was also dated 2008 April 23, Mr. Stephen Wedderburn informed Mr. Ian Moore, *inter alia*, that “**It appears we have another supporter in Jamaica House.** Please see Bart’s report on the first meeting with Sancia Bennett Templer and Noel Hylton...”⁸ (OCG’s Emphasis)

The foregoing emails were just three (3) of many which the OCG reviewed and which allude to the following:

- i. Evidence to suggest that Exmar Marine NV was not in favour of the use of CNG in Jamaica and used the opportunity to introduce the concept of the LNG Project to certain specified GOJ Officials;
- ii. Exmar Marine NV appears to have been instrumental in the attempts to influence the Government’s policy decision away from coal and CNG, as has been evidenced by the email from Mr. Stephen Wedderburn regarding the apparent support which was emerging in ‘Jamaica House’;
- iii. A working relationship, of some sort, existed between Exmar Marine NV, Mr. Stephen Wedderburn and Mr. Ian Moore, the then Chairman of the PCJ Board of Directors; and
- iv. There were several pieces of email correspondence in 2008 between Mr. Ian Moore, the then Chairman of the PCJ Board of Directors, Mr. Stephen Wedderburn, in his capacity as the Group Technical Director, and Mr. Bart Lavent of Exmar Marine NV.

⁷ Email dated 2008 April 23, from a Mr. Bart Lavent, Exmar Marine NV, to Mr. Stephen Wedderburn, PCJ.

⁸ Email dated 2008 April 23, Mr. Stephen Wedderburn to Mr. Ian Moore.

The foregoing would suggest that the three (3) named gentlemen would have, at a minimum, been in dialogue, in whatever capacity, regarding the prospects of alternative fuel types in Jamaica.

5. The OCG found that neither the MEM nor the PCJ conducted any Front End Engineering Design (FEED) study and/or other form of a formal pre-assessment for the 'FSRU LNG Project'. To the contrary, the only FEED study which was conducted was for a land-based facility which was undertaken by Mustang Engineering for the LNG Project in 2006.
6. The OCG found that from as early as 2006, Exmar Marine NV had been courting the GOJ with respect to the introduction of LNG to Jamaica. This was evidenced, *inter alia*, by way of a document which was submitted to the OCG by the Permanent Secretary in the MOFAFT, Ambassador Evadne Coye, which was entitled "*Report of Meeting: CEO EXMAR, Hilton Hotel, Brussels*", which was dated 2006 December 1.

In the referenced document, the OCG found that Minister Hylton had "...*outlined that the meeting was of an exploratory nature. He proceeded to give an overview of Jamaica's present situation as it relates to reliance on fuel oil and the possibilities for a convergence of interest between Jamaica and EXMAR...*"

7. The OCG found that the 'FSRU LNG Project' is a sub-component of the overall "*LNG Project*" in Jamaica and reflects the GOJ's decision to adopt the changing technologies which are associated with obtaining and distributing LNG.
8. The OCG found that the Invitation to Pre-qualify was issued by the PCJ in 2007 April. In response to the referenced pre-qualification exercise, nine (9) potential LNG Providers submitted proposals on 2007 May 25. The OCG also found that the referenced pre-qualification exercise was not completed and that the 'FSRU LNG Project', was not formally reconsidered until late 2009.

9. It is instructive to note that the former Minister, Mr. Clive Mullings, stated that among the persons who spearheaded the LNG Project, during his tenure, were Mr. Ian Moore, the former Chairman of the PCJ Board of Directors and Mr. Stephen Wedderburn, the then Group Technical Director, PCJ.

10. The OCG was advised by Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, in his sworn response to the OCG's Statutory Requisition, which was dated 2010 November 15, that several meetings were held in respect to the LNG Project both locally and internationally.

It is instructive to note that the majority of the meetings, which were allegedly attended by various Public Officers and/or Officials, were held prior to the commencement of the tender process for the 'FSRU LNG Project' in 2009 November.

Of the nine (9) companies which expressed an interest in the LNG Project from 2007, the OCG found, based upon representations from Mr. Stephen Wedderburn, that meetings were held with only six (6) of the potential bidders, as prospective '*FSRU Providers*' for Jamaica.

11. Mr. Stephen Wedderburn also provided the OCG, at the request of the OCG, with tabular representations of, *inter alia*, (a) all the places he had travelled, (b) the respective meetings which were attended, and (c) the persons with whom he travelled in each instance, in regard to the 'FSRU LNG Project'.

Based upon the referenced tabular representations, which were provided by Mr. Stephen Wedderburn, the OCG found, *inter alia*, the following:

- i. Meetings were attended by GOJ representatives between the period of 2003 to 2010 in regard to the LNG Project.

- ii. Meetings were attended by GOJ representatives with potential bidders between

the period of 2005 to 2010, with specific regard to the 'FSRU LNG Project'.

- iii. Between the period of 2005 to 2010, Mr. Stephen Wedderburn indicated that he attended several meetings to, *inter alia*, promote LNG awareness, investigate potential FSRU and/or LNG suppliers and to investigate the feasibility of the FSRU technology. He also indicated that conferences and training courses were attended with potential LNG Providers/Suppliers, in regard to the 'FSRU LNG Project'.
- iv. Three (3) meetings were alleged to have been attended, between the period of 2006 to 2007, by representatives of the GOJ in Brussels, Belgium. Of the three (3) meetings, two (2) were with Exmar Marine NV and Besix and Dredging International, and the third with Hoegh LNG.
- v. Mr. Stephen Wedderburn, in 2008 June, '*travelled on the same flight*' with Mr. Bart Lavent, Director LNG, Exmar Marine NV, from Jamaica to Havana for a '*PetroCaribe Gas Working Group Meeting*'. Mr. Wedderburn indicated that he "*...attended the meeting as a Working Group Member. Mr. Lavent attended to brief the Working Group on FSRU technology.*"⁹
- vi. Several meetings were held with potential LNG suppliers between the period of 2006 to 2007. Of note, this was during the period in which the former Minister, Mr. Anthony Hylton, MoFAFT, indicated that the GOJ was in search of sourcing supplies of LNG in regard to the agreement between Jamaica and Trinidad. The OCG found that the then Minister, was in attendance at several of these meetings.
- vii. Mr. Stephen Wedderburn, in 2009 May, '*travelled on the same flights*' with Mr. Bart Lavent of Exmar Marine NV, from Jamaica to Colombia to '*Private gas supply meetings*'. Mr. Wedderburn also stated that Mr. Bart Lavent had been in Jamaica for a meeting with the MEM. It is instructive to note that in 2009 May,

⁹ Response from Mr. Stephen Wedderburn which was dated 2010 November 15. Response to question # 8

Mr. Stephen Wedderburn, who was not employed to the GOJ at the time, submitted a proposal to the MEM to coordinate the LNG Project. (OCG's Emphasis)

viii. Meetings were held in 2010 with potential LNG suppliers, among others, with respect to the LNG Project.

12. Based upon the foregoing representations from Mr. Stephen Wedderburn, it would appear that the trips which were undertaken by GOJ representatives, from 2003, were specifically with respect to FSRU LNG Re-gasification. However, the OCG found that contrary to the foregoing assertion by Mr. Stephen Wedderburn, Mr. Anthony Hylton indicated that during his tenure as Minister of MoFAFT and MEM, the GOJ's energy policy was with respect to diversification and the use of alternative sources such as LNG, coal and renewables.

In this regard, Mr. Anthony Hylton, in his response to the OCG's Statutory Requisition, which was dated 2011 February 4, stated that "*Useful and cutting edge information was gathered from trips to Japan, South Korea, Algeria, Trinidad & Tobago, Belgium, Norway and Venezuela.*"¹⁰

13. The OCG found that the GOJ held several meetings with Golar LNG and Exmar Marine NV between the period of 2008 to 2009. In this regard, both companies were required to provide updated proposals, on separate occasions, to different Public Officials/Officers, with respect to the LNG Project.

14. In 2009 June, representatives of Exmar Marine NV met with the current Minister of Energy and Mining, the Hon. James Robertson, and the then Permanent Secretary, Ms. Marcia Forbes (together with Promigas, EDC LNG and Merrill Lynch). The goal of the meeting was to advise the Government of its intent to conduct the pre-feasibility studies

¹⁰ Response from the former Minister of MME and MOFAFT, Mr. Anthony Hylton, which was dated 2011 February 4. Response to Question #1

to determine the economic and technical viability of developing a private project to import LNG and supply natural gas for use by private bauxite sector entities.

It should be noted that neither the MEM and/or the PCJ conducted a pre-feasibility study for the 'FSRU LNG Project'. Interestingly, EDC LNG (now CLNG) conducted its own feasibility study, which was completed 2009 October, one (1) month prior to the commencement of the tender period for the 'FSRU LNG Project'.

15. The OCG also found that Exmar Marine NV signed a 'Mandate', which was dated 2007 March 17, with the Ministry of Foreign Affairs and Foreign Trade, under the then Minister, Mr. Anthony Hylton, "*...to act as an agent for and on behalf of the Government of Jamaica to assist the Government, in purchasing liquefied natural gas ("LNG") and/or natural gas...*" The mandate remained valid until and including the termination date of 2007 September 30.

Mr. Anthony Hylton also indicated in his response to the OCG's Statutory Requisition, which was dated 2011 February 4, that 'Mandates' were signed between 2006 - 2007 between a number of possible LNG providers in an effort to source supplies of LNG.

It is instructive to note that despite Mr. Anthony Hylton's assertion that '*an identical mandate*' was signed with Hoegh LNG, Ambassador Evadne Coye, in her sworn response to the OCG, which was dated 2011 February 4, advised that "*There is no evidence in this Ministry that any other 'Mandate' was signed between the Ministry of Foreign Affairs and Foreign Trade and Exmar Marine NV and/or any other company in regard to assisting the GOJ in purchasing liquefied natural gas.*"¹¹

The OCG has not seen any other documentary evidence to support the assertions which were made by Mr. Anthony Hylton, former Minister, MEM and MOFAFT.

¹¹ Response from Ambassador Evadne Coye, Permanent Secretary, MOFAFT, which was dated 2011 February 4. Response to Question # 5

16. The OCG sent a Follow-Up Letter of Invitation (LOI) to Mr. Sveinung Stohle, President & CEO, Hoegh LNG, which was dated 2011 February 23, and questioned, *inter alia*, “... whether Hoegh LNG signed a ‘Mandate’ with the GOJ in 2007, and/or at any time, in regard to the purchasing of LNG...”

Hoegh LNG responded to the OCG’s LOI, by way of a letter which was dated 2011 March 9, and stated, *inter alia*, that “...please be informed that HLNG AS was in discussions in 2007 for appointment; however no original copy of a formal appointment letter has yet been found in our archives...”

Having regard to the lack of documentation and the conflicting statements which have been presented to the OCG by Ambassador Evadne Coye, Mr. Anthony Hylton and Hoegh LNG, the OCG is unable to corroborate Mr. Hylton’s assertion that “*an identical mandate*” was signed with Hoegh LNG.

17. Mr. Stephen Wedderburn submitted a proposal to the MEM in 2009 May, to coordinate the Liquefied Natural Gas Project.

It is instructive to note that the proposal, which was submitted to the MEM by Mr. Stephen Wedderburn, recommended, *inter alia*, that the formal GOJ Public Sector Procurement Procedures should be bypassed in the selection and award of a contract to a FSRU provider for the ‘FSRU LNG Project’, for the sake of expedience.

In this regard, the OCG found that Mr. Stephen Wedderburn not only proposed an unorthodox approach to the issue, but simultaneously sought to justify same by indicating that “...rather than going through a formal procurement system to select an [sic] FSRU provider (which will waste time and unduly delay the execution of more important aspects of the Project such as the identification of LNG supply) that one of these two companies be selected by interview.”¹²

¹² Ibid.

Nonetheless, Mr. Wedderburn, in his 2009 May proposal also recommended that if the MEM was desirous of utilizing the traditional procurement methodology, consideration would have to be given to the contracting of Technical Consultants in order to ensure that a proper RFP would be developed.

The proposal further revealed that Mr. Stephen Wedderburn had already identified two (2) companies in the industry as having an interest, namely, Exmar Marine NV and Golar LNG. In this regard, Mr. Wedderburn expressed that the referenced companies were the only ones to “...*actually have floating regasification systems in operation...*”¹³

It is instructive to note that Mr. Wedderburn, in his referenced proposal, also indicated that “*Two other companies, Hoegh LNG and Suez Gaz de France, will join the floating regasification club in the next year when they jointly begin to supply LNG...*”¹⁴

18. The OCG found that irrespective of Mr. Stephen Wedderburn’s recommendation to bypass the procurement process to contract one (1) of the two (2) recommended LNG Providers for the ‘FSRU LNG Project’, the GOJ, through the PCJ, utilized the GOJ Public Sector Procurement Procedures in accordance with the Limited Tender Procurement Methodology, to contract a suitable LNG FSRU Re-gasification provider.

19. The OCG found that several Public Officers, Officials and Consultants, since 2001, contributed in different forms and manner to the progress of the LNG Project in Jamaica.

Notwithstanding the foregoing, the OCG found that there are certain key players who were affiliated with the project from the inception to present, namely:

- i. Mr. Stephen Wedderburn; and
- ii. CH-IV International.

¹³ Ibid.

¹⁴ Footnote #1 as stated in 2009 May proposal from Mr. Stephen Wedderburn. Page # 6

The OCG also found that the following Public Officials/Public Officers, between November 2009 to December 2010, were primarily responsible for the tender process of the 'FSRU LNG Project', within the MEM and the PCJ:

- i. The Hon. James Robertson – Minister, MEM;
- ii. Mrs. Hillary Alexander – Permanent Secretary, MEM;
- iii. Dr. Ruth Potopsingh – former PCJ Group Managing Director;
- iv. Mr. Nigel Logan – PCJ Acting Group Managing Director;
- v. Mr. Stephen Wedderburn – LNG Project Coordinator;
- vi. The PCJ Board of Directors (2009 to 2010)

20. The OCG found that the following Committees, outside of the PCJ Procurement Committee and the Evaluation Committee (referred to as the LNG Technical Evaluation Committee), were established by the MEM for the 'FSRU LNG Project':

- i. The LNG Steering Committee / LNG Task Force;
- ii. The LNG Negotiating Team; and
- iii. Natural Gas Project Team.

The OCG also found that the PCJ established a LNG Project Unit which was headed by Mr. Stephen Wedderburn.

The OCG further found evidence to suggest that the established LNG Steering Committee/LNG Task Force was a key decision-making body in the tender process for the 'FSRU LNG Project'. However, the Permanent Secretary in her response to the OCG's Statutory Requisition, which was dated 2010 November 12, stated that "*The Task Force is not a part of the PCJ's Corporate Governance Framework as it represents an attempt to have a grouping of the various Ministries/Agencies/Bodies of Government identify and contribute to the best course for implementation of an [sic] LNG Project. The critical nature of the project and the various activities involved required the matters to be considered and addressed by a wider grouping of individuals than under the umbrella of*

the PCJ."¹⁵

21. The OCG found that several of the Public Officers within the PCJ served on more than one (1) Committee, which was established for the 'FSRU LNG Project'.

In accordance with information which was provided by Mrs. Hillary Alexander, Permanent Secretary, MEM, and Mr. Nigel Logan, Acting Group Managing Director, PCJ, the OCG found that members of the PCJ Board of Directors and the LNG Steering Committee/LNG Task Force also served on the LNG Technical Evaluation Committee.

The Permanent Secretary indicated that three (3) of the members who served on the LNG Steering Committee/LNG Task Force, a Committee which was integral in the decision-making process of the 'FSRU LNG Project', also served on the Evaluation Committee.

The OCG found that Mr. Stephen Wedderburn was a member of the LNG Steering Committee and that he also played an integral role in guiding the LNG Technical Evaluation Committee, prior to the commencement of the Evaluation process.

22. It is instructive to note that Mr. Stephen Wedderburn declared a financial interest with one (1) of the potential partners of the Exmar Consortium, Exmar Marine NV, to the PCJ and the MEM. However, and as stated by Mr. Wedderburn, in an email to the former Group Managing Director, Dr. Ruth Potopsingh, "*Given this background it has already been decided that I would not be involved in the evaluation of any LNG FSRU proposals for Jamaica...*"

Notwithstanding, the OCG, however, found the following:

- i. The LNG Technical Evaluation Committee, which was chaired by Dr. Audley Darmand was found to have been guided by Mr. Stephen Wedderburn, despite

¹⁵ Response from Mrs. Hillary Alexander, Permanent Secretary, MEM, which was dated 2010 November 12. Response #28(i)

knowing that Mr. Wedderburn declared a prior affiliation with one of the potential bidders for the 'FSRU LNG Project'.

The OCG also found that the then PCJ Board of Directors, indicated that Mr. Wedderburn "...*was present at nine of the eleven evaluation meetings and was present at the opening of the bids.*"

- ii. The Minutes of the Special Meeting of the PCJ Board of Directors, which was held on 2010 March 31, revealed that the Evaluation Committee met prior to the opening of the bids.
- iii. The referenced Minutes of the Special Meeting of the PCJ Board of Directors, also indicated that Dr. Darmand stated, *inter alia*, that "...**the meetings that Mr. Wedderburn attended, his presence was necessary as he was required to develop the instrument of measure.**"
- iv. The referenced Minutes of the Special Meeting of the PCJ Board of Directors, also revealed that Mr. Wedderburn was involved in the development of the RFP.
- v. According to Mr. Wedderburn, he was involved in a floating LNG liquefaction project in Colombia which also involved Exmar Marine NV. Mr. Wedderburn also stated that he does "...**not have any commercial relationship with Exmar. Nevertheless, if the project is successful both Exmar and I will benefit.**"
- vi. It is instructive to note that Mr. Wedderburn, in his response to the OCG's Statutory Requisition, which was dated 2010 November 15, revealed, *inter alia*, that in 2009 May, he '*travelled on the same flights*' with Mr. Bart Lavent of Exmar Marine NV, from Jamaica to Colombia to '**Private gas supply meetings**'.

Of note, this was during the same period (2009 May) in which he submitted a proposal to the MEM to coordinate the LNG Project. Further, Mr. Wedderburn

stated that he was employed to the PCJ, 'retroactive to July 2009'. However, he stated that his employment contract became official in 2009 October. It must be noted that the RFP was issued by the PCJ on 2009 November 12.

23. The OCG, in an effort to ascertain whether the PCJ, the MEM and/or any other Public Body had identified, leased and/or purchased any land with respect to the sitting of the 'FSRU LNG Project', requisitioned the Port Authority of Jamaica (PAJ) and the respective Accounting/Accountable Officers in the MEM and the PCJ, with respect to same.

The OCG found that no form of an agreement has been signed between the PAJ and any other GOJ Entity, Public Official/Officer and/or any of the potential bidders for the 'FSRU LNG Project'.

It is instructive to note, however, that the PAJ provided the OCG with a table which revealed that the PAJ had had several meetings with EDC LNG (now CLNG), amongst others, with respect to the LNG Project.

Based upon the referenced tabular representation, the OCG found the following:

- i. Exmar Marine NV had a meeting with the PAJ one (1) day before the issuance of the RFP, to "...determine the suitability of harbor facilities as against the scope of the project".
- ii. The other meetings which were held with the PAJ were undertaken after the PCJ's recommendation to enter into negotiations with the selected 'preferred bidder', the Exmar Consortium, for the 'FSRU LNG Project', was made.
- iii. On 2010 September 22, the Minister, the Hon. James Robertson, invited the PAJ, amongst other relevant Public Sector Entities, to attend a 'LNG briefing meeting',

in which the Exmar Consortium was present and presentations were made “...on technical aspects of industry and provided responses to queries.”

- iv. The basis, however, upon which several meetings were held with Exmar Marine NV and/or EDC LNG (now CLNG), was in regard to identifying and/or selecting a location for the project. Of note, the meeting of 2010 August 9 revealed that the PAJ “...expressed concerns regarding having a gas facility close to the container terminal” and as such the PAJ rejected a proposal to have the LNG facility in close proximity to the terminal.
- v. The PAJ has not sold and/or granted any lease and/or license to any GOJ Entity and/or any of the potential bidders for any prospective property for the ‘FSRU LNG Project’.

24. The OCG found that a new procurement process for the ‘FSRU LNG Project’ commenced with the issuance of the RFP to the potential nine (9) companies/consortia which were invited to tender on 2009 November 12 and 13.

25. The OCG found that there were several concerns expressed in regard to the RFP. These concerns are as follows: (a) the circumstances surrounding the preparation of the RFP; (b) certain requirements for qualification which were outlined in the RFP; and (c) the approval process of the RFP.

Based upon a review of the Minutes of the then PCJ Board of Directors’ meetings, which were dated 2009 December 8 and 10, the OCG found the following, among other things:

- i. Cabinet approval of the RFP preceded the approval of the PCJ Procurement Committee.
- ii. The Minutes of the Meeting of the PCJ Board of Directors, which was held on 2009 December 10, revealed that Mr. Wedderburn was waiting on the proposals

from the potential bidders to guide him in the planning of the project.

- iii. A FEED Study was not undertaken for the 'FSRU LNG Project'.
- iv. There appears to have been certain internal issues between the PCJ Board of Directors and the LNG Steering Committee/LNG Task Force in regard to the preparation of the RFP and the urgency with which the RFP was issued to the potential bidders.
- v. It is instructive to note that the issues which arose in regard to the drafting of the RFP were in relation to: a) the age of the ship; and b) the timeline, which was considered to be inadequate, that was given for the potential bidders to submit their proposals.

26. The OCG found that the 'Form of Questionnaire', within the RFP, contained a requirement that "*...the maximum age of the FSRU vessel should be no more than ten (10) years at the start of the operation.*"

The OCG found that one (1) of the bidders, Golar LNG, wrote to the PCJ, on 2009 November 25, indicating that having been in meetings with the GOJ, in which no specific concerns were raised, they were "*...surprised that LNG carriers older than 10 years were specifically excluded from the Request for Proposal...*"

The OCG found that the then PCJ Board of Directors deliberated upon same on 2010 January 13, and a unanimous resolution had been passed to reconsider a previous decision to amend the RFP to reflect ten (10) years instead of twenty (20) years. Hence, the Board agreed on the decision for the age of the ship to be ten (10) years.

27. The OCG has noted several concerns with respect to the timelines which were given for the submission of the bids. These include, *inter alia*, the following:

- i. Four (4) requests for extensions to the submission deadline were received by the PCJ. Two (2) of the requests were for the deadline to be extended between 2010 April-May. However, the Permanent Secretary in the MEM, alleged that the World Bank and the OUR were consulted with respect to the extensions. In this regard, ninety (90) days was deemed to be an appropriate timeframe for the submission of bids.
- ii. The bidders were given approximately ninety (90) days to prepare a proposal in accordance with the RFP, which was issued on 2009 November 12.

It is instructive to note that it is stated in Clause IV, Sub-Section S-2090 of the GOJ Public Sector Procurement Procedures (2008 November), for Contracts which are in excess of JA\$150 million, that a minimum of 45 days should be allotted to a Bid Submission. It is further stated that *“For large complex projects might be as long as three months.”*

- iii. The only potential bidder that did not request an extension of the deadline for submission was the Exmar Consortium.
- iv. The PCJ Board of Directors was not informed by Mr. Stephen Wedderburn of the decisions, which were being made, in respect of the requests for extensions of the submission deadline. The Minutes of the Meeting of the PCJ Board of Directors, which was held on 2009 December 22, indicated that the Board was not consulted on same, however, there were *“...letters going out indicating that a decision was taken to grant an extension after consultation with the PCJ and with the Ministry.”*

28. It is instructive to note that Mr. Stephen Wedderburn informed the OCG that he was unaware of the circumstances which led to the decision not to extend the deadline beyond 2010 February 16, as per the request from Samsung/Kogas.

However, contrary to Mr. Stephen Wedderburn's assertion, the OCG found that Mr. Wedderburn sent an email to the Permanent Secretary, Mrs. Hillary Alexander, MEM, which was dated 2010 January 28, which outlined his reasons why the deadline for submission should not be extended and made his recommendations accordingly.

29. The OCG found that the Technical Consultants, CH-IV International, prepared a document which was entitled "*FRAMEWORK FOR REVIEW AND EVALUATION OF PROPOSALS*", which was dated 2010 February 12, to evaluate the proposals which were received for the 'FSRU LNG Project'.

The referenced document stated, *inter alia*, that "*The purpose of this Report is to describe the framework that CH-IV proposes to use to complete its review of Proposals received in accordance with Section 2.17 of the RFP.*"¹⁶ The OCG also found that the referenced document contained an appended "*Review Matrix*" which was designed by the Consultants, CH-IV International, to review the bids which were received for the 'FSRU LNG Project'.

It is instructive to note that by way of a letter, which was dated 2010 March 28, a Mr. Joseph Fossella, CH-IV International, informed Dr. Audley Darmand, Chairman, FSRU LNG Bid Evaluation Committee, PCJ, *inter alia*, that "*This final weighted matrix was reviewed by the LNG team and a consensus was reached on the matrix and weighting...*"¹⁷

30. It is instructive to note that the OCG was not provided with and/or found any evidence to suggest that the referenced 'Review Matrix', which was designed by the Consultants, CH-IV International, for and on behalf of the PCJ, was issued to the potential bidders, via an Addendum or otherwise, prior to the submission deadline.

¹⁶ Bid Evaluation Matrix Report: Framework for Review and Evaluation of Proposals, dated 2010 February 12, and which was prepared by CH-IV International. Pg. 1

¹⁷ Letter from Mr. Joseph Fossella, CH-IV International informed Dr. Audley Darmand, Chairman, FSRU LNG Bid Evaluation Committee, MEM, which was dated 2010 March 28.

The OCG also found that the referenced 'Review Matrix' broadened the scope of the evaluation criteria.

Sub-Section No. S-3100 of the GOJ Public Sector Procurement Procedures (2008 November) provides, *inter alia*, that **"All adopted sub-criteria should be specified in the RFP... If points allocated to these sub-criteria are not disclosed in the RFP, the Evaluation Committee should allocate them before proposal submission, to reduce the risk of manipulations during the evaluation process..."** (OCG's Emphasis)

Consequently, the OCG found the foregoing to be irregular and a breach of the GOJ Public Sector Procurement Guidelines.

31. The OCG found that two (2) proposals were received from Hoegh LNG and the Exmar Consortium, prior to the deadline for submission.
32. The OCG was advised by Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, on 2010 February 21, that Golar LNG submitted a proposal, by way of an email on 2010 February 15, after the deadline for submission.

By way of a letter, which was dated 2010 February 24, the OCG responded to the foregoing email and stated, *inter alia*, that "...In accordance with the provisions of the Request for Proposal (RFP), which states, "Proposals must be physically received at PCJ's office...no later than 4:00 p.m. Electronically transmitted Proposals will not be considered a valid response to the Request for Proposal", Golar LNG's proposal cannot be considered...the OCG posits that the late proposal, which was electronically submitted, be rejected..."

The OCG found that the bids which were received from Hoegh LNG and the Exmar Consortium proceeded to the evaluation stage.

33. It is instructive to note that the OCG also found that information which was requested, by the PCJ, in Clause 2.21.2 “*Form of Questionnaire*’ which was contained in the RFP, included qualification requirements which were not reflected in the Evaluation Criteria of the RFP.

34. It is also instructive to note, that Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, in his response to the OCG’s Statutory Requisition, which was dated 2010 November 15, stated, *inter alia*, that “...**the PCJ FSRU tender did not ask for a binding price or a firm financing proposal** as would be normal in a 90 – 120 day tender. *The absence of these requirements made the shorter timeline feasible. **Section 3.4 of the RFP Questionnaire would have indicated to the bidders that PCJ was not requiring a completed FEED-level or detailed engineering design**, another factor making the 54 day timeline feasible.*”¹⁸

However, the ‘Review Matrix’ which CH-IV International used to evaluate the bids indicated that the bids were going to be assessed, *inter alia*, on:

- i. The “*Commercial Proposal*”, which would assess, *inter alia*, the bidders capability and commitment to finance the project and would consider details of the financing plan and structure considerations along with the bidder projected cost estimate and pricing.
- ii. The “*Technical Proposal*”, which included, *inter alia*, the proposed design with particular consideration of the “*Status of the proposed design, i.e. feasibility, pre-FEED or FEED.*”

Further, while Mr. Wedderburn stated that the PCJ was not requesting bidders to provide “...*completed FEED-level or detailed engineering design*...”, the technical component of the evaluation criteria, as detailed in the ‘Review Matrix’, also examined the project execution and construction plan, where the credibility

¹⁸ Response from Mr. Stephen Wedderburn, which was dated 2010 November 15. Response # 11(j) – (l)

of the construction schedule, commissioning plan and operating plan were to be assessed.

It is also instructive to note that despite Mr. Wedderburn's assertion that the bidders were not required to provide "...*completed FEED-level or detailed engineering design...*", one (1) of the nine (9) invited bidders indicated, in writing, its unwillingness to participate in the referenced tender process because of, *inter alia*, "...*the absence of site specific information (maritime and weather data)...*"

35. The OCG found that the LNG Technical Evaluation Committee, by way of a Final Report, which was dated 2010 March 29, recommended the Exmar Consortium as the '*preferred bidder*' for the 'FSRU LNG Project'.

It is instructive to also note that CH-IV International, by way of a letter to Dr. Audley Darmand, Chairman, FSRU LNG Bid Evaluation Committee, which was dated 2010 March 29 and subjected "*PCJ Procurement Committee – Preferred Supplier*", provided "...*a summary of the attributes of each proposal submitted and the final score that CH-IV presented to the Committee.*"

Based upon the foregoing letter, the OCG found that the Exmar Consortium received a score of 68.2 and that Hoegh LNG received a score of 33 from the Consultant's Report.

36. The OCG found that the PCJ Procurement Committee, and the then PCJ Board of Directors, expressed concerns with respect to the Evaluation Report which was prepared by the Technical Advisors, CH-IV International, in which the composition of the Exmar Consortium, and in particular, CLNG, and its financial viability, was questioned.

The OCG found that on 2010 April 12, the Secretary for the PCJ Procurement Committee, Mr. Godfrey Perkins, wrote to Dr. Ruth Potopsingh, expressing certain concerns in regard to the Evaluation Report for the proposed 'FSRU LNG Project'. The

referenced letter stated, *inter alia*, that “...*The report which was received was grossly inadequate in quite a number of particulars.*”

37. The OCG also found that several concerns were expressed by both the PCJ Procurement Committee and the PCJ Board of Directors in regard to (a) the report which was submitted by CH-IV International and (b) subsequent letters which were received from same in respect of the Evaluation of the Bids. In particular, however, and based upon the referenced letter, the OCG found, that the following information was requested, by the PCJ:

- a) *Particulars of the principals of each of the three entities within the Exmar consortium;*
- b) *Corporate and financial profile of CLNG as well as the experience of this company in the business of LNG supplies;*
- c) *Financial analysis of the two tenders...*

38. By way of a letter, which was dated 2010 April 14, Mr. Godfrey Perkins, Secretary, PCJ Procurement Committee, informed Ms. Kathryn Phipps, the then Chairman of the PCJ Board of Directors, that the PCJ Procurement Committee had approved the recommendation in accordance with the final report of the Technical Consultants, CH-IV International and the LNG Technical Evaluation Committee.

39. On 2010 April 14, the then PCJ Board of Directors “...*approved the bid Evaluation Report being forwarded to the Accounting Officer in the Ministry of Energy and Mining subject to the corporate profile being obtained and incorporated...*”¹⁹ for CLNG.

40. It is instructive to note that Mrs. Hillary Alexander, Permanent Secretary, MEM, by way of a letter which was dated 2010 April 28, wrote to Mr. John Wright, Chairman of the NWA Sector Committee, seeking “... *the approval of the NCC to select Exmar as the preferred bidder and to conduct detailed negotiations with Exmar in relation to the*

¹⁹ PCJ Minutes of Special Meeting of Board of Directors, which was held on 2010 April 14. Pg. 9.

financing, building, owning and operation of the FSRU.”²⁰

The NCC, on 2010 May 13, endorsed the recommendation of the MEM to enter into negotiations with the ‘*preferred bidder*’, the Exmar Consortium.

41. The Cabinet approved the recommendation for the selection of the ‘*preferred bidder*’, the Exmar Consortium, and also for the PCJ to enter into negotiations with the said bidder, for the ‘FSRU LNG Project’ on 2010 June 14.

However, finalization of the negotiation was subject to the completion of a technical assessment of the project and the procurement procedures utilized. The assessment was to be undertaken by an ‘*independent consultant*’ which was obtained through the World Bank.

42. It is instructive to note, that the PCJ, prior to the approval of the Negotiation Team by the Cabinet, on 2010 October 25, commenced negotiations with the ‘*preferred bidder*’, the Exmar Consortium, from 2010 July.

43. The OCG found that the ‘*preferred bidder*’, which was recommended for the proposed ‘FSRU LNG Project’, is a Consortium, referred to as the “Exmar Consortium” which is composed of the following partners:

- i. Exmar Marine NV;
- ii. Promigas S.A.; and
- iii. Caribbean LNG (Jamaica) Limited (CLNG).

44. The OCG found that a MOU was signed between CLNG, Promigas S.A. ESP and Exmar Marine NV on 2010 February 15. It is instructive to note that the deadline for submission of the bids and Tender Opening was extended to 2010 February 15.

²⁰ Letter from Mrs. Hillary Alexander, Permanent Secretary, MEM which was dated 2010 April 28 and which was addressed to Mr. John Wright, Chairman of the NWA Sector Committee.

45. The OCG conducted a company search, on the Companies Office of Jamaica (COJ) website, for CLNG and found that the Directors and Shareholders of the company, as at 2010 June 22, were as follows:

Directors:

- i. Andrew Bogle (ceased);
- ii. Paul East;
- iii. Ian Moore;
- iv. Al Kerr;

Shareholders:

i.	Caribbean LNG (BVI) Limited	5,200,000 shares	(81.9%)
ii.	AC. Kerr LLC	800,000 shares	(12.6%)
iii.	Old Harbour Estates Limited	47,826 shares	(0.75%)
iv.	Maritime & Transport Services Limited	47,826 shares	(0.75%)
v.	Andrew Bogle	197,827 shares	(3.12%)
vi.	Albert Donaldson	50,001 shares	(0.79%)
vii.	Martin Phillips	0 shares	
viii.	Sandra Martin	-	
ix.	Marco Mirst	0 shares	
x.	Nicole Mirst	-	

The OCG further found that the total shares in the company amounted to 6,343,480.

Based upon the foregoing breakdown of the shareholding of CLNG, the company, Caribbean LNG (BVI) Limited, was found by the OCG to be the majority shareholder of CLNG with a shareholding of 81.9%.

46. The OCG found that Mr. Conrad Kerr, Chief Executive Officer (CEO), CLNG, wrote to Mr. Bart Lavent, on 2010 July 6, and provided confirmation of the Directors of and Shareholders in both CLNG and Caribbean LNG (BVI) Limited.

It is instructive to note that the share allotment of CLNG, which was provided by Mr. Kerr, differed from that which was detailed on the COJ's website as at 2010 June 22. In this regard, the total shares in CLNG was reported by Mr. Kerr as 6,539,130, with Caribbean LNG (BVI) Limited having a majority share allotment of 79.52%.

47. It is also instructive to note that by way of a letter, which was dated 2010 June 23, Mr. Ian Moore wrote to the OCG and advised, *inter alia*, that “*Kindly see enclosed herewith our correspondence directed to Messrs. Coverdale Trust Services Ltd. who is the corporate secretary for Caribbean LNG (B.V.I.) Ltd. We have already given verbal instruction to Messrs. Coverdale Trust Services Ltd, for them to cooperate with your office to the fullest extent, and concurrent with this letter we are providing them with the original of the enclosed authority... For your immediate attention we inform you that the shareholders of Caribbean LNG (B.V.I.) Ltd. are:*

Mr. Ian Moore

Mr. Paul East.”²¹

Consequently, the OCG, by way of a letter which was dated 2010 December 16, extended an invitation to Coverdale Trust Services Limited, the Corporate Secretary of Caribbean LNG (BVI) Limited, to provide a formal statement and/or information in regard to the circumstances which surrounded its role(s), responsibility(ies), contribution, and/or involvement, if any, in the referenced ‘FSRU LNG Project’.

Based upon the documentation which was provided by Coverdale Trust Services Limited, the OCG found the following information:

- i. The Certificate of Incumbency for the company, Caribbean LNG (BVI) Limited, was dated 2010 December 28.

²¹ Letter from Mr. Ian Moore to the OCG which was dated 2010 June 23

- ii. The company, Caribbean LNG (BVI) Limited, was incorporated on 2009 December 22.
- iii. The Directors of the company are ‘Paul East’ and ‘Ian Moore’. Of note, both Directors were appointed on the date the company was incorporated (2009 December 22).
- iv. The Shareholders of the company are ‘Paul East’ and ‘Ian Moore’. Of note, is the fact that the shares were issued on the date the company was incorporated and divided as follows: a) Paul East - 20,000 and b) Ian Moore - 30,000.
- v. No fiduciary services were being provided by the company Caribbean LNG (BVI) Limited and, under BVI Law, there is no requirement for the company to have audited financial statements.

48. The OCG found that the company, Caribbean LNG (B.V.I.) Limited, the primary Shareholder of CLNG (Jamaica) Limited, was incorporated on 2009 December 22, approximately one (1) month after the issuance of the RFP for the ‘FSRU LNG Project’.

49. The OCG conducted a review of the final evaluation document, which was prepared by CH-IV International for the PCJ, that was entitled “*REVIEW OF PROPOSALS*”, with respect to the ‘FSRU LNG Project’, and dated 2010 April 8, against the proposal which was submitted by the Exmar Consortium and entitled “*EXMAR CONSORTIUM – JAMAICA LNG FSRU TENDER*”.

Having regard to the foregoing, the OCG found the following:

- i. That although the bid proposal which was submitted by the Exmar Consortium made mention of Excelerate Energy LP being a partner of Exmar Marine NV, the proposal does not include Excelerate Energy LP as a partner of the Consortium.

- ii. Appendix B, which was prepared by CH-IV International, assessed the strengths of the Exmar Consortium by including the capabilities of an Exmar Marine NV/Excelerate Energy LP partnership.

In this regard, the referenced report indicated, as a strength of the proposal, that “*Exmar and partner Excelerate have demonstrated since 2005 the ability to develop offshore regasification projects*”²². However, the proposal was assessed to be weak as it “...does not state clearly the relationship between Exmar and Excelerate...”²³

Nonetheless, CH-IV International, after highlighting the foregoing weakness and strength, noted that the Exmar Marine NV had a “*Very good response*”.

Having regard to the foregoing, and the fact that Excelerate Energy LP is not a party to the Exmar Consortium, the OCG is unable to determine the basis upon which CH-IV International arrived at its conclusion that the Exmar Consortium had a “*Very good response*” with respect to its capabilities to carry out its project, despite the noted ambiguity.

- iii. The referenced Appendix B further stated that “**Exmar demonstrates experience in the construction of LNG Regas Vessels (LNGRV), with a total number of 7 constructed and operating through Excelerate, in a range of 138,000m³ to 151,000m³ storage capacity.**”²⁴ (OCG’s Emphasis)
- iv. The referenced Appendix B, further stated that “*Exmar and its partner Excelerate commissioned and continued to operate the first deepwater port Gulf Gateway project in the gulf of Mexico...*”²⁵

²² The final issued “Review of Proposals” which was prepared by CH-IV International which was dated 2010 April 8. Appendix B, Proposal Review Findings – Exmar Consortium.

²³ The final issued “Review of Proposals” which was prepared by CH-IV International which was dated 2010 April 8. Appendix B, Proposal Review Findings – Exmar Consortium.

²⁴ The final issued “Review of Proposals” which was prepared by CH-IV International which was dated 2010 April 8. Appendix B, Proposal Review Findings – Exmar Consortium.

²⁵ The final issued “Review of Proposals” which was prepared by CH-IV International which was dated 2010 April 8. Appendix

- v. CH-IV International utilized information which was obtained from the websites of Excelerate Energy LP and Exmar Marine NV as a part of the evaluation of the proposals. Therefore, this suggests that the Technical Consultants used information which was not submitted by the Exmar Consortium, in its proposal on 2010 February 15, to evaluate the bid.
- vi. The OCG found that CH-IV International evaluated the strength of the Exmar Consortium with respect to the partnership between Exmar Marine NV and Excelerate Energy LP.

50. It is instructive to note that CH-IV International, in assessing the specific experience and capabilities of the Exmar Marine NV, in relation to the assignment, did not undertake an independent assessment of same with respect to its capabilities outside of the partnership with Excelerate Energy LP. Therefore, the OCG is unable to state definitively whether Exmar Marine NV, on its own, is capable of performing the required tasks for the 'FSRU LNG Project', given that a substantial portion of its experience has been attributed to its partnership with Excelerate Energy LP.

The OCG further found the following:

- i. Mr. Stephen Wedderburn did not recommend Excelerate Energy LP as one of the potential companies in the FSRU Industry as having the experience and capability of providing the 'FSRU LNG Project'.
- ii. Upon the enquires of Mr. Shaun Davison, Excelerate Energy LP, as to the reasons why Excelerate Energy LP was not invited to tender, Mr. Stephen Wedderburn indicated that because Excelerate Energy LP's initial proposal was submitted late in 2007, the referenced company was not eligible to bid in the current process.

This reason was premised upon the basis that (a) the tender process was restricted to the nine (9) companies which had submitted a bid; (b) the Cabinet and the Jamaican Government had decided upon the nine (9) companies; and (c) that the tender rules were strict in respect of late proposals.

- iii. It is clear from email correspondence, which was dated 2009 December 11, between Mr. Glenford Watson, the Senior Legal Counsel, MEM, Mrs. Hilary Alexander, the Permanent Secretary, MEM, and Mr. Stephen Wedderburn, that Mr. Stephen Wedderburn was the Public Official who was charged with the responsibility of informing the Accounting/Accountable Officers within the PCJ and the MEM of, *inter alia*, the potential bidders within the LNG Industry and the capabilities of same.
- iv. Mr. Stephen Wedderburn, gave, at a minimum, both the Permanent Secretary and the Senior Legal Officer in the MEM, the impression that Excelerate Energy LP and Exmar Marine NV were one (1) entity and that there were no other companies outside of the nine (9) companies which were invited to tender “... *that have FSRU operating experience*”.

51. Based upon the assertions of Mr. Shaun Davison of Excelerate Energy LP, the OCG found that Exmar Marine NV (a) operated the vessels on behalf of Excelerate Energy LP, by providing physical crew; (b) did not design or build any fixed infrastructure facility; (c) does not control operationally or commercially the vessels; and (d) does not have the technology patents.

52. According to Mr. Nigel Logan, Acting Group Managing Director, PCJ, the Legal Consultants, Latham and Watkins, and the Technical Consultants, CH-IV International, were initially engaged prior to 2007 via competitive tenders. However, both entities were re-engaged via the Sole Source Procurement Methodology, specifically for the current project.

The basis upon which both entities were re-selected was (a) familiarity with the project; (b) the previous contracts had not been executed and/or cancelled and the Consultants provided "...*limited services*"; (c) the entities were re-selected based upon a previous open tender and endorsed by the NCC; and (d) the experience of the firm in developing LNG projects.

53. The OCG found that on 2010 November 1, the NCC endorsed the request of the PCJ to utilize the Sole Source Procurement Methodology to award a contract to Taylor-DeJongh as the Financial Advisors for the LNG Project in the amount of US\$200,000.00.

54. The OCG found that the aggregate value of Consultancy Fees, which have been paid by the GOJ for the period of 2005 December 31 to 2010 September 30, in respect of the LNG Project, was \$149,354,533.95.

55. It is instructive to note that since the re-engagement of CH-IV International, between 2010 April 30 to 2010 September 30, the Consultant has been paid **\$29,123,712.53**.

Mr. Nigel Logan further indicated in his response to the OCG's Follow-up Requisition which was dated 2011 February 15 that "*The second contract dated April 2010 was between PCJ and CH IV and is for US\$387,000 of which US\$425,923.02 has been paid.*"

56. The recommendation for the award of the services contract for the Technical Consultants was first endorsed by the NCC on 2005 August 12.

The OCG found that the requisite approvals were received from the NCC and the Cabinet in 2005 for the award of contract to CH-IV International for the provision of Technical Services in accordance with the GOJ Public Sector Procurement Procedures (2001 May).

57. Notwithstanding the foregoing, approval for the 2005 contract with CH-IV International, the OCG has not been provided with any evidence to suggest that approval was sought

from the NCC and the Cabinet for the re-engagement of the Technical Advisors in respect of an undated consultancy services contract.

The OCG found that the PCJ took the decision to re-engage CH-IV International, by utilizing its previous contract to prevent the process of re-tendering. In this regard, the Board of Directors indicated that if the contract was re-tendered then the process would not have been completed until 2010 January 5. Of note, is the fact that this was the original deadline for submission for the bids for the 'FSRU LNG Project'.

Based upon the foregoing, the OCG found that the re-engagement of the Technical Consultants, CH-IV International, was irregular. The OCG's Finding is also premised upon the following:

- A. The 2005 contract between CH-IV International, the PCJ and the National Gas Company (NGC) of Trinidad and Tobago, was in regard to an Interim Governance Arrangement for the LNG Project.
- B. CH-IV International was re-engaged in 2010 April based upon the pre-existing approvals which were obtained for the 2005 contract. The PCJ's justification for same, was that the scope of the initial contract included provisions for CH-IV International to provide technical supervision of the FEED, EPC and Commissioning phases of the project and acceptance of a LNG receiving terminal, storage facilities, re-gasification plant and distribution system.
- C. The Consultants were said to have been re-engaged in 2010 January and have been operating within the terms and conditions of the contract which was signed between the PCJ and CH-IV International since 2005 and that they were not paid the full amount which was approved by the Cabinet in 2005.

However, it is instructive to note that the National Gas Company (NGC) of Trinidad and Tobago was no longer a party to the contract and the scope of works that was required of CH-IV International was modified for the 2010 contract.

- D. The OCG found that a new contract was signed between CH-IV International and the PCJ on 2010 April 8. Attached to the contract was a Review Matrix which increased the scope of works of the Consultant.
- E. The OCG found that the PCJ did not issue an Addendum to the contract and/or seek the approval of the NCC and/or the Cabinet for the variation to the contract, despite the fact that the parties to the contract had been altered.
- F. Further, according to Mr. Nigel Logan, as at 2011 February 15, the PCJ paid CH-IV International, a total of US\$425,923.02, pursuant to the contract which was awarded on 2010 April 8. However, based upon the thresholds as outlined under Sub-Section S-2040, Clause VII and VIII of the GOJ Public Sector Procurement Procedures (2008 November), such a variation to the contract of 2005 would have required the approval of the NCC and the Cabinet.

In this regard, the PCJ would have been in contravention of the referenced Sub-Section of the GOJ Procurement Guidelines.

58. Further, the OCG found that a contract was not signed, by the PCJ, until 2010 April 8, after services were performed by the Technical Consultant for the 'FSRU LNG Project'. In this regard, it should be noted that CH-IV International had already begun to evaluate the bids which were received on 2010 February 15.

59. The OCG found that representatives from Merrill Lynch, albeit that their proposal had been rejected by the MEM, had multiple discussions and/or meetings with Exmar Marine NV of which Mr. Stephen Wedderburn and Mr. Ian Moore were fully informed.

It is instructive to note that Mr. Conrad Kerr, the CEO of CLNG and a 12.6% shareholder of the company, previously worked with Merrill Lynch as the Global Head of LNG and was part of a team which courted the GOJ with respect to the LNG Project to Jamaica.

60. Based upon the assertion of Mr. Conrad Kerr, the OCG has found that Merrill Lynch was not involved in the 'FSRU LNG Project'. However, based upon the assertions of Mr. Ian Moore, the OCG found that representatives of Merrill Lynch, along with EDC LNG (now CLNG), Exmar Marine NV and Promigas, met with Minister James Robertson and the then Permanent Secretary, Ms. Marcia Forbes, to inform them of the intent of the aforementioned companies to conduct a pre-feasibility study to determine the economic and technical viability of developing a private project to import LNG and supply natural gas for use by the bauxite sector. Of note, is the fact that the referenced pre-feasibility study was completed approximately one (1) month prior to the commencement of the tender period for the 'FSRU LNG Project'.

61. The OCG found the expenditure and financing of the LNG Project, on the part of the GOJ, to be as follows:

- i. It has been asserted that the GOJ's expenditure to-date included payments for the planning, conceptualisation and implementation of the project.
- ii. A total of \$251,408,280.88 was expended from 2003 to 2010.
- iii. A total of \$43,497,589.88 was expended in 2010.
- iv. The PetroCaribe Development Fund, by way of a grant, is to finance a total of US\$5.3M for '*pre-development expenses*' and implementation of the LNG Project over a two (2) year period.
- v. The PCJ will be providing US\$1.65M from its "LNG Project Implementation Budget" to finance the '*pre-development expenses*' for the LNG Project.

- vi. The Permanent Secretary, Mrs. Hillary Alexander, MEM, asserted that the World Bank, via a proposed US\$15M loan to the GOJ, will, in part, provide funding for the LNG Project with respect to technical assistance for the development of the legislative and regulatory framework for LNG by the Office of the Utilities Regulation (OUR).
- vii. The Permanent Secretary further indicated that the Exmar Consortium will be responsible for financing the ‘FSRU LNG Project’.

62. Mr. Glenford Watson, in his response to the OCG’s Statutory Requisition, which was dated 2011 January 26, stated, *inter alia*, that “**I am aware that on November 12, 2010, negotiations were being undertaken between the GOJ and the preferred bidder Exmar Consortium, as to, the terms and condition of an Implementation Agreement that would explicitly set out the detailed roles and responsibilities of the Exmar Consortium and the GOJ in the implementation of the project...**”²⁶ (OCG’s Emphasis)

63. The OCG found that the deadline which was set for the signing of the Implementation Agreement was in accordance with the timeline which was given by the Exmar Consortium. The ‘Notes on the LNG Negotiating Team Tele Conference with Latham & Watkins...and CH-IV...’, which was held on 2010 September 7, indicated that “...*The Exmar Consortium by way of letter to the LNG Project Coordinator has indicated that they would not be able to hold the price after the November 15 deadline...Exmar had secured a shipyard for the FSRU until November 15 and would have to re-negotiate the price with the managers of the shipyard and this may incur additional cost...*” (OCG’s Emphasis)

64. By way of Cabinet Decision No. 45/10, which was dated 2010 December 6, in regard to Submission No. 531/MEM-52/10 regarding “*Permission to Negotiate an Implementation Agreement with the Preferred Bidder for the Liquefied Natural Gas (LNG) Project*”, the OCG was informed that “**The Cabinet agreed that the Submission would be withdrawn**

²⁶ Response from Mr. Glenford Watson, Senior Legal Counsel, MEM, which was dated 2011 January 26. Response #6.

from the Agenda; and noted that the draft Implementation Agreement had been finalized and would be referred to the Project Committee established to oversee the direction of the LNG Project, along with the report from the Independent Consultants and the response thereto...” (OCG’s Emphasis)

65. The OCG found that certain emails revealed that of the companies with which discussions were being held there were significantly more communications between Mr. Ian Moore and Mr. Stephen Wedderburn, with respect to Exmar Marine NV and what Exmar Marine NV was bringing to the table.

66. The OCG found that the former Chairman of the PCJ Board of Directors, Mr. Ian Moore, who was appointed on 2007 December 7, is presently a Director and Shareholder, of the company, CLNG, a partner of the Exmar Consortium, the selected ‘*preferred bidder*’ for the ‘FSRU LNG Project’. The OCG has also found that Mr. Ian Moore is the Beneficial Majority Shareholder of CLNG.

It is also instructive to note that Mr. Conrad Kerr, former executive of the company, Merrill Lynch, is also a Director of the company, CLNG and a 12.6% shareholder of the company.

67. The OCG conducted a review of the Minutes of the Meetings of the PCJ Board of Directors, for the period during which Mr. Ian Moore was appointed the Chairman. The referenced Minutes revealed that the LNG Project and/or any other component of same were deliberated upon in at least two (2) distinct meetings. These are as follows:

- i. The Minutes of the Regular Meeting of the PCJ Board of Directors, which was held on 2008 May 27, stated, *inter alia*, that “... *if the FSRU route was taken then 50% of the project would be paid for by proceeds from the carbon credits and 100% if all the bauxite companies came on board.*”²⁷

²⁷ Minutes of the Regular Meeting of the PCJ Board of Directors which was held on 2008 May 27. Pg. 8

- ii. The Minutes of the Regular Meeting of the PCJ Board of Directors, which was held on 2008 June 30, stated, *inter alia*, that “*Enquiries were made as to whether the LNG project was being delayed because of a lack of support from the PCJ Board or the Government. The Chairman noted that the Project has the support of the Board but would also need the support of the Ministry of Energy and the Office of the Prime Minister.*”²⁸

Based upon the foregoing, the OCG found that the LNG Project was halted during Mr. Moore’s tenure, as the Chairman of the PCJ Board of Directors. There was no evidence found in the Minutes of the PCJ Board of Directors, during Mr. Moore’s tenure, that any form of discussion was held in respect of the LNG Project, as an alternative source of energy. As such, the OCG found no evidence to suggest that approvals and/or recommendations were made, by the then PCJ Board of Directors, in regard to the LNG Project.

However, the OCG found evidence in the form of several email correspondence from Mr. Stephen Wedderburn to Mr. Ian Moore, and Mr. Conrad Kerr, amongst others, which indicated that preparations were being made, and information on the LNG Project was being shared, on the project during Mr. Moore’s tenure.

Based upon the emails which have been reviewed, the OCG found, *inter alia*, the following:

- i. There is evidence to suggest that Mr. Bart Lavent of Exmar Marine NV, was informing Mr. Stephen Wedderburn of certain strategic steps which should be taken for the LNG project to materialize.
- ii. It is also instructive to note that Mr. Ian Moore, during his tenure as Chairman of the PCJ Board of Directors, was copied on the majority of the emails from Mr. Stephen Wedderburn, in regard to the LNG Project. Hence, the OCG found that

²⁸ Minutes of the Regular Meeting of the PCJ Board of Directors, which was held on 2008 June 30. Pg. 10

during Mr. Moore's tenure, Mr. Stephen Wedderburn informed Mr. Moore, at every step of the way, of the progress of the LNG Project, in which his input was required in most instances.

- iii. Of critical note, is the fact that both Mr. Ian Moore and Mr. Stephen Wedderburn, appeared to have been aggressively working to bring LNG to Jamaica during the time in which Mr. Wedderburn asserted that LNG was 'halted' because the then Minister, Mr. Clive Mullings, was promoting coal.
- iv. Based upon an email from Mr. Stephen Wedderburn to Mr. Conrad Kerr, which was dated 2008 February 6, the OCG found that Mr. Stephen Wedderburn was instructed to prepare a diagram of the pipeline network throughout the island. The referenced email was copied to Exmar Marine NV, representatives from Merrill Lynch, and Mr. Ian Moore, as the representative from the PCJ. The OCG has seen no evidence to suggest that, unlike Exmar Marine NV, the other potential bidders were made aware of this information.
- v. The OCG also found that Mr. Wedderburn informed Golar LNG of his personal ranking of four (4) of the entities which were involved in the pre-qualification exercise which was undertaken in 2007 by the PCJ and which were subsequently invited to tender in 2009 November. Of note, is the fact that Mr. Wedderburn ranked Exmar Marine NV as the number one (1) company and used Exmar Marine NV and its invested interest to compare the other entities.
- vi. Mr. Bart Lavent of Exmar Marine NV, hosted several meetings with Jamaican Public Officials/Officers, in which discussions were held with respect to Exmar Marine NV's progress and the LNG prospects for Jamaica.

68. The OCG also found that (a) Mr. Stephen Wedderburn sent several emails to Mr. Ian Moore, during his, Mr. Moore's tenure, at the PCJ, informing him of meetings and other

forms of communications and that (b) Mr. Ian Moore convened other meetings in regard to the LNG Project.

69. The OCG found that even during the time that Mr. Stephen Wedderburn had demitted office at the PCJ, between 2008 September to 2009 July, he was still promoting LNG as the preferred energy choice for Jamaica.

The OCG found that Mr. Wedderburn sent an email to Mr. Ahmad Zia Mian, Director General, OUR, which was dated 2009 March 26, in which he indicated, *inter alia*, that “*If you are able to talk with the Prime Minister, please encourage him not to go down the coal path...I have contacts who can initiate serious LNG supply meetings with existing suppliers, but they have to be sure that the Government is willing to move forward and will not just waste their time as has happened in the past.*”

I had mentioned to you that I am in Colombia. The reason I am here is that I am providing assistance to a project to liquefy gas here. We expect to have an agreement signed next week to proceed with the FEED...

Again, if you get the chance please stress to the Prime Minister that there are real options for gas. However, if he were to depend on Minister Mullings to procure gas for Jamaica it will never happen...”²⁹ (OCG’s Emphasis)

70. It is instructive to note, that during the time that Mr. Wedderburn was not employed to the PCJ, he was involved in a LNG liquefaction project in Colombia in which Exmar Marine NV was also involved. In this regard, upon being re-engaged by the MEM, Mr. Stephen Wedderburn, by way of an email to Dr. Ruth Potopsingh, the then Group Managing Director, PCJ, which was dated 2009 September 6, disclosed that “*...I have been involved in a project to develop floating LNG liquefaction in Colombia. Exmar is also involved in this project, but I do not have any commercial relationship with Exmar. Nevertheless, if the project is successful both Exmar and I will benefit.* My involvement

²⁹ Email from from Mr. Stephen Wedderburn to Mr. Zia Mian, which was dated 2009 March 26.

in the project was on a success fee basis and even where I have ceased active involvement in the project, I will still have a financial interest...”

Further, Mr. Zia Mian, in his response to the OCG’s Statutory Requisition of 2010 September 10, which was dated 2010 October 1, stated that “...*Mr. Wedderburn was brought on board to spearhead the project. At a meeting at Jamaica House, the Minister, and Messrs. Wedderburn and Moore strongly recommended that a negotiated deal with Exmar could deliver the LNG to Jamaica on a fast track basis...*”³⁰ (OCG’s Emphasis)

71. The OCG found that Mr. Stephen Wedderburn was integrally involved in the drafting of the RFP and was the primary point of contact with the potential bidders during the tender process for the ‘FSRU LNG Project’.

72. The OCG found that Mr. Stephen Wedderburn played an integral role in the re-engagement of the Technical Consultants, CH-IV International.

In addition, the OCG found that Mr. Stephen Wedderburn recommended and guided the Technical Consultants, CH-IV International and Clean Skies LLC, with regard to the pricing of their quotation whilst informing the Consultants of the deliberations of the PCJ Board of Directors. As such, Mr. Wedderburn, by way of an email, which was dated 2009 December 20, advised Mr. Arthur Ransome, *inter alia*, as follows:

“I just wanted to let you know that things are progressing in terms of moving to finalize the re-engagement of CH-IV...”

...There is some concern that some elements of your quotation are too high and the main issue now is to establish that your quotation represents value for money. There is also some concern in the PCJ Board to relate the current quotation back to the quotations you made in 2005 to ensure that the current quotations are reasonable...”

³⁰ Response from Mr. Zia Mian, which was dated 2010 October 1. Response to Question #1.

Of note, is that several of the emails, between Mr. Stephen Wedderburn and the referenced companies, occurred subsequent to the issuance of the RFP and prior to the signing of a contract with CH-IV International in 2010 April. It is also instructive to note that the PCJ Board of Directors held discussions with respect to the re-engagement of CH-IV on 2009 December 22 and the foregoing emails from Mr. Stephen Wedderburn, preceded that date.

73. The OCG found that based upon the assertion of Mr. Authur Ransome, Vice President and General Manager, CH-IV International, the PCJ wanted to use Clean Skies LLC to provide commercial services for the LNG Project. However, due to poor planning on the part of the PCJ, there was limited time to allow for the proper use of the procurement guidelines in the contracting of Clean Skies LLC and, as such, the OCG has found that it was asserted that Mr. Stephen Wedderburn recommended that Clean Skies LLC, which is owned by Mr. Joseph Fossella, enter into a sub-contract with CH-IV International, given that there was a pre-existing contract between CH-IV International and the PCJ from 2005.

74. It is instructive to note that the sub-contracting of Clean Skies LLC was allegedly done pursuant to a recommendation which was made by Mr. Stephen Wedderburn. The referenced recommendation was made with the intention to circumvent the procurement procedures. In this regard, Mr. Arthur Ransome, CH-IV International, in an email which was dated 2011 January 17, indicated, *inter alia*, that “PCJ mentioned to us that although it wanted to use the services of Clean Skies to provide commercial services its procurement guidelines prevented it from directly hiring them. However, since CH-IV had an existing contract with PCJ...it was suggested that we consider hiring Clean Skies on a subcontract basis.”

75. The OCG found that one of the Technical Consultants, Mr. Joseph Fossella, is the owner of the company, Clean Skies LLC. Mr. Joseph Fossella is also the former employee of Black & Veatch, a company with which Exmar Marine NV has an alliance and who was a member of the ‘negotiation team’ for Black & Veatch, prior to his retirement.

76. It is instructive to note that by way of an email, which was dated 2008 November 5, Mr. Stephen Wedderburn informed Mr. Ian Moore, *inter alia*, that “*For information please see press release from Exmar indicating that they are pursuing a floating liquefaction deal in partnership with Excelerate and Black & Veatch...**I am pleased to have played a role in introducing Exmar and Black & Veatch to each other.***” (OCG’s Emphasis)

77. Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, disclosed his interest in a project in Colombia in which Exmar Marine NV was a party. However, the OCG has found no evidence to suggest that Mr. Wedderburn disclosed his relationship with Mr. Joseph Fossella, a sub-contractor of CH-IV International, who was actively involved in the Evaluation of the Bids for the ‘FSRU LNG Project’.

78. Based upon the foregoing, the OCG has found the following:

- i. That Mr. Stephen Wedderburn had discussions with both Mr. Joseph Fossella and Mr. Patrick LaStrapes of Clean Skies LLC in 2009 November, around the time of the commencement of the tender period for the ‘FSRU LNG Project’, to provide commercial services on the said project.
- ii. Mr. Joseph Fossella was a part of the LNG Technical Evaluation Team which had the core responsibility to assist with the Evaluation of the Bids.
- iii. Mr. Stephen Wedderburn explicitly stated that he played a role in introducing Exmar Marine NV and Black & Veatch to each other.
- iv. Mr. Stephen Wedderburn recommended that CH-IV International sub-contract Mr. Joseph Fossella’s company, Clean Skies LLC, to work on the ‘FSRU LNG Project’.

79. Based upon the information which has been provided to the OCG, the OCG found that there were significant collaborative efforts between Mr. Stephen Wedderburn and Mr. Ian

Moore during his tenure as Chairman of the PCJ Board of Directors. In this regard, the OCG found several pieces of correspondence from which it can be inferred that both Mr. Wedderburn and Mr. Ian Moore were actively pursuing LNG as an energy option and, in so doing, attempted to divert from the GOJ policy agenda of the then Minister.

Further, the OCG found that prior to the bidding process in 2009 November, Mr. Stephen Wedderburn and Mr. Ian Moore, in their attempts to divert from the policy agenda towards LNG, shared more information with Exmar Marine NV, than any of the other nine (9) potential bidders.

In point of fact, in one correspondence the OCG found that Exmar Marine NV was identified by Mr. Stephen Wedderburn as his first choice based upon his assessment prior to the commencement of the tender process in 2009 November.

80. The OCG found in an email which was dated 2008 January 23, that Mr. Stephen Wedderburn informed Mr. Stephen Hanan, Mr. Conrad Kerr and Mr. Ian Moore, *inter alia*, that “...**To clarify the role of Exmar, PCJ wants the Exmar proposal to be treated as the base case for the implementation of the LNG Project in Jamaica and the proposal being developed for the Prime Minister should reflect this...**” (OCG’s Emphasis)

81. In another email, which was dated 2008 February 1, Mr. Stephen Wedderburn informed Mr. Ian Moore, *inter alia*, that “**I do believe that Exmar stands out by way of the significant development work it has done in coming up with customized solutions for Jamaica and by the initiatives it has undertaken to present a turnkey solution that takes into account all the infrastructure...There are therefore solid reasons why Exmar is a clear frontrunner. However, because other companies have expressed interest, if we make an announcement that we have selected Exmar there are likely to be complaints by these other companies that they were not given a fair chance to compete with Exmar on an equal footing...However, it is safe to say that Exmar would have been ranked number one...Should I invite these companies to put proposals**”

forward with respect to their technical solution, cost and time of implementation within the next month, or should we just let sleeping dogs lie?³¹ (OCG's Emphasis)

It is also instructive to note that Exmar Marine NV worked behind the scenes developing their technical and commercial proposals prior to the RFP being issued in 2009 November.

In addition to the foregoing emails, the OCG also found the following:

- i. That the LNG project was officially inactive during Mr. Ian Moore's tenure as Chairman of the PCJ Board of Director as the then Minister was pursuing another agenda. However, while the official policy agenda was coal, Mr. Stephen Wedderburn and Mr. Ian Moore were actively pursuing LNG opportunities behind the scenes.
- ii. That Mr. Stephen Wedderburn had explicitly identified his assessment of the LNG providers in respect of which he has consistently ranked Exmar Marine NV as his number one choice.

82. The OCG received an anonymous allegation, by way of an email, which was dated 2010 December 11, which stated the following:

"if you really want to find the link between moore and robertson, go back fifteen years and investigate a call bypass business – precision enterprises – that they were involved and check out an account held by moore at wachovia that is used for political funding."^[1]

Consequently, by way of written Statutory Requisitions, which were dated 2010 December 16, the OCG required the Hon. James Robertson, Minister of Energy and

³¹ Email from Mr. Stephen Wedderburn which was dated 2008 February 1, to Mr. Ian Moore.

Mining, and Mr. Ian Moore, former Chairman of the PCJ Board of Directors, to respond to the aforementioned allegations.

In the case of Mr. Ian Moore, the OCG required Mr. Moore to disclose if he and/or any entity with which he was/is associated had/has a Wachovia Bank Account.

Mr. Moore complied with the OCG's request and furnished the OCG with the relevant Bank Statements for the period of 1999 November through to 2010 December.

It is instructive to note that the sworn responses, and documentary evidence, which were provided by Minister James Robertson and Mr. Ian Moore, respectively, did not provide the OCG with sufficient evidence which would lend credence to the allegations which were made against Minister James Robertson and Mr. Ian Moore.

83. The OCG found that an independent assessment of the 'FSRU LNG Project' was undertaken by a Mr. Donald Hertzmark and a Mr. Haydn Furlonge of DMP Resources. The referenced report was dated 2010 November 3.

84. In its reports, DMP Resources indicated, *inter alia*, as follows:

- i. *A second issue concerns the absence of regulation for the entire Project, but especially for construction and economic aspects. **The consultants recommend that the GoJ task its regulator with presenting a proposed framework to the Government by early-mid-2011...***
- ii. *Uncertainty about final design parameters and gas demand prevent a detailed engineering design for the Project. **The consultants recommend that a focused economic and financial feasibility study be completed quickly leading to a final design specification for the FSRU and pipeline system.***

- *This study should ultimately lead to a more accurate cost estimate, which would feed into a more detailed and useful economic evaluation of the Project.*
 - *Further, the consultants recommend that the technical advisors be tasked with a due diligence regarding the costs of comparable physical facilities as long as the construction and equipment supply bids are based on the current limited competition.*
- iii. *Timing issues remain problematic. The consultant believe that the Project is likely to encounter delays in its current form, due in large measure to the uncertainties created by the absence of a legal structure for the gas industry in Jamaica and by continuing uncertainties over participation by Jamalco...* *Consequently, there is less financial risk if the power plants are completed earlier than the gas plant than there is from the obverse. Realistically, the new power plants are not likely to be ready to receive gas until at least mid-2014, more than 40 months from now. This is sufficient time to remedy the defects in the current process noted in this report and the consultants recommend that this extra time be employed to effect the remedies suggested for the procurement, design and regulatory sides of the Project.*
- iv. *The current active proposal for the SPV creates serious conflict-of-interest issues and could well retard the spread of gas use to other companies in the country and create negative perceptions of the degree of transparency surrounding this transaction. At the same time the consultants believe that launching an entirely new round of bidding would create negative perceptions and delays that could potentially doom the Project. Therefore, it will indeed be necessary to have the support of Jamalco and “Power Co” as launch customers. However the current process with regard to the Implementation Agreement and establishment of the SPV is deeply flawed on grounds of transparency, risks to the GOJ, sizing, technical specifications and absence of an appropriate legal*

structure. Correspondingly, the consultants recommend that the SPV be subject to the following specific remedies:

- *OUR should create regulations that become part of the setup parameters of the SPV...*
- *The studies of demand, sizing, location, cost must be improved significantly between now and mid-2011*
- *The Implementation Agreement should be executed only when there is a letter of intent to purchase gas from one or both of the launch customers and a regulatory framework for the legal basis of the gas industry in Jamaica.*
- *The SPV sponsors must be willing to provide Letters of Intent to Purchase Gas that relieve the GOJ of its exposure to gas purchase contracts and to abide by the type of regulation contained in the OUR Framework (early mid-2011). If this is not the case then the Consultants recommend that the current process be scrapped and that a new round of bidding be instituted with a separate owner-operator for the FSRU who will also undertake responsibility to purchase gas. This company would operate as a regulated monopolist and would be subject to open access requirements, as would the companion, independently owned and operated pipeline company.*³² (OCG's Emphasis)

85. By way of letter which was dated 2010 December 7, Ambassador Douglas Saunders provided the OCG with a copy of a document entitled "LNG Assessment Report: Assessment Report Comments", which was prepared by CH-IV International for the Jamaica LNG Task Force. Of note, the referenced report was not dated.

The referenced report stated, *inter alia*, the following:

"The LNG Team has critically reviewed the DMP Report, and its recommendations

³² Independent LNG Assessment Final Report which was dated 2010 November 3. A copy is appended.

and is of the opinion that the Report is not sufficiently informed nor captures the vast information developed by the LNG Team. **Should this have been possible, it would have facilitated a better understanding of the decision making process, of the rich history of studies and Front-End Engineering work done to date and the importance of adhering to the process and schedule currently underway...**

The Advisory team therefore recommends that the government of Jamaica proceed with the current strategy and plan to acquire a long term, competitive supply of LNG... ”³³ (OCG’s Emphasis)

86. It is instructive to note that at a private meeting which was convened on 2010 November 5 at the instance of the Hon. Bruce Golding, the Prime Minister of Jamaica, with the Contractor General, Greg Christie, the Prime Minister provided the Contractor General with a draft copy of the referenced LNG Assessment Report.

In the referenced meeting, the Prime Minister also expressed his concerns with regard to the Findings of the referenced Report. He informed the Contractor General, *inter alia*, that in the upcoming week he would be addressing the issue by removing the project from the current Ministry (MEM) to the Office of the Prime Minister (OPM), which would assume full responsibility for overseeing the entire project.

87. The OCG found that the Prime Minister, in a Cabinet meeting which was held on 2010 November 29, advised the Cabinet that “...he would assume overall direction for the LNG Project, and a Project Coordination Unit would be established in the Office of the Prime Minister. He also said he would convene a preliminary meeting that week with the relevant entities to arrive at a definitive position which incorporated all the factors necessary to move the Project forward...”³⁴

On 2010 December 6, the Cabinet “...agreed that the Submission should be withdrawn

³³ LNG Final Assessment Report Comments which were prepared by CH-IV International.

³⁴ Cabinet Decision No. 45/10 submitted to the OCG by the Cabinet Secretary, under the cover of letter dated 2010 December 22.

from the Agenda; and noted that the draft Implementation Agreement had been finalized and would be referred to the Project Committee established to oversee the direction of the LNG Project, along with the report from the Independent Consultants and the response thereto...”³⁵

88. It is instructive to note that the Prime Minister, the Hon. Bruce Golding, submitted Cabinet Submission No. 631/CO 10/2010, which was dated 2010 December 9, in which it was indicated that three (3) new Committees were to be established within the Office of the Prime Minister, namely, (a) Steering Committee, (b) Core Technical Team and (c) Ministerial Committee.

Further, by way of a News Release from the OPM, which was dated 2010 December 15, and which was entitled “*PM NAMES COMMITTEE AND SETS TARGET FOR LNG PROJECT*” it was reported that “*Cabinet has approved the new arrangements for the Liquefied Natural Gas (LNG) Project for which Prime Minister Bruce Golding has assumed responsibility.*”

89. The OCG further identified a letter that was prepared by the Cabinet Secretary, Ambassador Douglas Saunders, on 2010 December 9, and which was addressed to the NCC, requesting permission to use the Direct Contracting Procurement Methodology to contract Mr. Ernest Megginson as the Project Manager for three (3) months in the amount of US\$105,000.00.

The NCC, by way of a letter, which was dated 2010 December 20, endorsed the recommendation of the Cabinet Secretary, and further stated, *inter alia*, that “*The National Contracts Commission’s approval is subject to the Cabinet Office utilizing the three (3) month period to conduct a tender process aimed at procuring the services of a full Time Project Manager for the LNG Project.*”

³⁵ Cabinet Decision No. 45/10 submitted to the OCG by the Cabinet Secretary, under the cover of letter dated 2010 December 22.

90. The Cabinet Secretary, Ambassador Douglas Saunders, also wrote two (2) letters to the NCC on 2011 January 17 requesting permission to utilize the Limited Tender Procurement Methodology to procure the services of (a) LNG Commercial Services and (b) LNG Technical Services.
91. The OCG further found, by way of Notes from the Meeting of the Liquefied Natural Gas (LNG) Core Project Team which was held on 2011 January 13, that “*Mr. Megginson informed the meeting that he has requested that the representatives from CH-IV, namely, Mr. Joseph Fossella and Mr. Pat LaStrapes have been removed [sic] from the project. Discussions were ongoing regarding a replacement...*”
92. The Hon. Bruce Golding, on 2011 April 7, submitted to the Contractor General, a copy of two (2) Legal Opinions, which were dated 2011 March 24 and 29, respectively, and which were reportedly prepared by Attorney-at-Laws, Livingston, Alexander & Levy, with respect to the ‘*procurement procedures for the LNG project*’.

The first Legal Opinion, which was dated 2011 March 24, stated, *inter alia*, the following:

- i. *It is submitted that **Mr. Fossella ought not to have participated in the evaluation of the rival bids so soon after working with Exmar in the alliance up to 2009 because he would not have been able to bring an independent and open mind.***
- ii. *A review of **Stephen Wedderburn’s statements concerning Exmar clearly shows that he ought not to have participated in the evaluation process,** particularly the e-mail of the 6th September 2009 which clearly shows that he had a pecuniary interest in a project with Exmar.*

It is trite law that a person who has the proprietary or pecuniary interest in a matter should not participate in a situation where a decision has to be made concerning a party in which the participants has such an interest.

- iii. *Consequently, it is clear that the decision is tarnished as the tender process could not be considered as transparent, fair or unbiased.*
- iv. *It is manifestly clear therefore that the evaluation done by CH-IV International is incorrect as Excelebrate Energy was not a part of the Exmar Consortium...The review having stated the relationship between Exmar and Excelebrate, as joint venture partners, clearly shows that Excelebrate ought to have been invited to tender. This certainly casts a very serious and grave concern on the tender process for Exmar to have been declared the preferred bidder, when its joint venture partner who the review determined as Exmar's strength was excluded.*

The only reasonable conclusion that can be drawn is that the Request For Proposal was not sent to Excelebrate so as to exclude them.

- v. **The tender...is flawed and could not withstand scrutiny under judicial review.**

The second Legal Opinion, which was dated 2011 March 29, stated, *inter alia*, the following:

- i. *...There can be no doubt that his [Mr. Stephen Wedderburn's] views in favour of Exmar as frontrunner and other laudatory comments on Exmar would have some influence on Moore.*
- ii. *It is of paramount importance to appreciate that the Request for Proposals was issued on the 12th day of November 2009, shortly thereafter, Moore had the name of the company changed to "Caribbean LNG (Jamaica) Limited"... Thereafter, even more remarkable that when the Exmar Consortium sent in its proposals, that CLNG was a member of the Exmar Consortium. **It is therefore clearly obvious that the name change bore relationship to the submission by the Exmar Consortium.***

- iii. ...CLNG was a partner in Exmar Consortium. **Comment must also be made that it was a partner in a venture that it could not be making any substantial financial contribution to the capital expenditure thereof.** This raises the question, when was it then necessary to involve CLNG as a partner to the Consortium in an venture of this nature as far as the tender process is concerned. **Certainly, Moore's corporate profile shows that he lacks the expertise necessary to play a pivotal role in any project of this nature.**
- iv. ...It is known that other parties who should have participated were not given the opportunity to do so, as the Request For Proposals [sic] were not given to them...This is clearly as [sic] case of being biased and **was certainly designed to reduce any competition that Exmar may have had particularly from Excelerate who was the leader in the field.**" (OCG's Emphasis)

The OCG notes that the referenced Legal Opinions, which were obtained from the private Bar, support certain of the OCG's considered Conclusions which have been detailed herein. More specifically, the Legal Opinions have been able to establish a *prima facie* case of improper and irregular conduct on the part of certain present and former Public Officials/Officers and, in consequence, support certain of the OCG's Findings which are detailed herein.

93. The Office of the Cabinet, in its response to the OCG's Statutory Requisition which was dated 2011 2010 April 18, informed the OCG, *inter alia*, that "...**Meeting was held with Ministerial Sub-Committee on April 13, 2011 where the LNG Steering Committee submitted its recommendation for cancelling the former tender for the Financing, Development, Ownership, Operation of an [sic] FSRU LNG Re-gasification Terminal and Natural Gas Transmission System issued by PCJ in November 2008 and re-tender the FSRU and onshore natural gas pipelines in separate RFPs.**

94. The Office of the Cabinet, by way of its response to the OCG's Statutory Requisition, which was dated 2010 April 18, submitted a copy of a Memo that was prepared by the

Solicitor General, Mr. Douglas Leys, which was dated 2011 April 11, and which was captioned “*Opinion by Livingston Alexander & Levy concerning Tender Process for the LNG Project*”.

The referenced Memo stated, *inter alia*, that “...**I have reviewed the said opinion and am in substantial agreement with the views posited by the Attorneys...**”

The OCG found that the referenced opinion from the Solicitor General, which is the Attorney for the GOJ, supports and confirms the reasoning and substantive legal issues which were delineated in the Legal Opinions from Livingston, Alexander and Levy, private Attorneys-at-Law.

95. The OCG found that collectively, the Legal Opinions from the Solicitor General and Livingston, Alexander and Levy, Attorneys-at-Law, have unequivocally brought into sharp focus the issue of the lack of fairness and transparency in the tender process for the ‘FSRU LNG Project’. Further, the issues of a conflict of interest and the implicit use of ‘insider information’ on the part of Mr. Ian Moore, the former Chairman of the Board, PCJ, and Mr. Stephen Wedderburn, the LNG Project Coordinator, PCJ, are matters which have compromised and which have brought into disrepute the integrity, legitimacy, fairness and transparency of a poorly planned and executed tender process which was driven, in large, by the technical expertise and questionable multi-faceted and conflicted involvement of Mr. Wedderburn.
96. The OCG received a letter from Mr. Glenford Watson, Senior Legal Officer, MEM, which was dated 2010 November 11, in which he requested the OCG’s opinion with respect to whether, “... **it would be permissible for the Government to enter into an Implementation/Direct Agreement with the Project Company and the members of the Project Company (Consortium) as co-signees?** This Agreement would contain the normal boiler plate provisions expected in a project of this nature. **The intent would be to also hold Exmar and Promigas, developers of the FSRU and pipelines, respectively, directly liable for their respective operations.** This would allow the Government to look

to both the Project Company and the individual members of the Consortium for any redress...” (OCG’s Emphasis)

It is instructive to note that the OCG, by way of a letter which was dated 2010 November 16, responded to Mr. Watson’s query and stated, *inter alia*, that **“Having regard, among other things, to (a) the matters which are outlined in the OCG’s Notice of Enquiry which was dated June 22, 2010, and which was formally conveyed to your Ministry and to the PCJ, and (b) the fact that a major and extensive OCG Investigation is currently under way, it would be highly inappropriate for the OCG to render any advice to you other than for you to summarily and immediately abort the subject process.”** (OCG’s Emphasis).

It is critical to note that the referenced letter was copied to the Honourable Prime Minister, the Honourable Minister of Energy and Mining, the MEM Permanent Secretary and the Group Managing Director (Acg.) of the PCJ.

Conclusions

Based upon the sworn responses which were received from certain Public Officials/Officers within the MEM, the PCJ, the Cabinet Office and other persons of interest, who were affiliated with, and/or involved in, the LNG Project and/or the recommendation for the selection of the ‘preferred bidder’ for the ‘FSRU LNG Project’, which have been reviewed and cross-referenced, the OCG has arrived at the following considered Conclusions:

1. The OCG has concluded that since 2001, the GOJ’s energy policy has evolved significantly. The OCG has found that over the period, 2001 to 2011, the GOJ, has pursued the LNG Project at different stages and having regard to various technical considerations.

In this regard, the OCG has found that, prior to 2008, the GOJ undertook a Front End Engineering Design (FEED) study and engaged in significant research with respect to

the suitability of LNG, specifically with regard to the development of a land-based facility.

It is instructive to note that Ms. Marcia Forbes, the then Permanent Secretary, MEM, also indicated, to the OCG, that the GOJ had discussions regarding “... *land-based versus off-shore system and the implications, the pros and cons of each concerned me in terms of long-term benefits/threats to Jamaica.*”

However, during the tenure of the then Minister, Mr. Clive Mulling, coal was the preferred choice as an energy source and the LNG Project was officially halted. Hence, the LNG project was formally halted until 2009, when the present Prime Minister, the Hon. Bruce Golding, made an announcement in his Budget Presentation that Jamaica would once again be pursuing LNG.

2. The OCG has found and concluded that between the period of 2005 through to 2006, Mustang Engineering undertook a Front End Engineering Design (FEED) Study, on behalf of the PCJ, in regard to the setting up of a local land-based LNG Project.
3. Based upon the sworn documentary evidence which has been adduced to the OCG, by representatives of the PCJ and the MEM, the OCG has found, and concluded, that there were no formal pre-assessments and/or studies which were undertaken and/or conducted on behalf of the PCJ and/or the MEM for the ‘FSRU LNG Project’.
4. The OCG has concluded that both Exmar Marine NV and Merrill Lynch presented proposals to the GOJ with respect to the introduction of LNG in Jamaica. However, the GOJ did not act upon any of the referenced proposals and, instead, sought to pursue the introduction of LNG, to Jamaica, via the competitive route.

As such, a pre-qualification exercise was undertaken by the PCJ in 2007 April, and, consequently, nine (9) prospective bidders responded to an ‘Invitation to Pre-Qualify’ as LNG providers in 2007 May. However, this process was not completed.

Subsequently, in 2009 November, following upon the GOJ's resumed consideration of LNG as a viable fuel source, the Limited Tender Procurement Methodology was utilized, by the PCJ, to invite the nine (9) entities which had previously responded to the request for pre-qualification in 2007.

5. Based upon the documentary evidence which has been provided to the OCG, the OCG has found and concluded that, over the period of 2001 to 2009, Exmar Marine NV has been actively seeking to introduce LNG in Jamaica.

In point of fact, Exmar Marine NV made unsolicited overtures to the PCJ, in 2007, to develop LNG facilities in Jamaica and held discussions with GOJ officials during the period of time in which there was an ongoing debate regarding the benefits of coal versus LNG and CNG, as alternative energy sources.

Exmar Marine NV also informed the OCG that it had its first meeting with the then Minister of Foreign Affairs and Foreign Trade in Brussels, Mr. Anthony Hylton, in 2006 December and, for the first time, was made aware of the potential interest of Jamaica in the FSRU Technology.

Subsequently, in 2007 March, following upon a presentation by Exmar Marine NV, a 'Mandate' was signed between the GOJ and Exmar Marine NV. The referenced 'Mandate' authorized Exmar Marine NV to act as an agent for and/or on behalf of the GOJ, to assist it in the purchasing of LNG and/or natural gas. In the same year, Exmar Marine NV participated in the 2007 Pre-Qualification exercise which was initiated by the PCJ.

However, after the Pre-Qualification process was halted, Exmar Marine NV stated that it continued "...unsolicited meetings in respect of sharing ideas on the feasibility of importing LNG and natural gas use in Jamaica..."

Further, the OCG found that Exmar Marine NV held meetings with representatives of

the PCJ at the Gastech Conference on 2008 March 10-13, in Bangkok. Of import, is the fact that the GOJ Representatives who were involved in the referenced Conference included Mr. Ian Moore, the then Chairman of the Board of Directors of the PCJ and current Director of CLNG – the local Jamaica corporate partner in the Exmar Consortium, Mr. Stephen Wedderburn, LNG Project Coordinator, and Mr. Patrick Dallas, Advisor to the then Minister, Mr. Clive Mullings.

6. The OCG has found, and concluded, that, in 2009 June, Exmar Marine NV held a meeting with the Minister of Energy and Mining, the Hon. James Robertson, the then Permanent Secretary, Ms. Marcia Forbes, representatives of Promigas, Merrill Lynch and EDC LNG, now known as CLNG (Jamaica) Ltd., and that **“The goal of the meeting was to advise the Government of the intent to conduct the pre-feasibility studies to determine the economic and technical viability of developing a private project to import LNG and supply natural gas for use by private bauxite sector entities.”**³⁶(OCG Emphasis)

The OCG has also concluded, based upon the documentary evidence with which it is seized, that in 2009 July, Exmar Marine NV met with representatives of the MEM and presented “... **the approach that would be taken by the group to demonstrate the feasibility of providing LNG to the bauxite sector.**”³⁷

7. The OCG has found and concluded that the company, EDC LNG Limited (which was renamed Caribbean LNG (Jamaica) Limited on 2009 December 8), was incorporated in Jamaica on 2009 June 19.
8. The OCG has also found and concluded that the Directors and the three (3) majority beneficial shareholders of Caribbean LNG (Jamaica) Limited are as follows:
 - i. Mr. Ian Moore, former Chairman of the PCJ Board of Directors;

³⁶ Response from Exmar Marine NV, which was dated 2010 December 22. Response #4

³⁷ Response from Exmar Marine NV, which was dated 2010 December 22. Response #4

- ii. Mr. Paul East; and
 - iii. 'Mr. Al Kerr', otherwise known as Mr. Conrad Kerr, former Global Head of LNG, Merrill Lynch.
9. Based upon the documentary evidence which has been presented to the OCG, the OCG has found and has been led to conclude the following:
- i. That a MOU was signed between CLNG and Promigas on 2009 July 17.
 - ii. That a MOU was signed between CLNG and Exmar Marine NV on 2009 July 22.
 - iii. That a MOU between Exmar Marine NV, Promigas S. A., and CLNG was signed on 2010 February 15, the same date as the extended deadline for the submission of the bids for the 'FSRU LNG Project'. The referenced MOU of 2010 February 15, had replaced the two (2) previous MOU's.
10. The OCG is of the considered opinion that the company, Caribbean LNG (Jamaica) Limited was formed for the sole purpose of the 'FSRU LNG Project'. This is based upon (a) the nature of the company and the date on which it was formed; (b) the fact that approximately one (1) month after the incorporation of the company, two (2) MOU's were signed between EDC LNG (the then name of the company) and Promigas and Exmar Marine NV, on 2009 July 17 and 22, respectively, (c) the fact that despite being formed in 2009 June, EDC LNG, on its own apparent initiative, was able to successfully undertake and complete a feasibility study, by 2009 October, in regard to the introduction of FSRU LNG technology to Jamaica, and (d) the fact that a qualification requirement of the RFP, which was issued in 2009 November, was that the potential bidder ought to have the '*use of local expertise*'.
11. The OCG has concluded that the GOJ, through the PCJ, utilized the GOJ Public Sector Procurement Procedures (2008 November), in accordance with the Limited Tender Procurement Methodology, to contract a suitable provider for the 'FSRU LNG Project'.

In this regard, the NCC, by way of a letter which was dated 2009 November 5, endorsed the proposal of the MEM to utilize the Limited Tender Procurement Methodology to invite the nine (9) entities, which had submitted applications for Pre-Qualification in 2007 May, to re-submit proposals for the 'FSRU LNG Project'.

12. The OCG found that the MEM and the PCJ received certain approvals from the PCJ Procurement Committee, the PCJ Board of Directors, the NCC and the Cabinet in respect of the 'FSRU LNG Project'.

However, the OCG found that the then PCJ Board of Directors expressed several concerns with respect to the manner in which approvals were being requested for the referenced project. In point of fact, the Minutes of the PCJ Board of Directors which was dated 2009 December 10, indicated that the approval from the Cabinet preceded the approval from the Procurement Committee "*...and the Committee could not interfere with Cabinet's decision...*"

Further, the Minutes of the Meeting of the PCJ Board of Directors, which was held on 2009 December 22, indicated, *inter alia*, that "*...the Board took a decision that if an application was received for extension then the Board would consider it...that has not been done and yet there are letters going out indicating that a decision was taken to grant an extension after consultation with the PCJ and with the Ministry.*"

The foregoing has led the OCG to conclude that there was indeed irregularity with respect to at least one (1) component of the approval process for the 'FSRU LNG Project'. In point of fact, the OCG has concluded that the very approval process itself was improper due to the fact that the approval of PCJ Board of Directors was circumvented.

13. The OCG has concluded that the MEM and the PCJ breached Sub-section S-3100 of the GOJ Public Sector Procurement Procedures (2008 November) which provides, *inter alia*, that "**All adopted sub-criteria should be specified in the RFP...** *If points*

allocated to these sub-criteria are not disclosed in the RFP, the Evaluation Committee should allocate them before proposal submission, to reduce the risk of manipulations during the evaluation process...”

In this regard, the OCG found that the PCJ and/or the MEM, did not provide the potential bidders with the amended evaluation criteria, as detailed in the ‘Review Matrix’, which was dated 2010 February 12. It should be noted that the referenced ‘Review Matrix’ was dated three (3) days before the deadline for the submission of bids on 2010 February 15.

14. The OCG has concluded that the initial oversight structure which was established, within the PCJ, to guide the ‘FSRU LNG Project’, did not promote the principles of good corporate governance.

In this regard, the OCG found that at least three (3) of the members of the PCJ Board of Directors served on the LNG Task Force, which is not a part of the approved PCJ Corporate Governance structure, and the LNG Evaluation Committee. Further, there were instances in which the PCJ Board of Directors raised concerns with respect to the decision-making process for the ‘FSRU LNG Project’.

Further, the OCG has found and concluded that the PCJ was responsible for the implementation of the ‘FSRU LNG Project’. However, the parent Ministry, the MEM, had direct responsibility with regard to the overall policy guideline for the project.

The OCG has not seen any evidence to suggest that any of the Accounting and/or Accountable Officers within the MEM and/or the PCJ took effective and decisive steps to ensure good corporate governance in the reporting structure which was established to guide the ‘FSRU LNG Project’.

15. The OCG is of the considered opinion, and has concluded, herein, that Mr. Stephen Wedderburn’s (a) prior involvement and/or affiliation with Exmar Marine NV and Mr.

Joseph Fossella, a representative of CH-IV International and (b) current involvement in guiding the Tender process for the 'FSRU LNG Project', has compromised the integrity of the entire 'FSRU LNG Project'.

The OCG's Conclusion is premised, *inter alia*, upon the following:

- i. Mr. Stephen Wedderburn, in 2009, in his then private and personal capacity, had submitted a proposal to the MEM in which he recommended, *inter alia*, that the formal GOJ procurement procedures be by-passed in order to expedite the LNG project.

The OCG also found another instance in which Mr. Arthur Ransome of CH-IV International indicated that, based upon the recommendation of Mr. Stephen Wedderburn, CH-IV International subcontracted Mr. Joseph Fossella's company, Clean Skies, in order to by-pass the stringencies of the GOJ's procurement process.

- ii. Mr. Stephen Wedderburn, in several pieces of written correspondence, has consistently identified Exmar Marine NV as a company with which the GOJ should negotiate in regard to the LNG Project. In point of fact, Mr. Wedderburn, on 2008 May 16, ranked several of the prospective LNG providers and placed Exmar Marine NV as the number one contender. Such a ranking was undertaken by Mr. Wedderburn prior to an actual tender process and is, without question, indicative of a demonstrated bias towards Exmar Marine NV.
- iii. Questions are also raised with respect to Mr. Stephen Wedderburn's relationship with Mr. Joseph Fossella who was instrumental in the evaluation of the bids for the 'FSRU LNG Project'. Mr. Fossella is a former employee of Black & Veatch and the proprietor of Clean Skies LLC. Further, the OCG has found, based upon the documentary evidence, that Mr. Wedderburn has taken credit for introducing Exmar Marine NV to Black & Veatch.

Incidentally, the OCG has also found and concluded that Mr. Fossella was a part of the ‘negotiating team’ for and on behalf of Black & Veatch, which led to the formation of an alliance between Exmar Marine NV and Black & Veatch.

- iv. Prior to the PCJ’s Board of Directors deliberations on 2009 December 22, for the re-engagement of CH-IV International, Mr. Stephen Wedderburn had exchanged several pieces of correspondence with representatives of CH-IV International and Clean Skies and passed information to CH-IV International with respect to the PCJ Board of Directors’ discussion in regard to the requirements for the technical services for the ‘FSRU LNG Project’.
- v. Having regard to the foregoing, it is instructive to note that Mr. Stephen Wedderburn disclosed to the PCJ his pecuniary interest in a project in which Exmar Marine NV was involved. However, the OCG has found no evidence to suggest that Mr. Stephen Wedderburn disclosed his relationship with Mr. Joseph Fossella, a sub-contractor of CH-IV International, who was actively involved in the Evaluation of the Bids for the ‘FSRU LNG Project’.

Based upon the foregoing, the OCG has concluded that Mr. Stephen Wedderburn’s actions were professionally unethical, tantamount to a flagrant conflict of interest and, in consequence, breached Sub-Section S-1040 of the Revised GOJ Public Sector Procurement Procedures (2008 November).

The OCG’s conclusions and concerns are further compounded by the fact that Mr. Stephen Wedderburn, in his sworn response to the OCG, asserted that “*As LNG Project Coordinator I am responsible for overseeing the day-to-day activities of the LNG Project and acting as the focal point for communications in respect of the project. In respect of procurement activities this includes drafting RFPs and issuing these RFPs once they have been approved, handling bidders’ queries and drafting clarification responses.*”

The foregoing puts it beyond doubt that, due to Mr. Stephen Wedderburn's prior associations and demonstrated bias, and the critical role which he has played in the 'FSRU LNG Project', the entire integrity of the tender process has been compromised, brought into disrepute and is tainted by a conflict of interest and a gross lack of objectivity which has been evidenced, *inter alia*, by certain email correspondence which were either written by or sent to Mr. Stephen Wedderburn.

16. The OCG has concluded that Exmar Marine NV had a distinct advantage over the other potential bidders for the 'FSRU LNG Project' as a result of the extensive work which it undertook with respect to introducing LNG to Jamaica since 2006.

In point of fact, prior to the commencement of the tender period in 2009 November, Exmar Marine NV had meetings with EDC LNG (now CLNG) and Promigas (now members of the Exmar Consortium), in which it was disclosed that they were undertaking a pre-feasibility study to “...**determine the economic and technical viability of developing a private project to import LNG and supply natural gas for use by private bauxite sector entities.**”³⁸ (OCG Emphasis)

It must be reiterated that EDC LNG (now CLNG) is the company which was formed by Mr. Ian Moore, former PCJ Board Chairman, and other interested parties in 2009 June.

Further, and having regard to the fact that Exmar Marine NV was also privy to information which was not made available to the other bidders and was afforded the privilege of having an ongoing working relationship with representatives of the PCJ, in the persons of Mr. Stephen Wedderburn and Mr. Ian Moore, the involvement of Exmar Marine NV in the tender process was highly irregular and unfair to the other bidders which were involved in the process.

Consequently, the foregoing initiative would have given the Exmar Consortium a distinct, and hence, irregular, improper and unfair advantage in the tender process.

³⁸ Response from Exmar Marine NV, which was dated 2010 December 22. Response #4

17. The OCG has concluded that the overall tender process for the ‘FSRU LNG Project’ has been compromised having regard, *inter alia*, to the following:

- i. Mr. Ian Moore, during his tenure as the PCJ Board Chairman, was, at a minimum, (a) privy to information with respect to the possibilities of introducing LNG to Jamaica; (b) privy to discussions which Mr. Stephen Wedderburn had with Mr. Bart Lavent of Exmar Marine NV; (c) found to have requested information from Mr. Stephen Wedderburn regarding, *inter alia*, the feasibility of LNG to Jamaica; and (d) attended several meetings and had numerous discussions with potential bidders.
- ii. Subsequently, after Mr. Ian Moore’s tenure ended as the Chairman of the PCJ Board of Directors in 2008 November, he established the company, EDC LNG (now CLNG), approximately seven (7) months after. EDC LNG (now CLNG) subsequently formed a business partnership with the said Exmar Marine NV, which was found to have been lobbying for the introduction of LNG to Jamaica from 2006. The CEO of EDC LNG (now CLNG), Mr. Conrad Kerr, happens to be the former Global Head of LNG for Merrill Lynch, a company that (a) proposed to joint venture with the GOJ for the introduction of LNG to Jamaica, albeit being rejected; and (b) had had several meetings and discussions with Mr. Bart Lavent of Exmar Marine NV, in respect of which both Mr. Stephen Wedderburn and Mr. Moore were informed.
- iii. Mr. Stephen Wedderburn was also found to have played a key role in establishing (a) the alliance between Exmar Marine NV and Black & Veatch and (b) the sub-contract between Mr. Joseph Fossella’s company, Clean Skies LLC, and CH-IV International.

Of note, is the fact that Mr. Joseph Fossella was the former Vice President, Business Development for Black & Veatch and had also worked with the company, as a Consultant, up to April 18, 2009. The OCG has also found that Mr.

Fossella played an integral role in the evaluation of the bids for the ‘FSRU LNG Project’. Mr. Fossella was further found to have “...started the LNG Liquefaction Alliance Project between Black & Veatch, Excelerate and Exmar, and worked on the project for six or seven months up to his retirement.”

- iv. Mr. Stephen Wedderburn was also found to have played a key role in establishing (a) the alliance between Exmar Marine NV and Black & Veatch and (b) the sub-contract between Mr. Joseph Fossella’s company, Clean Skies LLC, and CH-IV International. Mr. Fossella was further found to have “...started the LNG Liquefaction Alliance Project between Black & Veatch, Excelerate and Exmar, and worked on the project for six or seven months up to his retirement.”
- v. Exmar Marine NV, having been identified as trying to introduce LNG to Jamaica since 2006, was found to have been considerably more favoured over the other bidders. Further, the Exmar Consortium was found to have been at an advantage with respect to the preparation of a proposal, as Exmar Marine NV’s previous proposal was used as a benchmark for the ‘FSRU LNG Project’. The OCG’s conclusion is buttressed by the fact that the Exmar Consortium was the only bidder that did not request an extension of the submission deadline.

18. The OCG has concluded that there are several questions which have been raised with respect to the Exmar Consortium’s capabilities to fulfill the requirements for the ‘FSRU LNG Project’, specifically with respect to its abilities to (a) design and build any fixed infrastructure facilities; and (b) to commercially operate the vessels.

The OCG’s foregoing conclusion is premised upon the fact that Exmar Marine NV has substantially partnered with Excelerate Energy LP on projects of a similar nature. In this regard, Mr. Shaun Davison of Excelerate Energy LP, asserted that Exmar Marine NV (a) operated the vessels, on behalf of Excelerate Energy LP, by providing physical crew; (b) did not design or build any fixed infrastructure facility; (c) does not control

operationally or commercially the vessels; and (d) does not have the technology patents.

Further, the OCG found that CH-IV International evaluated the strength of the Exmar Consortium with respect to the partnership between Exmar Marine NV and Excelerate Energy LP. However, of import is the fact that Excelerate Energy LP is not a part of the Exmar Consortium.

Also, and quite importantly, is the fact that CH-IV International, in assessing the specific experience and capabilities of the Exmar Consortium, in relation to the assignment, did not undertake an independent assessment of Exmar Marine NV's capabilities outside of its partnership with Excelerate Energy LP.

Therefore, the OCG is unable to state definitively whether Exmar Marine NV, on its own, is capable of performing the required tasks for the 'FSRU LNG Project', given that a substantial portion of its experience has been in partnership with Excelerate Energy LP.

19. The OCG has concluded that the evaluation process, which led to the recommendation to award the contract to the Exmar Consortium, was flawed. This is premised, *inter alia*, upon the following:

- i. The Technical Consultants, CH-IV International, in assessing the proposal from the Exmar Consortium, utilized information which was not presented in the Consortium's bid. In this regard, CH-IV indicated in its report that **"...information obtained from their websites demonstrate clearly the nature of the joint venture between Exmar and Excelerate in terms of development, construction, management and operation of the LNGRV fleet."**

- ii. The Technical Consultants, CH-IV International, evaluated the strength of the Exmar Consortium with respect to the partnership between Exmar Marine NV and Excelerate Energy LP. However, Excelerate Energy LP is not a part of the Exmar Consortium.

- iii. The Technical Consultants, CH-IV International, in assessing the specific experience and capabilities of the Exmar Consortium, in relation to the assignment, did not undertake an independent assessment of the Exmar Marine NV's capabilities outside of its partnership with Excelerate Energy LP.

Consequently, the OCG is unable to substantiate the recommendation which was made to award the contract to the Exmar Consortium based upon the flaws which have been identified above.

20. Notwithstanding the initiative of Exmar Marine NV, during 2008, there was significant sharing of information between Exmar Marine NV, Mr. Stephen Wedderburn, Mr. Conrad Kerr and Mr. Ian Moore with respect to Exmar Marine NV's lobbying for the introduction of LNG in Jamaica.

During the tenure of Mr. Ian Moore as the Chair of the PCJ Board of Directors (2007 December to 2008 November), the LNG Project was purportedly inactive. However, the documentary evidence which has been provided to the OCG suggests that Mr. Ian Moore and Mr. Stephen spearheaded an initiative to steer the GOJ's energy policy away from coal to LNG.

Consequently, the OCG found that a relationship between Mr. Bart Lavent of Exmar Marine NV, Mr. Stephen Wedderburn, Mr. Conrad Kerr and Mr. Ian Moore developed, wherein the named parties collaborated in an effort to promote LNG.

Having regard to the foregoing, the OCG is of the considered opinion that Mr. Stephen

Wedderburn's involvement in the LNG project (a) created a conflict of interest situation specifically with respect to the roles and responsibilities which were assigned to him during the tender process and (b) raised questions of impropriety and irregularity. The OCG's conclusion is also premised upon the following:

- i. Mr. Wedderburn was instrumental in developing the RFP which was issued to the prospective bidders on 2009 November 12 and 13. It should be noted that the RFP was drafted in the absence of a comprehensive project plan for the 'FSRU LNG Project'. In this regard, Mr. Wedderburn, in the Meeting of the PCJ Board of Directors, which was held on 2009 December 10, indicated that *"...the team did not really have a master plan, so it is looking for the proposals to come and then dissect from there adding that he was waiting on the proposals to guide him in terms of plans for the project..."*
- ii. Further, the RFP which was prepared by Mr. Stephen Wedderburn, and the LNG Task Force, amongst others, was alleged to have been rushed for same to be issued by 2009 November. In this regard, it was reported by Mr. Nigel Logan, the Acting Group Managing Director, PCJ, that the RFP *"...was sent to the members of the Procurement Committee by email...for the Committee to approve, for it to be sent out that same day by midnight... **the Procurement Committee of course would not have been able to meet at such short notice and essentially did not have a chance to read over the RFP,** before it went out..."*

Having regard to the foregoing, the OCG found that the RFP was not duly approved by the PCJ Procurement Committee prior to it being issued.

- iii. It was reported that Mr. Stephen Wedderburn, who was not supposed to have been involved in the process for the evaluation of the bids, was present at several of the meetings of the LNG Technical Evaluation Committee in which the Chairman, Dr. Audley Darmand, indicated that Mr. Wedderburn's

presence was necessary as he was required to develop the *'instrument of measure'*.

Of note, Mr. Stephen Wedderburn was fully aware that his involvement in the evaluation process would have been unethical as he stated in an email to Dr. Ruth Potopsingh, which was dated 2009 September 6, prior to his official re-engagement at the PCJ, *inter alia*, that "... it has already been decided that I would not be involved in the evaluation of any LNG FSRU proposals for Jamaica. I therefore hope that people are not creating a red herring out of this matter. I also note that my involvement in the Colombia project was widely known by officials of the Ministry, PCJ and JBI long before I was approached to assist with the Jamaican project..."

- iv. By way of an email which was dated 2008 January 23, Mr. Stephen Wedderburn also informed Mr. Ian Moore and Mr. Conrad Kerr, amongst others, that "...PCJ wants the Exmar proposal to be treated as the base case for the implementation of the LNG project in Jamaica..."

- 21. The OCG has concluded that Merrill Lynch had approached the GOJ in 2007 proposing a willingness to be a joint venture partner in developing the LNG project. However, the proposal was rejected by the GOJ.

The OCG further found that representatives from Merrill Lynch, namely, Mr. Conrad Kerr, then Global Head of LNG, Mr. Stephen Hanan and Mr. Andrew Gray (Chief Operating Officer – Latin America & the Caribbean), communicated with Mr. Stephen Wedderburn, during the period. There were several pieces of email correspondence which were identified, by the OCG, which indicated that Merrill Lynch had discussions and meetings with Mr. Bart Lavent, Director - LNG, Exmar Marine NV, with respect to the LNG Project in Jamaica.

In at least one instance, the OCG found that information was being shared on the “...existing and potential future LNG demand at the various prospective end-users in Jamaica”, between Mr. Stephen Wedderburn, Mr. Conrad Kerr, and Mr. Bart Lavent, amongst the other referenced representatives of Merrill Lynch.

Having regard to the foregoing, the OCG found that information was being shared between both Mr. Conrad Kerr and Mr. Ian Moore, who are now Directors and Shareholders of CLNG, a partner company of the Exmar Consortium, and Mr. Stephen Wedderburn, within the period of 2007 to 2008. Further, the said information was being shared with Mr. Bart Lavent of Exmar Marine NV.

The OCG is of the considered opinion that the apparent working relationship which existed between the named individuals, which involved the sharing of information regarding LNG, and the subsequent establishment of a corporate entity, CLNG, in 2009, by Mr. Conrad Kerr and Mr. Ian Moore, which is a principal member of the consortium which submitted a bid for the ‘FSRU LNG Project’, has compromised the entire LNG Project.

It is abundantly clear from the documentary evidence that both Mr. Ian Moore and Mr. Conrad Kerr, who have now partnered with the preferred bidder, the Exmar Consortium, via the formation of CLNG, were, in their then respective substantive capacities, involved in some form of information trading with a representative of Exmar Marine NV, a company which has been lobbying for the introduction of LNG to Jamaica from as early as 2006.

The OCG is of the considered opinion that the collective fact circumstances surrounding the events, meetings, networking, and subsequent business ventures which have developed between the named individuals, rises above mere coincidence and closely resembles that of a contrived and collusive collaborative effort which was driven by their knowledge of Jamaica’s prospective requirements for LNG based upon

information which was previously garnered by the named persons in their then respective employment capacities.

22. The OCG identified an email from Mr. Stephen Wedderburn, which was dated 2008 January 23, that was addressed to Mr. Stephen Hanan of Merrill Lynch, and which was copied to Mr. Ian Moore and other representatives from Merrill Lynch, in which Mr. Wedderburn stated, *inter alia*, that “...**PCJ wants the Exmar proposal to be treated as the base case for the implementation of the LNG Project in Jamaica and the proposal being developed for the Prime Minister should reflect this...**”

The foregoing statement made by Mr. Stephen Wedderburn suggests that the ‘implementation’ of the LNG Project to Jamaica was tailored in accordance with a proposal of Exmar Marine NV.

The OCG further found, by way of an email which was dated 2008 January 9, from Mr. Stephen Wedderburn to Mr. Ian Moore and Mr. Conrad Kerr, amongst other, that the Exmar Marine NV had given a presentation on “...*an adjusted proposal from Exmar...*” which was attached to the referenced email.

Having regard to the foregoing, the OCG is of the view that once the referenced proposal was used as a base-case for the implementation of the LNG Project, by whatever means, the entire ‘FSRU LNG Project’ would have been compromised and skewed in favour of Exmar Marine NV and, consequently irregular, improper and unfair to the other bidders.

23. The OCG has concluded that the Accounting and Accountable Officers within the MEM and the PCJ, whilst having knowledge of Mr. Wedderburn’s prior affiliation with Exmar Marine NV, allowed Mr. Stephen Wedderburn to (a) participate in the process which preceded the evaluation of the bids, (b) serve on the decision-making Committees/Task Forces for the ‘FSRU LNG Project’ and (c) communicate with the potential bidders during the tender process with respect to the ‘FSRU LNG Project’.

The OCG has, therefore, concluded that the Accounting and Accountable Officers of the MEM and the PCJ were complicit in their duties as it regards mitigating and/or preventing the conflict of interest situation in which Mr. Stephen Wedderburn has become embroiled.

24. The OCG has concluded that the re-engagement of CH-IV International was highly irregular, improper and breached the GOJ Public Sector Procurement Procedures.

This is premised upon the fact that (a) the NGC of Trinidad and Tobago was also a party to the 2005 contract with the PCJ and CH-IV International; and (b) the scope of work which was required by the technical consultant for the 'FSRU LNG Project' was different from the scope of work which was detailed in the 2005 contract.

Consequently, the new contract which was signed with CH-IV International, in 2010 April, included the development and utilization of a 'Review Matrix' which effectively increased the consultant's scope of works.

Having regard to the changes to the parties in the contract and the increased scope of works, the OCG is of the considered opinion that the PCJ should have initiated a new tender process for the Technical Advisors. However, having failed to undertake this new tender process, the PCJ should have, at a minimum, sought the approval of the NCC and the Cabinet with respect to the variation of the contract pursuant to Sub-section S-2040 of the GOJ Public Sector Procurement Procedures.

25. The OCG has, therefore, concluded that the re-engagement of the Technical Consultants, CH-IV International, was done in contravention of Section S-2040 of the GOJ Public Sector Procurement Procedures (2008, November).
26. The OCG has concluded that Mr. Ian Moore, on one of his official trips in March 2008, held discussions with Exmar Marine NV with respect to the introduction of LNG in Jamaica.

The OCG, having considered the information which was provided to it, herein concludes that a relationship seems to have been fostered between representatives of Exmar Marine NV, Mr. Stephen Wedderburn and Mr. Ian Moore during the period 2007 December to 2008 November, wherein, all the named parties were working together and sharing ideas on the feasibility of LNG and natural gas in Jamaica. This relationship is demonstrated by the numerous email correspondence which continued to be exchanged up to the time at which Mr. Ian Moore demitted office from the PCJ, in 2008 November, as the company's chair.

27. With respect to the role, involvement and/or affiliation of the former Chairman of the PCJ Board of Directors, Mr. Ian Moore, in the overall LNG project, the OCG has made the following determinations:

- i. During Mr. Ian Moore's tenure he actively sought to promote LNG and was in communication with Mr. Stephen Wedderburn and Mr. Bart Lavent of Exmar Marine NV.
- ii. Mr. Ian Moore's active lobbying for LNG involved the attendance of several meetings with LNG stakeholders such as Golar LNG, Merrill Lynch and Exmar Marine NV.
- iii. Mr. Ian Moore's active lobbying for LNG occurred at a time when the LNG project was officially halted as the then Minister, Mr. Clive Mullings, was pursuing coal as the preferred fuel choice for Jamaica.
- iv. Mr. Ian Moore, as the then Chairman of the PCJ Board of Directors, working in conjunction with Mr. Stephen Wedderburn, was sufficiently provided with a wealth of information regarding LNG and the prospects for LNG in Jamaica.
- v. During Mr. Ian Moore's tenure, Exmar Marine NV continued its courting of the GOJ with respect to the introduction of LNG in Jamaica.

Consequently, the OCG has concluded that Mr. Ian Moore, during his tenure at the PCJ (2007 December to 2008 November), (a) worked with Mr. Stephen Wedderburn to promote LNG in Jamaica; (b) gained a wealth of knowledge on LNG and was exposed and/or had access to the propriety information which the GOJ had in its custody with respect to LNG; (c) came into contact with representatives of Exmar Marine NV and Mr. Conrad Kerr, formerly of Merrill Lynch; and (d) participated in at least one (1) GOJ funded trip in which he held discussions with representatives of Exmar Marine NV with respect to introducing LNG in Jamaica.

28. Having regard to (a) Mr. Moore's lobbying for LNG during his tenure as Chairman of the PCJ Board of Director, and (b) the apparent mutual working relationship between Mr. Bart Lavent of Exmar Marine NV, Mr. Stephen Wedderburn and Mr. Ian Moore, several questions of impropriety and irregularity with respect to bidding process are raised.

This is premised, *inter alia*, upon the following:

- i. Approximately seven (7) months after demitting office at the PCJ in 2008 November, Mr. Ian Moore became the Majority Beneficial Shareholder of EDC LNG (now CLNG) on 2009 June 19.
- ii. The OCG found that the company Caribbean LNG (B.V.I.) Limited, the primary Shareholder of CLNG (Jamaica) Limited, was incorporated on 2009 December 22, approximately one (1) month after the issuance of the RFP for the 'FSRU LNG Project'.
- iii. The sole Shareholders of the company, Caribbean LNG (B.V.I.) Limited, are Mr. Ian Moore and Mr. Paul East.
- iv. CLNG and Promigas, another party to the Exmar Consortium, signed a MOU on 2009 July 17.

- v. CLNG and Exmar Marine NV signed a MOU on 2009 July 22.
- vi. Exmar Marine NV, Promigas and CLNG, signed a MOU replacing all other MOUs on 2010 February 15, the same day which was the deadline for the submission of the bids for the 'FSRU LNG Project'.
- vii. In 2009 June, Exmar Marine NV indicated that a meeting was held with Mr. James Robertson and the then Permanent Secretary, Ms. Marcia Forbes and EDC LNG (now CLNG) to advise the GOJ of its intent to conduct a pre-feasibility study to determine the economic and technical viability of a private project to import LNG and supply natural gas.

It is instructive to note that Mr. Ian Moore, in his response to the OCG's Requisition of 2010 December 3, indicated that EDC LNG (now CLNG) engaged an engineering firm called Bechtel Oil and Gas in 2009 July to conduct the pre-feasibility study.

- viii. EDC LNG (now CLNG) completed a pre-feasibility study in 2009 October on its own volition which was one (1) month prior to the issuance of the RFP in 2009 November.
- ix. Coincidentally, Exmar Marine NV was the only company which did not request an extension of time for submitting its bid.
- x. By way of an email which was dated 2008 January 23, Mr. Stephen Wedderburn informed Mr. Ian Moore and Mr. Conrad Kerr, amongst others, that "...PCJ wants the Exmar proposal to be treated as the base case for the implementation of the LNG project in Jamaica..."
- xi. Mr. Stephen Wedderburn, in a meeting at the PCJ Board of Directors, which was held 2009 December 10, indicated that the Team did not have a master plan for

the project and, as such, was looking for the proposals which would be received in response to the RFP to guide the plan for the project.

- xii. Mr. Conrad Kerr, a director and shareholder of CLNG, who was also in communication with Mr. Ian Moore, during his tenure as Chairman of the PCJ Board of Directors, and Mr. Bart Lavent of Exmar Marine NV, was an executive employee of Merrill Lynch at the time that Merrill Lynch had submitted a proposal to the GOJ with respect to LNG, albeit that Merrill Lynch's proposal was rejected by the PCJ.

29. Mr. Ian Moore, in his capacity as a Director and Majority Beneficial Shareholder of CLNG, indicated in his sworn response to OCG's Statutory Requisition, which was dated 2010 December 3, that "**There was no approved and/or active LNG Project during my tenure at the PCJ.** *The entire period of my tenure was consumed by an ongoing debate between the merits of coal and LNG as an energy source.*"

Mr. Moore further indicated to the OCG that "*The PCJ Board of Directors, as a whole, received recommendations from the Petroleum Corporation of Jamaica (PCJ) Procurement Committee for review and endorsement by the Board, as appropriate, and on-ward recommendation to the Ministry of Mining and Energy (MEM) PC.*"

Upon a review of the Minutes of the PCJ Board of Directors, during Mr. Ian Moore's tenure, the OCG found that the LNG Project was only mentioned in the formal Minutes of the PCJ's Board of Directors on two (2) occasions.

However, and despite the sworn assertions of Mr. Ian Moore, the OCG has seen evidence of several pieces of email correspondence, in 2008, which revealed that Mr. Ian Moore, during his tenure, was in frequent communication and attended several meetings, with Mr. Stephen Wedderburn, then Group Technical Director, PCJ, Mr. Conrad Kerr, then Global Head of LNG, and other representatives of Merrill Lynch,

Mr. Bart Lavent of Exmar Marine NV, and other individuals, with respect to lobbying for LNG in Jamaica.

In at least one instance, Mr. Stephen Wedderburn was identified as requesting information, for and on behalf of Mr. Ian Moore, regarding the “*Floating Energy Solution concept*” and, amongst other things, enquiring how long it would take for same to be delivered.

The OCG also found evidence to indicate that Mr. Stephen Wedderburn advised and updated Mr. Ian Moore in regard to developments and issues which concerned LNG, and in particular, provided Mr. Ian Moore with information which was continuously being shared between Mr. Bart Lavent of Exmar Marine NV and himself (Mr. Stephen Wedderburn).

In addition, the OCG was also provided with information from Mr. Nigel Logan, Acting Group Managing Director, PCJ, which indicated that the PCJ incurred expenses in the sum of \$24,430,345.82 and \$1,829,198.42 in the years 2007 and 2008, respectively, in regard to the LNG Project.

Irrespective of Mr. Ian Moore’s statement that “**There was no approved and/or active LNG Project during my tenure at the PCJ**”, the fact circumstances and documentation which have been provided to the OCG sharply contradict such an assertion. It is the OCG’s considered opinion that (a) since email correspondence was being exchanged between Mr. Ian Moore, Mr. Stephen Wedderburn and Mr. Bart Lavent of Exmar Marine NV, regarding the feasibility of LNG in Jamaica, (b) the PCJ was expending money during the tenure of Mr. Ian Moore, and (c) since Mr. Ian Moore was in fact copied on certain emails, he would have been privy to ongoing considerations and discussions. In this regard, Mr. Moore’s assertions raise serious questions regarding the credibility of such a response and whether the LNG was in fact inactive as has been suggested.

30. For the period of 2003 to 2010, the PCJ expended a total of \$251,408,280.88 with respect to the LNG Project.

It is instructive to note that of this amount, an aggregated value of \$16,345,677.61 was expended on *'Travel Expenses (Foreign)'* and \$212,353,624.67 was spent on *'Consultancy Fees (Foreign)'*.

Further, of the \$212,353,624.67 which was expended on *'Consultancy Fees (Foreign)'* Mustang Engineering was paid \$96,608,451.25 between the period of 2005 to 2007. It is instructive to note that the FEED Study which was undertaken by Mustang Engineering was for a *'land-based facility'* and not the *'FSRU LNG Project'*.

Pursuant to the 2010 April 8 contract between PCJ and CH-IV International, Mr. Nigel Logan, Acting Group Managing Director, PCJ, in his response to the OCG's Statutory Requisition, which was dated 2011 February 15, indicated, *inter alia*, that the contract "... is for US\$387,000 of which **US\$425,923.02** has been paid."

31. Given the fact that during Mr. Ian Moore's tenure the official GOJ Energy Policy was geared towards coal, and Mr. Ian Moore's sworn assertion that "**There was no approved and/or active LNG Project during my tenure at the PCJ**", the OCG is unable to determine (a) on whose behalf Mr. Stephen Wedderburn and Mr. Ian Moore were working in all instances; and (b) under whose Authority both gentlemen were sharing information and/or correspondence with, *inter alia*, Mr. Conrad Kerr and Mr. Bart Lavent of Exmar Marine NV.

Consequently, the OCG is unable to determine under whose authority and for whose benefit Mr. Stephen Wedderburn and Mr. Ian Moore were acting given (a) that several of the referenced correspondence were not shared with any other Accounting and/or Accountable Officers of the PCJ and/or the MEM, (b) the curious and seeming conspiratory circumstances surrounding the Exmar Consortium's exposure to information, (c) the timing and formation of CLNG and (d) the fact that CLNG, in

conjunction with Exmar Marine NV, were sufficiently poised to have completed a feasibility study one month prior to the issuance of the RFP by the PCJ.

However, the OCG found at least one (1) instance in which both Mr. Ian Moore and Mr. Stephen Wedderburn, while on an official GOJ trip, met with representatives of Exmar Marine NV and shared information with respect to the promotion of LNG.

32. Having regard to any questions in respect of (a) insider information trading; (b) bid rigging and/or (c) corruption, the OCG has made, *inter alia*, the following determinations:

- i. As previously highlighted, Exmar Marine NV was placed at a distinct advantage based upon (a) its 2007 Mandate with the GOJ; (b) the prior sharing of information with Mr. Stephen Wedderburn and Mr. Ian Moore between 2007 and 2008; (c) work which was undertaken in 2007; and (d) the pre-feasibility study which was undertaken in 2009 October.
- ii. During Mr. Ian Moore's tenure (2007 December – 2008 November) there were several pieces of email correspondence between Mr. Bart Lavent of Exmar Marine NV, Mr. Stephen Wedderburn, Mr. Ian Moore, and Mr. Conrad Kerr then of Merrill Lynch. In the referenced correspondence, all parties were privy to information on LNG and it appears that they were collectively working to introduce LNG in Jamaica.
- iii. Two (2) of the parties who were privy to the above referenced correspondence, namely, Mr. Ian Moore and Mr. Conrad Kerr, subsequently formed a company, EDC LNG (now CLNG) in 2009 June.
- iv. The referenced company was formed approximately seven (7) months after Mr. Ian Moore demitted office.

- v. Mr. Ian Moore, as the then Chairman of the PCJ Board of Directors would have been privy to all the information with respect to LNG which was in the possession of the PCJ.

- vi. Mr. Stephen Wedderburn, who was in prior communication with Exmar Marine NV and who, by all accounts, had a working relationship of some sort with Exmar Marine NV (a) was a key person responsible for the drafting of the RFP; (b) in communication with the bidders throughout the tender period; (c) was assisting the Evaluation Committee to develop the *'instrument of measure'*; (d) had communicated on more than one occasion that Exmar Marine NV was his number one ranked company in the FSRU industry; and (e) had on several occasions recommended that the formal procurement process be undermined and/or bypassed in the name of expediency.

Based upon the foregoing determinations, the OCG is of the considered view that the referenced matter is one which presents adequate evidence which would demand that further investigations and consultations be undertaken by the State's law enforcement and criminal prosecutorial agencies with the objective of determining whether Mr. Ian Moore, Mr. Stephen Wedderburn and/or Mr. Conrad Kerr, and/or any other Public Official/Officer or person, conspired or attempted to use insider information and/or proprietary information to enure a benefit to themselves and/or to any person or entity with which they were/are associated and/or in which they had or may have a pecuniary interest.

Referrals

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

Section 21 of the Contractor-General Act provides as follows:

"If a Contractor-General finds, during the course of his Investigations or on the conclusion

thereof that there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body, he shall refer the matter to the person or persons competent to take such disciplinary or other proceeding as may be appropriate against that officer or member and in all such cases shall lay a special report before Parliament.” (OCG’s Emphasis)

1. Pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor General Act, the OCG is hereby formally referring a copy of this Report to the Learned Director of Public Prosecutions, the Auditor General and the Financial Secretary in the MOFPS, for them to determine and to advise what steps may be taken to hold to account the Accounting and/or the Accountable Officers within the MEM and the PCJ, with respect to certain irregularities and improprieties, in the planning, conceptualization and implementation of the ‘FSRU LNG Project’, which were identified by the OCG during the course of its Investigation.

This Referral is being made having regard to the identified breaches of the Revised GOJ Public Sector Procurement Procedures Handbook (2008 November) and, in consequence, the breaches of the attendant Public Sector Regulations which were promulgated in 2008 December, which resulted from the referenced irregularities and improprieties.

The Referral is being made on the basis that there is sufficient *prima facie* evidence which is contained herein and, more particularly and importantly, in the sworn statements that were furnished to the OCG by the relevant Respondents, to suggest, *inter alia*:

- a. That the entire tender process for the ‘FSRU LNG Project’ has been compromised, brought into disrepute and tainted by a conflict of interest and a gross lack of objectivity and impartiality due to (i) Mr. Stephen Wedderburn’s prior associations with certain named contractors, (ii) Mr. Wedderburn’s demonstrated bias towards Exmar Marine NV, and (iii) the critical role which was played by Mr. Wedderburn in the ‘FSRU LNG Project’, as has been evidenced by, *inter alia*, certain email correspondence which was either written by and/or sent to Mr. Stephen Wedderburn.

Having regard to the foregoing, the OCG is also of the considered opinion that Mr. Stephen Wedderburn's actions were professionally unethical and constituted a conflict of interest and, in consequence, constituted a breach of Sub-Section S-1040 of the Revised GOJ Public Sector Procurement Procedures (2008 November).

Sub-Section S-1040 of the Revised GOJ Public Sector Procurement Procedures (2008 November) provides, *inter alia*, as follows:

“CONFLICT OF INTEREST

All personnel involved in handling a procurement process are expected to observe the GOJ Code of Conduct for Civil Servants outlined in the Staff Orders and to be free of interests or relationships that are actually or potentially detrimental to the best interests of GOJ and shall not engage or participate in any transaction involving a company, its affiliates, divisions or subsidiaries in which they have even minor interests.

Any GOJ personnel involved in a procurement process that has assumed, or is about to assume, a financial or other outside business relationship that might involve a conflict of interest, must immediately inform their supervisors in writing of the circumstances involved. This information is to be reviewed at an appropriate level for a decision whether a conflict of interest is present, and if so, what course of action will be taken.”

- b. That the re-engagement of the Technical Advisors, CH-IV International, in 2010 April, was undertaken, without the stipulated approvals, in contravention of Sub-section S-2040 of the Revised GOJ Public Sector Procurement Procedures Handbook (2008 November) and, in consequence, in contravention of the attendant Public Sector Regulations which were promulgated in 2008 December.

Sub-Section S-2040 of the Revised GOJ Public Sector Procurement Procedures (2008

November) provides, *inter alia*, as follows:

“EXPENDITURE AUTHORITIES

The expenditure authorities required before a Procuring Entity may enter into a contract are currently as follows:

<i>Threshold</i>	<i>Authority</i>
<i>J\$10,000,000 and below</i>	<i>The Accounting Officer/Head of Entity shall approve subject to procedures included herein.</i>
<i>Above J\$10,000,000 – J\$30,000,000</i>	<i>The Accounting Officer/Head of Entity shall endorse on the recommendation of the NCC.</i>
<i>Above J\$30,000,000</i>	<i>Cabinet, on the recommendation of the NCC and the Accounting Officer/Head of Entity shall approve.</i>

The threshold values above relate to gross amount payable to contractors. These figures will be revised from time to time as approved by Cabinet.”

- c. That in respect of a document which was entitled “*Framework for Review and Evaluation of Proposals*”, which was dated 2010 February 12 and the subsequent use of a “*Review Matrix*” to evaluate the proposals which were received for the ‘FSRU LNG Project’, the OCG was not provided with, nor has it seen, any evidence to suggest that the referenced ‘*Review Matrix*’, which was designed by the Consultants, CH-IV International, for and on behalf of the PCJ, was issued to the potential bidders, via an Addendum or otherwise, prior to the submission deadline.

The non-disclosure of same, to the bidders, is in contravention of Sub-Section No. S-3100 of the GOJ Public Sector Procurement Procedures (2008 November), which provides that:

“All adopted sub-criteria should be specified in the RFP... If points allocated to these sub-criteria are not disclosed in the RFP, the Evaluation Committee should allocate them before proposal submission, to reduce the risk of manipulations during the evaluation process...” Consequently, the OCG found the foregoing to be irregular and in breach of the GOJ’s Public Sector Procurement Guidelines and Regulations.

- d. That the OCG has found no evidence to suggest that Mr. Stephen Wedderburn disclosed his relationship with Mr. Joseph Fossella, a sub-contractor of CH-IV International, who was actively involved in the Evaluation of the Bids for the ‘FSRU LNG Project’.

It is important to note that Section 36 (1) of the Public Sector Procurement Regulations (2008 December) imposes a duty upon **“...any public officer directly or indirectly involved with the procurement process and particularly in the preparation of bidding documents, evaluation, contract negotiations and contract management and payments** to-(a) declare to the head of his entity or chairman of the entity's procurement committee any potential conflict of interest in relation to a proposed Government contract;(b) **declare to the head or chairman, any relationship with a bidder, supplier, contractor or consultant and refrain from taking part in either the decision making process or the implementation of any prospective Government contract where such a relationship exists.** (OCG Emphasis)

The OCG, is of the considered opinion, that it is within the purview of the Director of Public Prosecutions, the Auditor General and the Financial Secretary, in the Ministry of Finance and the Public Service (MOFPS), to determine and to advise what appropriate and/or applicable actions may be taken or initiated against the representatives of the

MEM and the PCJ, having regard to all of the circumstances of the case.

In the foregoing regard, it is of critical import to note the following sections of the Public Sector Procurement Regulations:

39. A person who-(a) contravenes any provision of these Regulations;(b) aids, abets, counsels or procures the contravention of any such provision;(c) is knowingly involved in or is a party to any such contravention;(d) conspires with any other person to contravene any such provision, is liable in damages for any loss caused to any other person by such conduct. Civil liability.

40. A person who-(a) contravenes these Regulations; or (b) aids, abets or otherwise knowingly facilitates or is an accessory to the contravention of these Regulations, commit an offence and is liable, on summary conviction in a Resident Magistrate's Court, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three months or to both such fine and Offences and penalties.

2. Pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor General Act, the OCG is hereby formally referring a copy of this Report to the Commissioner of Police and the Learned DPP for them to undertake such further investigations, as they may deem to be appropriate, into the actions of Mr. Ian Moore, Mr. Stephen Wedderburn and Mr. Conrad Kerr with respect to the multiple irregularities and improprieties which have been identified by the OCG during the course of its Investigation and which have been documented herein.

In particular, the matter is being referred to the Commissioner of Police and the DPP for them to determine whether Mr. Ian Moore and/or Mr. Stephen Wedderburn used their respective Public Offices in a conspiratory, fraudulent, corrupt, clandestine and/or surreptitious manner to enure a future illicit benefit for themselves, Caribbean LNG (Jamaica) Limited and/or the Exmar Consortium through, *inter alia*, the irregular utilization of proprietary insider information and/or through the exhibition of a bias or

preferential treatment towards Exmar Marine NV, in the referenced tender process for the 'FSRU LNG Project'.

The investigations should, among other things, specifically seek to determine whether there was a conspiracy or agreement between Mr. Ian Moore and/or Mr. Stephen Wedderburn and/or any or all of the named persons to facilitate, *inter alia*, what could be the possible commission, on the part of any and/or all of them, of an act or acts of corruption, contrary to Section 14 of the Corruption Prevention Act, or to otherwise determine if Mr. Ian Moore and/or Mr. Stephen Wedderburn and/or any or all of the named persons may have committed or aided and abetted an act or acts of corruption or other criminal offence.

3. Pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor General Act, the OCG is hereby formally referring a copy of this Report to the Learned Director of Public Prosecutions (DPP) for such further action as she may deem to be appropriate on the basis that the OCG has found that there is sufficient evidence which is contained herein and, more particularly and importantly, in the sworn statements that were furnished to the OCG by the relevant Respondents, to suggest that the PCJ and, more precisely, its lawful Accounting Officer, Mrs. Hillary Alexander, aided and abetted by Mr. Stephen Wedderburn, caused a Government contract to be irregularly, improperly and unlawfully awarded to CH-IV International, in contravention of the approval requirements of the RPPH and, consequently, in contravention of the Public Sector Procurement Regulations which make such breaches a criminal offence.

It is instructive to note that the Public Sector Procurement Regulations were promulgated with the approval of the Cabinet of the Government of Jamaica, effective 2008 December, with the intent of giving legal force to, and imposing criminal sanctions for, breaches of the GOJ's Procurement Rules.

The OCG has found that the 2010 April contract which was awarded to CH-IV

International, by the PCJ, was awarded in breach of Subsection S-2040 of the RPPH. These are the applicable provisions which govern the approval requirements which were applicable to the award of a contract to CH-IV International. Further, the OCG has found that CH-IV had already begun to evaluate bids for the 'FSRU LNG Project' prior to the signing of a formal contract on 2010 April 8.

The evidence which was provided to the OCG indicates that the PCJ failed to secure the necessary prior approvals of the NCC which would have been required for the increase in the scope of works which the Technical Consultants were re-engaged to provide.

Section 7 of the Public Sector Procurement Regulations provides as follows:

"7. Tender Proceedings for prospective government contracts shall be conducted according to the procedures outlined in the Handbook, as amended from time to time, and more particularly for the purposes of these Regulations the procedures as regards-

- (a) invitations to tender;*
- (b) qualification of suppliers;*
- (c) requirements for the publicising of bid Opportunities and Contracts;*
- (d) receipt and opening of bids;*
- (e) bid validity; and*
- (f) bid evaluation"*

Section 40 of the Public Sector Procurement Regulations provides as follows:

"40. A person who-

- (a) contravenes these Regulations; or*
- (b) aids, abets or otherwise knowingly facilitates or is an accessory to the contravention of these Regulations, commit an offence and is liable, on summary conviction in a Resident Magistrate's Court, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three months or to both such fine..."*

4. Pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor General Act, the OCG is hereby formally referring a copy of this Report to the Attorney General, for her to determine whether the members of the PCJ Board of Directors and/or the respective Accountable Officers within the MEM and/or the PCJ, were complicit in their statutory obligations by allowing Mr. Stephen Wedderburn to be integrally involved in the tender process for the 'FSRU LNG Project' despite his prior disclosure of having had commercial dealings with Exmar Marine NV.

The OCG has found that there is evidence which is recorded herein and, more particularly and importantly, in the sworn statements that were furnished to the OCG by the relevant Respondents, which would suggest that there was, *inter alia*, a breach of duty on the part of the then PCJ Board of Directors, in contravention, *inter alia*, of Sections 17(1) (a) and (b) and 6 of the Public Bodies Management and Accountability Act.

It is instructive to record that Sections 6 and 17 of the Public Bodies Management and Accountability Act impose certain specific responsibilities upon the Board of Directors of Public Bodies as well as Board Members themselves.

Had these and other responsibilities been fully discharged in the instant matter, the affairs of the PCJ and, in particular, the tender process for the 'FSRU LNG Project', would not have been shrouded in the appearance of unethical and/or improper practices.

It is particularly important to record that Boards of Directors of Public Bodies are appointed, *inter alia*, to efficiently and effectively manage the affairs of Public Bodies and to ensure the accountability of all individuals who manage and administer the affairs and resources of the said Public Bodies.

Section 6 of the Public Bodies Management and Accountability Act provides, *inter alia*, as follows:

“6. Every board shall-

(a) take such steps as are necessary-

(i) for the efficient and effective management of the Public Body;

(ii) to ensure the accountability of all persons who manage the resources of the Public Body;

(b) develop adequate information, control, evaluation and reporting systems within the body;

(c) develop specific and measurable objectives and performance targets for that body;

(d) advise the responsible Minister on matters of general policy relating to the management of the body”.

Section 17 (1) of the Public Bodies Management and Accountability Act provides, *inter alia*, as follows:

17- (1) “Every director and officer of a Public Body shall, in the exercise of his powers and the performance of his duties-

(a) act honestly and in good faith in the best interests of the Public Body; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances including, but not limited to the general knowledge, skill and experience of the director or officer.

Section 25 of the Public Bodies Management and Accountability Act provides, *inter alia*, as follows:

25. (1) If the Court is satisfied on an application by the Attorney-General that any person has contravened any of the provisions of-

(a) section 4 (acquisition of shares and payment of dividends);

(b) section 5 (exercise of borrowing powers);

(c) section 6 (corporate governance);

(d) section 14 (general duties of auditors);

(e) section 15 (failure to furnish information to auditor);

- (f) section 20 (levels of emoluments);
- (g) section 21 (restriction on formation of new companies),

the Court may exercise any of the powers referred to in subsection (2).

(2) The Court may-

- (a) order the person concerned to pay to the Crown such pecuniary penalty not exceeding one million dollars; or*
- (b) grant an injunction restraining that person from engaging in conduct described in subsection (1).*

(3) In exercising its powers under this section the Court shall have regard to

- a) the nature and extent of the default;*
 - (b) the nature and extent of any loss suffered by any person as a result of the default;*
 - (c) the circumstances of the default;*
 - (d) any previous determination against the person concerned.*
- (4) If in the opinion of the Attorney General there is a contravention of section 7, 8 or 9, he may make an application to the Court and the provisions of subsections (1), (2) and (3) shall apply in relation thereto.*

Recommendations

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

In light of the foregoing, and having regard to the Findings and Conclusions that are detailed herein, the OCG now makes the following considered Recommendations:

1. The OCG must strongly recommend that the current tender process for the 'FSRU LNG Project' be immediately and summarily aborted and a new OCG supervised and scrutinized process be undertaken by the PCJ and the MEM.

The foregoing Recommendation is one which is buttressed by the OCG's unearthing of overwhelming and incontrovertible evidence which is indicative, *inter alia*, of a lack of transparency, the absence of fairness, and a glaring demonstration of impropriety and irregularity in the circumstances which surrounded the bidding process for the referenced FSRU LNG Project. The OCG's Recommendation is also founded upon the conflict of interest issues, and the documented bias and preferential treatment, which were displayed by Mr. Stephen Wedderburn in favour of the '*preferred bidder*', Exmar Marine NV – a company with which Mr. Wedderburn had himself declared that he had a previous working relationship, as well as a pecuniary interest which was predicated upon the success of an Exmar Marine NV related project which was to be executed in Colombia.

2. The OCG must recommend that Accounting and/or Accountable Officers should scrupulously adhere to the GOJ Procurement Guidelines and Regulations in the award of contracts.

Further, the OCG must also highlight and recommend that in instances in which approval for the award of a Government contract is being granted by an Accounting and/or Accountable Officer, any such approval must be given within the parameters of the established GOJ procurement and accounting procedures.

3. The OCG recommends that in instances in which a Public Body has identified that there is a breach of the procurement procedures, the responsible agency should seek to remedy the said breach in an expeditious and effective manner, as opposed to continuing with the implementation of the project in violation of applicable GOJ Public Sector Procurement Procedures, the Regulations and other governing laws.

4. The OCG also feels compelled to strongly recommend that the Cabinet should move with expedition to develop and to implement a comprehensive and over-riding policy to be applicable to all Public Body Boards, to govern, restrict or prohibit, for a specified time, as the case may be, the award of Government contracts (or the divestment of publicly owned assets) by a Public Body, to former members of its Board of Directors, or to any entity in which a former Board member may have a pecuniary interest.
5. Transparency, the appearance of fairness and the need to avoid the possibility of a conflict of interest, in the public procurement process, require that there should be, among other things, a distinct separation of the Public Officials and Officers who sit and vote on a Public Body's established Procurement Committee with respect to a particular procurement, and the Officials and Officers who grant final approval for the procurement.

Consequently, the OCG recommends that these considerations should be borne in mind when appointing persons to the PCJ's Board of Directors, the PCJ's Evaluation Committee, the PCJ's Procurement Committee and any other established PCJ Committee, so as to ensure that the highest possible degree of integrity and objectivity in the execution of the respective functions of the said Committees is attained.

6. The OCG is compelled to remind Public Officials who are involved in the procurement process that they are required to uphold the highest standards of ethical conduct, and to observe the GOJ's Code of Conduct for Civil Servants which is outlined in the Staff Orders. Above all, Public Officials should, at all times, remain free of interest in relationships that could be potentially detrimental to the best interests of the GOJ.

Consequently, Public Officials should not participate and/or engage in any GOJ process which is related to a transaction which is to be executed between the GOJ and a company or entity, or its associated affiliates, divisions or subsidiaries, in which the Public Official has an interest.

Further, Public Body individuals who are involved in the procurement process should

disclose any personal or other relationships and interests which they may have with a bidder, supplier, contractor and/or consultant. Pursuant to Section 4, Volume 1, of the Revised GOJ Public Sector Procedures (2010 October), such Public Body individuals should not take part in either the decision-making process, or the implementation of any contract, where any such relationship or interest exist.

7. Heads of Ministries, Departments and Agencies who are aware that a Public Officer is in a conflict of interest situation are strongly recommended to take the necessary action, in accordance with applicable administrative procedures, to remove such an officer from the conflicted situation. Such action will ensure legitimacy and good governance in the administration and management of the GOJ's procurement process and the GOJ's affairs.
8. The OCG believes that it is timely to remind all Public Officials/Officers, who abuse their office and authority for personal gain and/or for the benefit of others, that there are circumstances in which such conduct is likely to rise to the level of a criminal act of corruption. The provisions that are contained in Section 14 (1) (b) of the Corruption Prevention Act are instructive in this regard. They provide simply that "*A public servant commits an act of corruption if he, in the performance of his public functions, does any act or omits to do any act for the purpose of obtaining any illicit benefit for himself or any other person*".

An act of corruption is punishable upon summary conviction in a Resident Magistrate's Court, in the case of a first offence, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment; and in the case of a second or subsequent offence, to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment;

Upon conviction in a Circuit Court, an act of corruption is punishable, in the case of a first offence, to a fine not exceeding five million dollars or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment; and in the case of a

second or subsequent offence, to a fine not exceeding ten million dollars, or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

9. The OCG wishes to strongly reiterate a recommendation that it has previously made that the GOJ should implement and adopt an anti-corruption measure to impose the following mandatory requirements as a part of the its contracting and procurement processes:

- i. All Private Entities that are desirous of bidding or tendering on Government contracts which exceed \$275,000 in value and/or who are part of a ‘Consortium’ which is bidding on a Government contract should be required to disclose sworn particulars of all of its beneficial owners.
- ii. A “**Private Entity**” should be deemed to be an entity which is not a publicly listed company or corporation but which is a privately owned or held sole-tradership, partnership, cooperative, company, corporation, trust, business association or other entity.
- iii. The particulars which should be required to be disclosed should include:
 - a) The name(s) of the beneficial owner(s) of the Private Entity;
 - b) The title(s) of the beneficial owner(s);
 - c) The current nationality(ies), address(es) and telephone number(s) of the beneficial owner(s);
 - d) The nature, share or percentage of the owner’s beneficial interest in the Private Entity;
 - e) The date(s) on which the beneficial interest in the Private Entity was acquired.

- iv. The Disclosure requirement should be a standard component and ‘Responsiveness Criterion’ for all GOJ Tender Documents, Requests for Proposals and Invitations to Tender, such that any Tender or Bid which is unsupported by the Disclosure will be rendered non-responsive and invalid and, thus, null and void.
 - v. The particulars of beneficial owners should be required to be declared and certified before a Justice of the Peace or a Notary Public, to be complete, accurate and truthful. If a false statement or declaration is made in any Disclosure Form, the maker thereof should be deemed to have committed a criminal offence.
10. Finally, it is recommended that the Ministry of Finance and the Public Service should issue a Circular to all Public Bodies, Departments and Agencies of Government, to advise that a Contractor General, pursuant to Section 4 of the Contractor General Act, has lawful jurisdiction over the award and implementation of **all** government contracts, to ensure merit, impartiality, propriety and regularity in the said award, irrespective of whether any such contracts have been exempted, by the Government, from the purview of its procurement guidelines.

Special Note and Recommendation

The OCG, in the conduct of the referenced Statutory Investigation, has been faced with what is best described as a seemingly debilitating and potentially costly obstacle in the execution of its statutory mandate to “*ensure*”, *inter alia*, that Government contracts are awarded impartially and on merit, and in circumstances which do not involve impropriety or irregularity.

In the discharge of its statutory mandate, the OCG, in 2010 June, had highlighted certain inherently critical and fundamentally flawed occurrences in the formal tender process for the ‘FSRU LNG Project’ which was being undertaken by the PCJ/MEM.

The OCG’s concerns and suspicions were articulated in its Formal Letters of Enquiry which were addressed to the Accounting and Accountable Officers of the MEM and the PCJ, and which were dated 2010 June 22, regarding the ‘FSRU LNG Project’.

However, and despite the OCG’s documented concerns that the good governance tenets of public contracting, which have been imposed by Parliament upon Public Bodies and Public Officers, were being violated, a seemingly cavalier and arbitrary decision was nevertheless taken by the current GOJ Administration to proceed with the tender process for the ‘FSRU LNG Project’, without any due consideration whatsoever being given to the stated OCG concerns.

Indeed, it is instructive to note that, on 2010 July 1, an article was published on the Radio Jamaica website which was entitled “*LNG deal with Exmar stands – Golding*”. The referenced media article indicated as follows:

“The Prime Minister has declared that the government will not stop the push for a cheaper energy alternative to oil.

This is despite the Contractor General's probe of the award of the contract to the Exmar Consortium to supply Liquid Natural Gas (LNG) to Jamaica.

“Greg Christie (Contractor General), God bless him, says he wants to scrutinize the whole transaction to see how we got to where we got to and I say yes, we welcome that.

But in the meanwhile, we need to get cheaper energy to the productive sector, so you go on looking at it but we’re going to continue negotiating because we want to get this in place as quickly as possible,” Mr. Golding said.”

Further, on 2010 July 2, an article was published in the Jamaica Gleaner, which was entitled “LNG financing, supplies unsettled”. The referenced media article indicated, *inter alia*, as follows:

“The consortium will absorb all the financial risk, with no backing from Jamaica, neither in the form of capital or loan guarantees, Energy Minister James Robertson affirmed.

Jamaica, however, has put \$1 billion into the LNG plan, some of it funding from multilateral sources, according to Robertson and acting managing director of the Petroleum Corporation (PCJ) of Jamaica Nigel Logan.

*Robertson, who along with the consortium members, met Tuesday with **Gleaner** editors, said the project is unlikely to enter its mobilisation phase before January 2011, but that the supply contracts should be tied down by year end.*

The contractor general's probe of the procurement process, including the role of former PCJ chairman Ian Moore - a director of CLNG - in the selection of the Exmar consortium, will not slow the negotiations nor the project, Robertson said.”

For the avoidance of doubt, it must be recalled, and emphasized, that the OCG is an Independent, Quasi-Judicial Anti-Corruption Commission of the Parliament of Jamaica, which was established by law, for the purposes of ‘ensuring’, among other things, probity, competition, transparency, accountability, and value for money in the award of Government of Jamaica contracts and, to that end, is empowered to monitor and to investigate the award of Government contracts.

However, it is well known that the OCG has no powers under the law to enforce its own recommendations, or to bring to a halt a Government procurement or contracting process which it has good reason to believe is exhibiting signs of corruption, impropriety or irregularity.

The inescapable question which must be forcefully asked, therefore, is what good purpose is served by maintaining, in place, a Commission of the Contractor General, at a cost to the Jamaican taxpayer which is currently in excess of \$180 million per annum, if the considered concerns, recommendations, injunctions and/or findings of the OCG can be summarily and arbitrarily ignored by the Executive arm of the State, the very authority which the OCG was established to monitor and to investigate?

Is it that the OCG was intended by the Executive and Legislative arms of the Jamaican State to be a toothless bulldog?

Or is it that Parliament, in enacting the Contractor General Act, and by requiring a Contractor General to swear to a solemn Oath to “*ensure*” that Government contracts are awarded ‘*impartially and on merit and in circumstances that do not involve impropriety or irregularity*’, was being insincere in its injunction by virtue of the simple fact that it has refused and/or has failed to date to give to the Contractor General the very tools and powers which he obviously requires to enable him to effectively discharge and to enforce his mandate?

It is respectfully submitted that these are very serious and critical questions in respect of which the taxpayers of Jamaica must demand, and should be provided with, credible and responsible answers, not only from the incumbent Administration, but also from the State.

It is against this background, and having regard to the substantive Findings which are embodied in this Report of Investigation, as well as in light of the considered Conclusions and Recommendations that are detailed herein, that the OCG now feels compelled to once again reiterate its Recommendation that the powers with which it is imbued, under the Contractor General Act, be significantly strengthened to, among other things, empower a Contractor General to bring to a halt a Government procurement, contract award or asset divestment process

which is, in the OCG's considered view, exhibiting patent signs of impropriety, irregularity or corruption.

There is nothing which is untoward or exceptional about the OCG's recommendation that the Contractor General Act should be amended and strengthened for the purposes of giving the Commission the power to halt a Government contracting activity, pending the outcome of an Investigation, nor is the OCG's posture one which should be considered as being ill-conceived.

Indeed, a similar power, for a national procurement regulatory commission, has been proposed for consideration by the Trinidad and Tobago Legislature, in the "*Draft Legislative Proposal for an Act to be called Public Procurement and Disposal of Public Property Act, 2010*".

Section 13 (4) of the referenced Draft Bill provides that "*The Commission upon hearing the parties to a transaction may direct the suspension of the procurement process pertaining to a transaction pending the outcome of an investigation and in so doing shall provide reasons.*"

Consistent with the foregoing draft provision, it is widely known that the OCG, in Jamaica, upon or before the initiation of a major Investigation, will publicly provide detailed and cogent reasons for the recommendations which it makes to the Government to halt an irregular procurement. Such disclosures are deliberately made by the OCG, out of an abundance of caution, to ensure, among other things, that its reasons for initiating an Investigation are not only well founded, but can withstand public scrutiny, should the need arise.

This strategic OCG measure was exhibited as recently as 2011 January in respect of the GOJ's then Proposed Sale of the Sandals Whitehouse Hotel to the Gordon 'Butch' Stewart led Sandals Group.

However, and despite the OCG's 22 page documented reasons for making its Recommendations to halt the proposed divestment, and to restart the same under the direct monitoring supervision of the OCG as is required by law, the OCG's Recommendations were summarily set aside by the incumbent Administration which declared that the Sale would proceed despite the OCG's

expressed concerns, positions and Recommendations.

To further compound the matter, it was also indicated by the Administration that such Recommendations from the OCG were immature because the OCG's Investigation was not yet completed.

This raises another curious question as to whose interests are being served when an Administration is allowed to proceed with a Government contracting activity which is presumed to be irregular, improper or corrupt, by simply stating that it, the Administration, will act after the OCG's Investigation therein is completed, when it knows full well that the horse would have already bolted from the gate and that no effective remedial actions can be taken after the fact.

It is also instructive to note that, in 2010 July, the OCG was faced with a similar challenge regarding its Investigation into the divestment of a lucrative state asset, namely the divestment of the GOJ's 45% stake in JAMALCO to the Chinese firm Zhuhai Hongfan.

In the referenced case, the OCG detailed at least five (5) major considerations, which, when taken together, raised very serious questions about transparency, value for money, competition and a potential conflict of interest, amongst other concerns, in respect of the proposed asset divestment.

However, and despite the foregoing expressed concerns, it was reported in the Jamaica Observer newspaper on Wednesday 2010 June 9, as follows:

"Responding to questions from the Opposition spokesman on energy Phillip Paulwell yesterday, Robertson said that the Government had no plan to halt the negotiations despite the (OCG's) investigation.

"The Government has entered into a legally binding contract and we will not be halting. We will be co-operating fully with the contractor general. We are not in a position to halt, we have entered into a contract and it is a very good contract in the interest of the

country," Robertson told Paulwell."

Not surprisingly, the fact is that the Government has since reportedly abandoned its so called "*legally binding contract*" with Zhuhai Hongfan, a development which will be publicly addressed by the OCG when it formally completes and submits its Special Report of Investigation into the matter.

Be that as it may, in the instant matter of the 'FSRU LNG Project', the OCG's Findings, Conclusions and Recommendations are not only well founded in fact and in reason, but they are also buttressed by the independent Legal Opinions which were solicited by the Administration, at additional and unnecessary cost to the Jamaican taxpayer, from the private law-firm of Livingston, Alexander and Levy.

Further, and as is now known, the Livingston, Alexander and Levy Opinions have also received the support of the Government's own attorney, the Solicitor General.

The referenced Opinions are not only highly indicative of those of the OCG's expressed concerns which were communicated to the Government from as early as 2010 June 22, but they also fully support the OCG's formal recommendation, which was made to the MEM, at the MEM's request, by way of letter which was dated 2010 November 16, wherein the Government was urged by the OCG to "*summarily and immediately abort the subject process*". It is critical to note that the referenced OCG letter was copied to the Honourable Prime Minister, the Honourable Minister of Energy and Mining, the MEM Permanent Secretary and the Group Managing Director (Acg.) of the PCJ.

The Legal Opinions also lend legitimacy to the OCG's call for the Commission of the Contractor General, in the public interest, to be urgently endowed with the power to halt the award of a GOJ contract when signs of irregularity or impropriety are being exhibited.

When fully contextualized, it is now crystal clear, from the matters that are set out herein, that the circumstances which surround the development, tender and approval for the award of a contract for the 'FSRU LNG Project', are such that they cannot, whether individually or collectively, withstand public scrutiny and/or any measure for probity.

In the final analysis, it must be said that had the warnings, concerns and/or considered Recommendation of the OCG been heeded by the Administration when they were formally communicated on 2010 June 22, and again on 2010 November 16, and had the Government responded then by halting the tender process for the FSRU LNG Project, and taken the decision to immediately restart same under the supervision of the OCG, the massive losses which the Jamaican taxpayer will now have to bear in consequence, *inter alia*, of the delayed restart of the 'FSRU LNG Project', would have been entirely avoided.

TERMS OF REFERENCE

The primary aim of the OCG's Investigation was to ascertain, *inter alia*, the following:

1. The propriety of the procurement process, which was undertaken by the PCJ, and which led to the recommendation to enter into negotiations with the selected '*preferred bidder*', the Exmar Consortium, for the proposed 'FSRU LNG Project'.
2. The role, involvement and/or affiliation, if any, of the former PCJ Board Chairman, Mr. Ian Moore, in the overall LNG Project, in particular, the conceptualization, planning and/or implementation of the proposed 'FSRU LNG Project', during his tenure on the Board of Directors and subsequent to his dismissal from the Board of Directors in 2008.
3. The link, if any, between the creation, incorporation and operation of the '*local*' company, Caribbean LNG (Jamaica) Limited, which is a partner of the Exmar Consortium, in which Mr. Ian Moore, former Chairman of the PCJ Board of Directors, is one of the principal Directors, and the subsequent recommendation to enter into negotiations with the selected '*preferred bidder*', the Exmar Consortium, for the proposed 'FSRU LNG Project'.

Specific Objectives

The Investigation also had the following specific objectives:

1. To identify the procurement process which was employed by the PCJ, the MEM and/or by anyone acting on their behalf, which led to the recommendation to enter into negotiations with the selected '*preferred bidder*', the Exmar Consortium, for the proposed 'FSRU LNG Project'.
2. To ascertain whether there were any breaches of the Revised GOJ Public Sector Procurement Procedures (2008 November) and/or any other applicable laws on the part

of the PCJ, the MEM and/or by anyone acting on their behalf, in the recommendation to enter into negotiations with the selected '*preferred bidder*', the Exmar Consortium, for the proposed 'FSRU LNG Project'.

3. To ascertain whether the process which led to the recommendation to enter into negotiations with the selected '*preferred bidder*', the Exmar Consortium, for the proposed 'FSRU LNG Project', was fair, impartial, transparent and devoid of irregularity or impropriety.
4. To ascertain whether there was any *prima facie* evidence that would suggest impropriety on the part of the PCJ, the MEM and/or anyone acting on their behalf, which contributed to the recommendation to enter into negotiations with the selected '*preferred bidder*', the Exmar Consortium, for the proposed 'FSRU LNG Project'.
5. To ascertain whether the awarding Public Body, any Public Officer/Official, and/or anyone acting on their behalf, was involved and/or engaged in any acts of impropriety and/or irregularity that may have influenced, *inter alia*, (a) pre-tender activities, (b) the nature, depth and conduct of any feasibility studies, and (c) any potential bidder, and, consequently, how same may have led to the recommendation to enter into negotiations with the selected '*preferred bidder*', the Exmar Consortium, for the proposed 'FSRU LNG Project'.
6. To ascertain whether any other transactions were collateral to the recommendation to enter into negotiations with the selected '*preferred bidder*', the Exmar Consortium, for the proposed 'FSRU LNG Project'.
7. To ascertain whether there was any *prima facie* evidence that would suggest that the '*preferred bidder*' benefited from any insider information, and/or whether any Public Officer/Official, and/or anyone acting on their behalf, was involved and/or engaged in any acts of (a) insider information trading, (b) bid rigging and/or (c) corruption.

8. To ascertain whether there was any *prima facie* evidence of a conflict of interest on the part of any Public Officer/Official within the PCJ, the MEM and/or any other Public Body, who was involved in the recommendation to enter into negotiations with the selected '*preferred bidder*', the Exmar Consortium, for the proposed 'FSRU LNG Project'.

METHODOLOGY

The OCG, in the conduct of its Investigations, has developed standard procedures for evidence gathering. These procedures have been developed and adopted pursuant to the powers which are conferred upon a Contractor General pursuant to the Contractor-General Act (1983).

It is instructive to note that Section 17 (1) of the Contractor General Act empowers a Contractor-General “to adopt whatever procedure he considers appropriate to the circumstances of a particular case and, subject to the provisions of (the) Act, to obtain information from such person and in such manner and make such enquiries as he thinks fit.” (OCG Emphasis).

The Terms of Reference of the OCG’s Investigation into the allegations regarding the proposal for the ‘FSRU LNG Project’, in Jamaica, were primarily developed in accordance with those of the mandates of the Contractor General which are stipulated in Section 4 (1) and Section 15 (1) (a) to (d) of the Contractor General Act.

The Terms of Reference of the Investigation, and the development of the written Requisitions/Questionnaires that were utilized throughout the course of the Investigation, were guided by the OCG’s recognition of the far-reaching responsibilities and requirements that are imposed upon Board of Directors, Public Officials and Public Officers under the provisions of the Public Bodies Management and Accountability Act, the Financial Administration and Audit Act, the Contractor General Act, the Revised GOJ Public Sector Procurement Procedures (2008 November) and the Staff Orders for the Public Sector, amongst other applicable legislation.

In addition, the OCG was guided by Section 21 of the Contractor-General Act which provides that “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.” (OCG Emphasis)

The OCG, on 2010 June 22, conducted an official preliminary enquiry, into the tender and contract award processes of the referenced project under the provisions which are contained in Sections 4, 15 and 18 of the Contractor General Act (1983).

The OCG took the initiative to secure, without delay or reservation, certain documents, computer electronic files and records, and associated correspondence from the MEM and the PCJ, in an effort to inform the referenced preliminary enquiry, in light of, amongst other thing, the following:

- a) The receipt of an anonymous complaint, which was received on 2010 June 16, from a seemingly knowledgeable source which alluded to impropriety and irregularity in the selection of the Exmar Consortium as the '*preferred bidder*';
- b) A complaint which alleged certain relationships between Jamaican Public Officials and one of the then potential bidders who it was further alleged that the tender document was '*tailormade*' in favour of;
- c) Certain now identifiable and pronounced concerns which were predicated, *inter alia*, upon a variety of media articles, publications and reports which appeared in the local print and electronic media; and
- d) A review of the official documents which are lodged with the Registrar of Companies in Jamaica, by Caribbean LNG (Jamaica) Limited.

By way of two (2) letters, which were dated 2010 June 22, the OCG, informed Mr. Nigel Logan, Acting Group Managing Director, PCJ, and Mrs. Hillary Alexander, MEM's Permanent Secretary, of the OCG's intent to review the complete file(s) which pertained to the tender and contract award processes for the proposed 'FSRU LNG Project', on 2010 June 22.

The referenced Accounting and Accountable Officers, were requested, pursuant to Sections 4(2) and 4(3) of the Contractor General Act to provide, *inter alia*, "...All file(s), inclusive of all

correspondence, Tender Documents/Requests for Proposals, Addenda, Bids Received, Evaluation Assessments and Reports and any other information, so determined by the OCG Team...”

Upon a complete review of the documentation, which was retained by the OCG in its Enquiry, Requisitions/Questionnaires were subsequently directed to certain Public Officials/Officers, in both the MEM and the PCJ, amongst others, who were formally advised of the OCG’s decision to initiate an Investigation into the tender and award processes of the ‘FSRU LNG Project’ and who were considered material to the said Investigation.

Where it was deemed necessary, ‘Follow-up’ Requisitions were directed to a number of Respondents in an effort to clarify certain issues which were identified in their initial sworn written statements and declarations. These ‘Follow-up’ Requisitions were also designed, *inter alia*, to clarify any discrepancy in the information which was provided by the Respondents.

The Requisitions/Questions which were utilised by the OCG, included specific questions that were designed to elucidate critical information from Respondents on the matters which were being investigated.

However, in an effort to not limit and/or exclude the disclosure of information which was germane to the Investigation, but which might not have been specifically requisitioned by the OCG, the OCG asked all Respondents the following question:

“Are you aware of any additional information which you believe could prove useful to this Investigation or is there any further statement in regard to the Investigation which you are desirous of placing on record? If yes, please provide full particulars of same.”

Very importantly, the form of written Requisition, which was utilized by the OCG, also required each Respondent to provide, under the pain of criminal prosecution, complete, accurate and truthful written answers to a specified list of written questions and to make a formal declaration attesting to the veracity of same before a Justice of the Peace.

The Requisitions were issued pursuant to the powers that are reserved to the Contractor General under the Contractor-General Act and, in particular, Sections 4, 15, 17, 18 and 29 thereof. The Requisitions were also issued pursuant to Sections 2 and 7 of the Voluntary Declarations Act and Section 8 of the Perjury Act.

It is instructive to note that **Section 18 (2) of the Contractor General Act** provides that, “*Subject as aforesaid, a Contractor-General may summon before him and examine on oath –*

- a) *any person who has made representations to him; or*
- b) *any officer, member or employee of a public body or any other person who, in the opinion of the, Contractor-General is able to furnish information relating to the Investigation,*

and such examination shall be deemed to be a judicial proceeding within the meaning of section 4 of the Perjury Act.” (OCG Emphasis).

Further, **Section 18 (3) of the Contractor General Act** provides that, “**For the purposes of an Investigation under this Act, a Contractor-General shall have the same powers as a Judge of the Supreme Court in respect of the attendance and examination of witnesses and the production of documents**”. (OCG Emphasis)

Section 2 (1) of the Voluntary Declarations Act provides that, “*In any case when by any statute made or to be made, any oath or affidavit might, but for the passing of this Act, be required to be taken or made by any person or persons on the doing of any act, matter, or thing, or for the purpose of verifying any book, entry, or return, or for any other purpose whatsoever, it shall be lawful to substitute a declaration in lieu thereof before any Justice; and every such Justice is hereby empowered to take and subscribe the same.*” (OCG Emphasis)

Section 7 of the Voluntary Declarations Act provides that, “*In all cases when a declaration in lieu of an oath or affidavit shall have been substituted by this Act, or by virtue of any power or authority hereby given, or when a declaration is directed or authorized to be made and*

subscribed under the authority of this Act, or of any power hereby given, although the same be not substituted in lieu of an oath, heretofore legally taken, such declaration, unless otherwise directed under the powers hereby given, shall be in the form prescribed in the Schedule.”

Section 8 of the Perjury Act provides, *inter alia*, that, “Every person who knowingly and willfully makes (otherwise than on oath) a statement false in a material particular and the statement is made-

(a) *in a voluntary declaration; or*

(c) *in any oral declaration or oral answer which he is required to make by, under, or in pursuance of any enactment for the time being in force,*

shall be guilty of a misdemeanour, and liable on conviction on indictment thereof to imprisonment with hard labour for any term not exceeding two years, or to a fine, or to both such imprisonment and fine”.

The material import of the foregoing, *inter alia*, is that the sworn and written evidence that is provided to a Contractor General, in response to his Statutory Requisitions, during the course of his Investigations, is (a) provided in accordance with certain specified provisions of the Statutory Laws of Jamaica, and (b) provided in such a manner that if any part thereof is materially false, the person who has provided same would have, *prima facie*, committed the offence of Perjury under Section 8 of the Perjury Act and, as will be seen, would have also, *prima facie*, committed a criminal offence under Section 29 (a) of the Contractor General Act.

The OCG considers the above-referenced evidence-gathering procedures to be necessary in order to secure, *inter alia*, the integrity and evidentiary cogency of the information which is to be elicited from Respondents. The implications of the subject requirements also serve to place significant gravity upon the responses as well as upon the supporting documents which are required to be provided by Respondents.

It is instructive to note that the OCG, in the conduct of its Investigation, prefers to secure sworn written statements and declarations from Respondents, under the pain of criminal prosecution. This ensures, *inter alia*, that there is no question as to what has been

represented to the OCG. Nor will there be any doubt as to the integrity or credibility of the information which is furnished to the OCG and on which its consequential Findings, Conclusions, Referrals and Recommendations will be necessarily based.

The OCG also went to great lengths to ensure that Respondents were adequately and clearly warned or cautioned that should they mislead, resist, obstruct or hinder a Contractor General in the execution of his functions, or fail to provide a complete, accurate and truthful response to any of the Requisitions or questions which were set out in its Requisition, they would become liable, *inter alia*, to criminal prosecution under Section 29 of the Contractor-General Act.

Section 29 of the Contractor General Act provides as follows:

“Every person who -

(a) willfully makes any false statement to mislead or misleads or attempts to mislead a Contractor-General or any other person in the execution of his functions under this Act; or

(b) without lawful justification or excuse -

i. obstructs, hinders or resists a Contractor-General or any other person in the execution of his functions under this Act; or

ii. fails to comply with any lawful requirement of a Contractor General or any other person under this Act; or

(c) deals with documents, information or things mentioned in section 24 (1) in a manner inconsistent with his duty under that subsection, shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.”

Further, in addition to the **sworn** written answers which the Respondents were required to provide, the OCG also requested that in respect of the assertions and/or information which were to be provided, Respondents should submit documentary evidence to substantiate the statements that were made.

Requisitions/Questionnaires were directed by the OCG to the Public Officers/Officials who are listed below and who were required to provide sworn written responses to formal Requisitions which were directed to them by the OCG:

1. The named Public Officials/Officers are as follows:
 - a. The Hon. James Robertson, Minister of Energy and Mining, MEM;
 - b. Mrs. Hillary Alexander, Permanent Secretary, MEM;
 - c. Mr. Glenford Watson, Senior Legal Counsel, MEM;
 - d. Mr. Nigel Logan, Acting Group Managing Director, PCJ;
 - e. Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ;
 - f. Ambassador Douglas Saunders, Cabinet Secretary, Office of the Prime Minister (OPM);
 - g. Ambassador Evadne Coye, Permanent Secretary, Ministry of Foreign Affairs and Foreign Trade (MoFAFT);
 - h. Mr. Noel Hylton, President/Chief Executive Officer, Port Authority of Jamaica (PAJ);
 - i. Mr. Ahmad Zia Mian, Director General, Office of Utilities Regulation (OUR).

2. A detailed Requisition (together with a follow-up Requisition in the case of the last listed person) was also directed to the following former Public Officials/Officers:
 - a. Mr. Anthony Hylton, former Minister, then Ministry of Mining and Energy (MME) and the MoFAFT;
 - b. Mr. Clive Mullings, former Minister of Energy, then Ministry of Energy;
 - c. Ms. Marcia Forbes, former Permanent Secretary, MEM;
 - d. Dr. Ruth Potopsingh, former Group Managing Director, PCJ;
 - e. Mr. Ian Moore, former Chairman, PCJ Board of Directors.

3. A detailed Requisition was also directed to the following persons:

- a. Mr. Conrad Kerr, Chief Executive Officer (CEO), Caribbean (LNG) Jamaica Limited (CLNG);
 - b. Mr. Paul East, Director and Shareholder, Caribbean LNG (Jamaica) Limited.

4. Follow-up Requisitions/Questionnaires, requesting clarification on certain issues, were directed by the OCG to the following Public Officials:
 - a. The Hon. James Robertson, Minister of Energy and Mining, MEM;
 - b. Mrs. Hillary Alexander, Permanent Secretary, MEM;
 - c. Mr. Nigel Logan, Acting Group Managing Director, PCJ;
 - d. Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ;
 - e. Ambassador Douglas Saunders, Cabinet Secretary, OPM.

5. Formal interviews were conducted with the following Public Officials:
 - a. Ms. Kathryn Phipps, former Chairman, PCJ Board of Directors (2009-2010)
 - b. Mr. Nigel Logan, Acting Group Managing Director, PCJ

6. Letters of Invitation (LOI) were sent to the following individuals and/or entities:
 - a. Mr. Nicolas Saverys, Director, Exmar Marine NV;
 - b. Mr. Blake Blackwell, Vice President, Business Development, Golar LNG Energy;
 - c. Mr. Sveinung Stohle, President & Chief Executive Officer, Hoegh LNG;
 - d. Mr. Krishma Orr, Coverdale Trust Services Limited, Corporate Secretary, Caribbean LNG (BVI) Limited;
 - e. Mr. Authur Ransome, Vice President and General Manager, CH-IV International (no response was received).

7. Follow-Up Letters of Invitation were sent to the following individuals and/or entities:
 - a. Mr. Nicolas Saverys, Director, Exmar Marine NV;

b. Mr. Sveinung Stohle, President & Chief Executive Officer, Hoegh LNG.

It is instructive to note that the response from Mr. Conrad Kerr, CEO, CLNG, to the referenced OCG's Statutory Requisition, which was dated 2011 January 30, was submitted without a certified Form of Declaration.

Consequently, the OCG, by way of a letter which was dated 2011 February 15, wrote to Mr. Conrad Kerr, and stated, *inter alia*, the following:

"We write to acknowledge receipt of your response to the Office of the Contractor General's (OCG's) Statutory Requisition, which was dated January 30, 2011, and received at our office on February 11, 2011, in regard to the captioned matter.

However, the Form of Declaration which was enclosed to the referenced OCG Statutory Requisition was not signed and attached to your response, as is required.

Accordingly, we are returning to you, your response to be submitted to the OCG in the manner which is articulated in the OCG's Requisition, which was dated January 17, 2011, and in which the following instruction was detailed:

"Your responses must be declared and certified by you before a Justice of the Peace to be complete, accurate and truthful. Your declaration must be in the form which is enclosed herewith."

We must respectfully remind you that any person who, without lawful justification or excuse, fails to comply with a lawful requirement of a Contractor-General, or who obstructs, hinders or resists a Contractor-General in the execution of his functions, commits a criminal offence under Section 29 of the Contractor General Act.

*In the premises, we are now requiring you to fully comply with the subject Requisition by **3:00 p.m., on Friday, February 18, 2011...**"*

Mr. Conrad Kerr, in his response to the referenced OCG Letter, which was dated 2011 February 18, and which was received on 2011 February 21, stated, *inter alia*, the following:

“...With regard to the statement excerpted from the form below:

- I can not sign the forms you asked me to because simply put “I do not have full knowledge of and do not understand any of the provisions of the Contractor General Act, nor (as stated previously) do I understand the instructions in the Statutory Requisition of January 17, 2011.”*

I suppose, to understand these items it would take an extensive legal review which neither CLNG, nor myself has to [sic] capability to do. As I am not a Jamaican citizen, I have never been exposed to these items.

Form of Declaration

This declaration affirms that the recipient has full knowledge of and understands the responsibilities and obligations which are outlined in the provisions of the Contractor General Act and the instructions which are detailed in the OCG’s Statutory Requisition of January 17, 2011.

As stated before, the questions were answered out of respect for the OCG investigation, and the hopes of a timely conclusion to the investigation. It should be noted that the answers were supplied without any legal review of the OCG letter, or any legal understanding of the statements made in the letter, or legal understanding of my rights under Jamaican law...”

Based upon the foregoing, the OCG has used the responses which were provided by Mr. Conrad Kerr, to the OCG’s Statutory Requisition, subject to and fully cognizant of the foregoing caveat.