

# OFFICE OF THE CONTRACTOR GENERAL

## Report of Investigation

Conducted into the Procurement of Fire-Fighting Vehicles and Equipment for the  
Jamaica Fire Brigade  
(Formerly) Ministry of Local Government and Community Development & Sport

### EXECUTIVE SUMMARY

In 2006 November, the Office of the Contractor General (OCG), initiated an investigation into a complaint against the Ministry of Local Government and Community Development & Sport (MLGCDS) made by Mr. Ian Levy, representing Ian. K. (Agencies) Ltd. Mr. Levy's complaints were in relation to:

- the award of a contract to Rosenbauer America, LLC, for the provision of Left Hand Drive (LHD) fire trucks;
- the Ministry's decision to put the acquisition of the fire trucks to tender;
- the disqualification of Renault Trucks from the pre-qualification process without any good reason; and
- the objection to the Ministry's decision to put to tender the acquisition of two (2) fire boats, stating that it was grossly unfair to his company.

The investigation was conducted in an effort to ascertain the merits of the complaint, the details of the selection process and whether the selection process was carried out in a fair and transparent manner. The investigation concluded that:

1. There is no evidence to support Mr. Levy's claim of a bilateral agreement between the French Government and the Jamaican Government.
2. There is evidence to suggest that there were discussions between the Ministry of Finance and Mr. Levy on the procurement of fire trucks from Renault Trucks but the discussions fell through. A decision was taken by the Government of Jamaica to procure the Fire-Fighting Vehicles and Equipment, by Open Tender, from the Government's budget.
3. Mr. Levy's claim that the tender from Renault Trucks was thrown out by the former MLGCDS, is baseless.
4. The Ministry of Local Government carried out a rigorous prequalification process and evaluated all the submissions in accordance with the requirements of the prequalification documents. Renault Trucks failed to satisfy six (6) of the prequalification requirements. It must be noted that Renault Trucks submitted historic financial statements in French for four (4) of the five (5) years required, and without providing a translation document. Sub-Clause 12.1 of the Instructions to Tenderers states that "*The Tender as well as all correspondence and documents relating to the Tender, exchanged by the Tenderer and the Purchaser, are prepared and submitted in English Language*".
5. The Evaluation team concluded that only one of the five tenderers, Rosenbauer America, LLC, met all the pre-qualification requirements. As a result, Rosenbauer America, LLC, was recommended to participate further in the procurement process. The evaluation revealed that Rosenbauer America met all the mandatory requirements and conformed to all of the terms, conditions and specifications of the Tender Document.
6. There is merit in the claim that was made by Mr. Levy that the tender was awarded to a company which supplied LHD fire trucks. However, the detailed

technical specifications of the tender referred to a preference on the part of the purchaser for RHD fire trucks not that the supply of RHD fire trucks was an absolute requirement.

7. Finally, Mr. Levy's objection to the tender of two (2) fire boats by the Ministry of Local Government & Environment, and that it would be "grossly unfair " for the Ministry to put the purchase of the boats to tender, is baseless. According to Section 2.12 Dispute Resolution of the Government Procurement Procedures Handbook (GPPH):

*"Any contractor that claims to have suffered, or that may suffer, loss or injury due to a breach under this Handbook by the procuring entity may seek review. Notwithstanding the foregoing, the following shall not be subject to review:*

- *The selection of a method of procurement; or*
- *A decision by the procuring entity under Section 2.8 to reject all tenders, proposal, or offer, prior to acceptance".*

Hence, the Ministry of Local Government has acted within the ambit of the Government Procurement Guidelines, and without prejudice to Mr. Levy or Ian. K. (Agencies) Ltd.

Based upon the foregoing, the OCG is of the view that the Ministry of Local Government acted within the ambit of the Government Procurement Procedures and Guidelines and that the procurement of the Fire-Fighting Vehicles and Equipment for the Jamaica Fire Brigade was subjected to competitive tender in accordance, *inter alia*, with the Contractor General Act and without prejudice to Mr. Levy and/or any other bidder. Further, the OCG believes that the award of the contract for the provision of Fire-Fighting Vehicles and Equipment was meritorious, fair and transparent.

## **INTRODUCTION**

Pursuant to a formal complaint made on 2005 September 7, by the Chairman of Ian K. (Agencies) Ltd., Mr. Ian Levy, the OCG, under the instruction of the Contractor General, commenced an investigation into the procurement of Fire-Fighting Vehicles and Equipment by the former MLGCDS for the Jamaica Fire Brigade.

The complaint related to:

1. The objection to the award of a contract to Rosenbauer America LLC for the provision of LHD fire trucks;
2. The decision of the MLGCDS to put the fire trucks to tender, for unclear reasons;
3. The 'throwing out' of the tender from Renault Trucks, by the Ministry, for no good reason; and
4. The objection to put to tender the acquisition of two (2) fire boats on the basis that it would be grossly unfair to his company because representation had been made by way of an offer for him to supply the fire boats to the Ministry.

## **TERMS OF REFERENCE**

The primary aim of the investigation was to determine, *inter alia*, in accordance with the OCG's mandates under Section 4 and Section 15 of the Contractor General's Act, whether the agency responsible for the award of the contract was in compliance with the applicable Government procurement, tender and contract award procedures; whether there were instances of irregularity or impropriety in the contract award procedures; and whether the contract was awarded impartially and on merit.

The following Terms of Reference led the focus of the investigation:

- a. Determine whether the MLGCDS was in compliance with the applicable Government Procurement Procedures;
- b. Determine whether the 2005 contract with Rosenbauer America, LLC, for the provision of Fire-Fighting Vehicles and Equipment, was subject to competition;
- c. Determine whether the 2005 contract with Rosenbauer America, LLC, for the provision of Fire-Fighting Vehicles and Equipment, was awarded on the basis of merit;
- d. Determine whether Rosenbauer America, LLC, met the required equipment specifications which were established by the Ministry of Local Government, Community Development and Sport; and
- e. Determine if there is any merit to Mr. Ian Levy's complaint.

## **BACKGROUND**

On 2005 September 7, Mr. Ian Levy, Chairman of Ian K. (Agencies) Ltd., made a formal complaint to the OCG. In his complaint letter, Mr. Levy strongly objected to the award of a contract to Rosenbauer America, LLC, for the provision of LHD fire trucks, an issue which he claimed was reported in *The Gleaner* on Wednesday, 2006 July 26. Mr. Levy also objected to a similar award made to Rosenbauer America, LLC, in 2005 for Thirty-three (33) fire trucks.

In his letter, Mr. Levy also stated his objection to the tendering of garbage units by the MLGCDS on behalf of the NSWMA. Mr. Levy reported in his letter, that sometime in 2004, the French company, Renault Trucks, which Ian K. (Agencies) Ltd. represents, presented a "... detailed package for Fire Trucks and Garbage Trucks to the Jamaican

Government”. Mr. Levy stated that the package was “... in direct response to a request from the Ministry of Finance and Planning of Jamaica to furnish these trucks with a Financial Offer covering the total supply. The package offered was backed by the French Government and as such was a bilateral agreement...” Mr. Levy further stated in his letter that the offer “...was approved by Mr. Robert Martin of the Ministry of Finance and Planning and also approved by the then Chairman of the National Contracts Commission, Mr. Leo Lawson...”

In his 2005 September 7 letter, Mr. Levy detailed the basis of his objections to the award of contracts to Rosenbauer America, LLC, as follows:

1. The MLGCDS, for unclear reasons, decided to put the fire trucks to tender.
2. The Renault Truck tender was “... thrown out by the Ministry for no good reason...”
3. The tender was awarded to a company which supplied LHD fire trucks.

Mr. Levy further referred to a letter from the Minister of Finance, dated 2005 August 9, in which he quoted a statement made under the signature of the then Minister of Finance which read: “I hereby confirm that Cabinet has taken the decision to sole source equipment and units for both services using the French Offer.” Mr. Levy contended in his letter of 2005 September 7 that “... the services referred to here are the Fire and Garbage Units as the letter was so titled.”

On 2006 October 9, Mr. Levy lodged an objection to the tender of two (2) fire boats. Mr. Levy reported that he was informed that the Ministry of Local Government & Environment (MLG&E) had recently “... put on tender, the acquisition of Two (2) fire boats.” His protest of the proposed tender was based upon the following points contained in his letter:

1. The French Government made an offer for the two fire boats based upon a special request from the MLGCDS.
2. The offer from Raidco Marine is based upon a French Bilateral Agreement.
3. There is a precedent of countries making an offer for a particular item to the Jamaican Government and the offer is accepted without the item being put to tender.
4. Ian K. (Agencies) Ltd. and Raidco Marine had incurred costs as a result of their work with the JFB to develop the specifications for the fire boats. This was done at the request of the MLGCDS.
5. A complete proposal with prices has been submitted to the MLGCDS and the JFB.
6. There is an arrangement for special financing in place which was accomplished through the intervention of the French Government.
7. The supply of the two (2) fire boats is the continuation of an initiative of the French Government.

As a result of the foregoing, Mr. Levy felt that it would be “grossly unfair” to put the purchase of the two fire boats to tender.

On 2005 April 11, the MLGCDS received a complaint from two (2) of the unsuccessful tenderers:

- (a) Mr. Ian Levy, representing Renault Trucks; and

(b) Rennie Wellington, representing Somati Equipment and Fort Garry Industries Ltd.

Over the period 2005 May to 2005 August, Mr. Levy, the Chairman of Ian K. Agencies Ltd., made several representations to the MLGCDS objecting to the award of the contract to Rosenbauer America, LLC. Chief, among his complaints, were his assertions that:

1. Renault Trucks had a proven track record of performance in Jamaica, whereas Rosenbauer America, LLC, did not.
2. Renault Trucks was backed by a concessionary financing offer from the Government of France, which was agreed upon by the Government of Jamaica.
3. The trucks supplied by Rosenbauer America, LLC, were left hand drive (LHD) vehicles and should not be allowed to operate in Jamaica.
4. Rosenbauer America, LLC, was awarded the contract without competition.

On 2005 August 31, the OCG received a complaint, by telephone, from Mr. Ian Levy, concerning the award of the contract for the provision of Fire-Fighting Vehicles and Equipment for the JFB. On 2005 September 7, Mr. Levy formalized his complaint by way of letter to the OCG, outlining his objection to the award of contract to Rosenbauer America, LLC, for JFB fire trucks, and to the tendering of garbage units by the MLGCDS on behalf of the NSWMA.

Mr. Levy based his objection upon an alleged 2004 presentation of a package for the supply of garbage and fire trucks to the Government of Jamaica, by the French company, Renault Trucks. According to Mr. Levy, the package was a direct response to a request from the Ministry of Finance and Planning (MF&P), and that the offer was approved by Mr. Robert Martin and the then Chairman of the NCC, Mr. Leo Lawson.



In 2006 November, following Mr. Levy's complaints to the OCG, the OCG initiated an investigation into the tender process, as well as the award of a contract for Fire-Fighting Vehicles and Equipment to Rosenbauer America, LLC, as was detailed in the aforementioned Terms of Reference.

## **METHODOLOGY**

The following methodologies were used to derive the findings and conclusions of this investigation:

- a. Review of Section 2 of the GPPH;
- b. Review of the NCC's Minutes and correspondences regarding the award of contracts for the JFB (2004 to 2006);
- c. Review of documents requisitioned from the MLG&E;
- d. Review of MF&P documents and correspondences;
- e. Review of tender documents and tender report regarding the supply of Fire-Fighting Vehicles and Equipment to the JFB.

## **FINDINGS**

The following are the stated facts and findings with regard to the procurement exercise:

### **NCC Approval for Limited Tendering**

The former Ministry of Finance and Planning (MOF), by letter dated 2004 May 7, sought guidance from the NCC regarding the acquisition of trucks for garbage disposal and fire services. The letter to the NCC stated, *inter alia*, "The GOJ has been offered what could

be considered a meritorious proposal for the sole source procurement of One Hundred and Sixty Two (162) garbage and fire trucks from Renault (CAMIVA)”.

The NCC approved the request to sole source on 2004 May 12 and instructed the MOF as follows:

1. *The development of clear specifications as to the vehicle requirements of the Jamaica Fire Brigade (JFB) and the Solid Waste Management Authority (NSWMA).*
2. *To ensure that the specification in the offer meets the requirements of the JFB and the NSWMA.*
3. *To compare the cost of the units being offered to the Government of Jamaica with current market prices worldwide.*
4. *To ensure that Renault /CAMIVA has a proper after sales support for the maintenance and spare parts”.*

Additionally, the NCC instructed, *inter alia*, that “*Regarding the specifications, the NCC is recommending that they be submitted to the National Works Agency’s Directorate of Assets Management for review.*”

The Ministry of Local Government & Environment (MLG&E), then known as the Ministry of Local Government, Community Development & Sport (MLGCDS), by letter, dated 2004 September 07, informed that “*...subsequent to receipt of NCC’s endorsement, several unsolicited proposals were received by MLGDS and MOFP concerning the supply of fire trucks for the Jamaica Fire Brigade.*”

Additionally, the MLGCDS, in the same letter, informed the NCC that the Ministry had sought technical advice as instructed, and that the following steps were taken:

- “1. *An evaluation team was established and chaired by the Cabinet Secretary, Dr. Carlton Davis. The Team included the Financial Secretary, MOFP- Mrs. Shirley Tyndall and the Permanent Secretary, MLGCDS- Ms. Loraine Robinson.*
  
2. *An independent technical panel was convened to develop clear technical specifications of the vehicle requirements of the Jamaica Fire Brigade. The panel comprised:*  
*Mr. Wainsworth Anderson – Director, Asset Management, NWA*  
*Frederick Whyte –Deputy Commissioner, JFB*  
*Mr. Hugh Morris – Emergency Services Manager, Airports Authority*  
  
*The specifications developed will be utilized in the tender document”.*

The MLGCDS, on 2004 September 16, received approval from the NCC to put to Limited Tender, the provision of Forty-one (41) Fire-Fighting Vehicles and Equipment for the JFB. The decision of the MLGCDS to pursue the Limited Tender procurement methodology was based upon the presentation of several unsolicited proposals for Fire-Fighting Vehicles and Equipment from various suppliers, as well as a Cabinet decision to prioritize the modernization of the JFB.

The NCC, in its approval to use the Limited Tender methodology, stipulated that the procurement should be open to only those Fourteen (14) contractors that had previously submitted unsolicited proposals for the supply of Fire-Fighting Vehicles and Equipment.

### **Pre-Qualification**

On 2005 January 17, Pre-qualification and Tender Documents, along with letters of invitation, were sent to the Fourteen (14) companies that had previously submitted unsolicited proposals. They were required to submit proposals for the supply of Fire-Fighting Vehicles and Equipment. The group included Ian K. (Agencies) Ltd.

## **Tender Invitation**

The MLGCDS, acting on the instructions of the NCC, began its Limited Tender procurement of Fire-Fighting Vehicles and Equipment on 2005 January 20, by inviting the Fourteen (14) companies that had previously submitted unsolicited proposals, to participate in the tender for the supply of Forty-one (41) Fire-Fighting Vehicles and Equipment and related services.

Letters of invitation and other documents were sent to the following Fourteen (14) companies:

1. Emergency One Inc.;
2. Oshkosh Trucks & NSG Exports Ltd.;
3. Somati Equipment NV;
4. Seagrave Fire Apparatus, LLC;
5. Fort Garry Industries;
6. AMECO Caribbean Inc.;
7. Rosenbauer International (America & Austria);
8. Ian. K. Agencies representing Renault Trucks;
9. John Dennis Coach Builders;
10. Angloco Ltd.;
11. Dennis Fire Ltd.;

12. Carmichael International;

13. Toyo Shokai;

14. AIBC International Corporation.

Tenderers were required to submit a five-year service and maintenance contract in their tender, for all the vehicles in the Lot(s) proposed for supply.

The letter of invitation to each supplier clearly stated that the tender closing date was Friday, 2005 February 18 at 12:00 NOON. The deadline for the submission of tenders was extended from 2005 February 18 to 2005 March 11, due to the issuance of four clarification responses and four Addenda. This was communicated via an Addendum issued 2005 March 2 by the MLGCDS.

Each supplier was sent a package including a letter of invitation, and the tender documents which included the tender instructions, stipulating, among other things, that the tenderers would be pre-qualified via the 'Two Envelope System'. Tenderers were permitted to submit a quotation / quotations for any individual lot or combination of lots. The total package of Forty-one (41) units was comprised of three Lots as shown below:

#### **Schedule of Required Vehicles, Equipment and Tools**

<b>Lots</b>	<b>Type of Vehicle inclusive of Equipment and Tools</b>	<b>Quantity</b>	<b>Item No.</b>
1	Water Tender	4	WT-01-04
	Foam Tender	4	FT-01-04
2	Emergency Tender	4	ET-02-04
	Hydraulic Platform	2	HP-02-02
	Turntable Ladder	2	TL-02-02
3	Pumper	25	PT-03-25
<b>TOTAL</b>		<b>41</b>	

### **Returning and Opening of Pre-qualification/Tenders**

Five companies responded to the invitation and their tenders were opened on 2005 March

11. These companies were:

1. Notmar Trading Co. Ltd.;
2. Somati Equipment;
3. Fort Garry Industries Ltd.;
4. Rosenbauer America, LLC;
5. Renault Trucks.

Five (5) submissions, inclusive of pre-qualification and tender documents, were received before the close of tender at 12:00 NOON on Friday, 2005 March 11. The pre-qualification documents were opened in the presence of the MLGCDS' Tender Officer, representatives of the tenderers, representatives of the JFB board, representatives of the OCG and representatives of the MLGCDS. The Tenderers and Representatives were:

<b>Tenderer</b>	<b>Local Representatives</b>
Somati Equipment	J. R. Group
Fort Garry Industries Ltd.	J. R. Group
Rosenbauer America LLC	National Safety ltd.
Osh Kosh Trading Co. Ltd. & NSG Exports Ltd.	Notmar Trading Co. Ltd.
Renault Trucks	Ian K. (Agencies) Ltd.

### **Evaluation of Pre-qualification/Tenders**

The evaluation of the bidders' pre-qualification documents was conducted on 2005 March 18, by a five-member team comprised of three MLGCDS representatives, a

representative of the JFB Board and a representative of the MF&P. Tenderers were required to submit the following qualification information:

- (i) Prequalification Submission Sheet;
- (ii) Historical Contract Non-Performance;
- (iii) Pending Litigation (Form PRQ – 4 with attachments);
- (iv) Financial Situation;
  - Historical Financial Performance (Form PRQ – 4 with attachments)
- (v) General Experience.

The Evaluation team concluded that only one of the five tenderers, Rosenbauer America, LLC, met all the pre-qualification requirements. As a result, Rosenbauer America, LLC, was recommended to participate further in the procurement process.

According to the Tender Report and accompanying documents, the remaining four tenderers were not pre-qualified:

- (1) Notmar Trading Co. / Ltd. RPM Tech Inc;
- (2) Fort Garry Industries Ltd;
- (3) Somati Equipment;
- (4) Renault Trucks.

The MLGCDS' Pre-qualification Evaluation Team's report, along with the recommendations, was forwarded to a three-member Evaluation Committee established by the Cabinet and headed by the Cabinet Secretary.

The three-member Evaluation Committee, led by Dr. Carlton Davies, Cabinet Secretary, reviewed the findings and made the following decisions:

1. Only one of the five tenderers, Rosenbauer America, LLC, is responsive and therefore eligible to participate further in this procurement.
2. One tenderer, RPM Tech Inc. (submitted through NOTMAR Trading Co. Ltd.) was not invited to tender and is therefore ineligible to participate in the procurement opportunity.
3. The other three tenderers, Fort Garry Industries Ltd., Somati Equipment and Renault Trucks, are non-responsive and therefore ineligible to participate further in this procurement opportunity.

On 2005 April 11, the Permanent Secretary in the MLGCDS wrote to Ian. K. Levy Ltd. - Renault Trucks, advising that Renault Trucks had failed to meet six (6) of the eleven (11) pre-qualification requirements. The letter provided details on each of the areas in which Renault Trucks had failed to meet the pre-qualification standard. The letter further informed Mr. Levy that Renault Trucks was considered non-responsive and Renault Trucks' technical and financial proposals were returned.

The Permanent Secretary in the MLGCDS advised the Minister of Finance and Planning of the outcome of the pre-qualification process by way of a status report, made under cover of a letter dated 2005 April 12. The report advised the Minister of the selection of Rosenbauer America, LLC and that the other four (4) bidders, including Renault Trucks, did not meet the pre-qualification requirements.



## Technical Proposal

On Wednesday, 2005 April 13 at 9:00 a.m., the technical proposals were opened at the MLGCDS' office at 85 Hagley Park Road, Kingston. Rosenbauer America, LLC, the sole pre-qualified tenderer, submitted technical proposals for the supply of Fire-Fighting vehicles and equipment listed in Lots #1 and 3.

An Evaluation team was established to analyse the technical proposal, namely:

Ms. Onika Campbell	-	MLGCDS
Mr. Anthony Anderson	-	JFB Board
Mr. Rudolph Summerville	-	MLGCDS
Mr. Ian Lyon	-	MLGCDS
Mr. Carlton Green	-	NWA

The criteria, methodology and scores which were utilized in the evaluation of the technical proposal were in accordance with the requirements of the Tender Document and were as follows:

- Compliance with the Technical Specifications - 50
- Dealership Resources - 30
- Servicing and Running Costs - 10
- Training - 10
- Delivery Period

The technical evaluation was completed on 2005 April 25. The evaluation revealed that Rosenbauer America met all the mandatory requirements and conformed to all of the terms, conditions and specifications of the Tender Document. As is outlined below, Rosenbauer had submitted a proposal for Lots #1 and #3 and attained a Quality score of 52.6 and 51.6, respectively, for both Lots, out of a maximum score of 100.

**Schedule of Required Vehicles, Equipment and Tools**

<b>Lots</b>	<b>Type of Vehicle inclusive of Equipment and Tools</b>	<b>Quantity</b>	<b>Item No.</b>
1	Water Tender	4	WT-01-04
	Foam Tender	4	FT-01-04
3	Pumper	25	PT-03-25
<b>TOTAL</b>		<b>33</b>	

A review of the tender documents supplied by Rosenbauer America, LLC, showed that the supplier satisfied the requisite NCC registration and Tax Compliance Certification.

The tender validity period was for 120 days after the tender submission date of 2005 March 11, and would expire on 2005 July 8. Prior to the expiration of the tender validity period, the MLGCDS requested the tenderer to extend the period of validity for an additional forty-five (45) days to facilitate completion of the tender process. The tenderer agreed to extend the tender validity to 2005 August 26.

**Financial Proposal**

The financial proposal for Lots #1 and 3, submitted by the only pre-qualified and technically responsive bidder, Rosenbauer, LLC, was opened and read out publicly on 2005 April 26 at 10:15 a.m. at the MLGCDS’ office, 85 Hagley Park Road, Kingston. The results of the opening were recorded as follows:

**Rosenbauer America, LLC**

<b>Lot #1</b>	<b>US\$</b>
4 – Water Tenders	879,200.00
4 - Foam Tenders	<u>987,288.00</u>
	1,866,488.00
<b>Lot #3</b>	<b>US\$</b>
25 – Pumpers	6,560,605.00
<b>Plus 5-year maintenance contract</b>	4,737.00/vehicle/year

The financial evaluation was completed on 2005 April 26. The criteria, methodology and scores which were utilized in the evaluation of the financial proposal, were in accordance with the requirements of the tender documents and were as follows:

- Purchase Price – 50
- Interest Rate – 40
- Repayment Structure – 20
- Insurance – 15
- Disbursement Schedule – 10
- Loan Currency – 05
- Other Costs – 10

Since Rosenbauer, LLC, was the only pre-qualified tenderer and their offer was technically responsive, they were awarded the maximum score of Fifty (50) points for the Purchase Price criterion. As regards the remaining criteria, the proposal from Rosenbauer, LLC was awarded an aggregate score of 86.75 for Lot #1 and 85.75 for Lot #3 out of a maximum score of 100 points.

**Lot #2**

Rosenbauer America, LLC, did not submit an offer for Lot #2, stating that due to insufficient time they could not adequately prepare an offer.

With respect to Lots # 1 and 3, the bid from Rosenbauer America, LLC, was determined by the Evaluation Team to be technically and financially responsive. As such, Rosenbauer America, LLC, was considered only for the supply of Thirty-three (33) Fire-Fighting vehicles and equipment.

### **Negotiation with Rosenbauer**

Rosenbauer, LLC's financial proposal was as follows:

Lot #1	-	\$1,866,488.00
Lot #3	-	\$6,560,605.00
Service and Maintenance for 5 years for both Lots	-	<u>\$781,605.00</u>
		\$9,208,243.00

After a series of negotiations concerning the specifications of the Fire-Fighting equipment and vehicles to be provided, Rosenbauer America, LLC, was recommended for the award of the contract for Lots #1 and 3 for the supply of Thirty-three (33) Fire-Fighting Vehicles and Equipment.

### **NCC Recommendation**

The MLGCDS submitted its recommendation for the contract award of the Thirty-three (33) Fire-Fighting Vehicles and Equipment to the National Works Agency's (NWA's) Sector Committee on 2005 July 1 to award the contract to Rosenbauer America, LLC, in the sum of US\$9,208,243.00. The NCC considered and endorsed the recommendation of the NWA Sector Committee on 2005 July 6.

### **Award of Contract**

The contract was awarded to Rosenbauer America, LLC, in the amount of Nine Million, Two Hundred and Eight Thousand, Two Hundred and Forty Three United States Dollars (USD\$9,208,243.00) for the supply of the Thirty-three (33) Fire-Fighting Vehicles and Equipment. Cabinet approved the recommendation on 2005 July 25, and the agreement was signed on 2005 September 30. This was confirmed by the Permanent Secretary of the MLGCDS.

## CONCLUSION

Based upon the findings of the investigation into Mr. Levy's complaints, and the circumstances surrounding the award of the contract to Rosenbauer America, LLC, the OCG has concluded that:

1. The NCC granted approval for the MLGCDS to use the Limited Tender method of procurement on 2004 September 16. The NCC's approval was conditional - only the Fourteen (14) bidders that had previously submitted unsolicited proposals were to be invited.
2. The MLGCDS informed the Cabinet Secretary that two formal complaints from Mr. Ian Levy, (representing Renault Trucks) and Mr. Rennie Williams, (representing Somati equipment and Fort Garry Industries Ltd.) were received on 2005 April 11 and 12, respectively.
3. By letter dated 2005 May 5, the Permanent Secretary in the MLGCDS responded to Mr. Levy's complaint. The Permanent Secretary reminded Mr. Levy that Renault Trucks had failed to meet the eleven (11) stated pre-qualification criteria. The Permanent Secretary also informed Mr. Levy that the Attorney General's Department reviewed the Ministry-led pre-qualification exercise, including the criteria and decisions, and advised that the process and decisions taken were fair and in accordance with the Pre-qualification Documents and Instructions to Tenderers.
4. The Permanent Secretary in the MLGCDS also informed Mr. Levy, by way of letter dated 2005 May 6, that the MLGCDS had received a copy of a letter dated 2005 January 25 addressed to Mr. Levy by the Minister of Finance and Planning, indicating that the initial discussions with Renault Trucks/Ian K. (Agencies) Ltd. were in the context of a bilateral concessionary agreement between the French and Jamaican Governments. However "this offer failed to materialize in the

- original form anticipated.” The Permanent Secretary further quoted the Minister’s letter to Mr. Levy, reiterating that “... there can now be no question that the acquisition of the vehicles and equipment is being carried out with total transparency. I sincerely hope that your firm will respond to the tender.”
5. There is evidence to suggest that there were discussions between the Ministry of Finance and Mr. Levy on the procurement of fire trucks from Renault Trucks but the discussions were unsuccessful. A decision was taken by the Government of Jamaica to procure the Fire-Fighting vehicles and equipment, by Limited Tender, from the Government’s budget.
  6. The Evaluation team concluded that only one of the five tenderers, Rosenbauer America, LLC, met all the pre-qualification requirements. As a result, Rosenbauer America, LLC, was recommended to participate further in the procurement process. The evaluation revealed that Rosenbauer America met all the mandatory requirements and conformed to all of the terms, conditions and specifications of the Tender Document.
  7. Mr. Levy’s claim that the Renault Truck tender was thrown out by the former MLGCDS, is baseless. The Ministry of Local Government carried out a rigorous pre-qualification process and evaluated all the submissions in accordance with the requirements of the pre-qualification documents. Renault Trucks failed to satisfy six (6) of the pre-qualification requirements. It must be noted that Renault Trucks submitted historic financial statements in French, for four of the five years required, without providing the requisite translated documents. Sub-Clause 12.1 of the Instructions to Tenderers states that “*The Tender as well as all correspondence and documents relating to the Tender, exchanged by the Tenderer and the Purchaser, are prepared and submitted in English Language*”.

8. The other claim that was made by Mr. Levy is that the tender was awarded to a company which supplied LHD vehicles. There is merit in this claim. However, the detailed technical specifications of the tender referred to a preference on the part of the purchaser for RHD fire trucks and not that the supply of RHD vehicles was an absolute requirement.
  
9. Finally, Mr. Levy's objection to the tender of two (2) fire boats by the Ministry of Local Government & Environment, along with his assertion that it would be "grossly unfair" for the Ministry to put the purchase of the boats to tender, is baseless. According to Section 2.12 Dispute Resolution of the GPPH:

*"Any contractor that claims to have suffered, or that may suffer, loss or injury due to a breach under this Handbook by the procuring entity may seek review. Notwithstanding the foregoing, the following shall not be subject to review:*

- *The selection of a method of procurement; or*
- *A decision by the procuring entity under Section 2.8 to reject all tenders, proposal, or offer, prior to acceptance."*

Based upon the foregoing, the OCG is of the view that the Ministry of Local Government acted within the ambit of the Government Procurement Procedures and Guidelines and that the procurement of the Fire-Fighting Vehicles and Equipment for the Jamaica Fire Brigade was subjected to competitive tender in accordance, *inter alia*, with the Contractor General Act and without prejudice to Mr. Levy and/or any other bidder. Further, the OCG believes that the award of the contract for the provision of Fire-Fighting Vehicles and Equipment was meritorious, fair and transparent.

### **RECOMMENDATIONS**

There are no recommendations.