

OFFICE OF THE CONTRACTOR-GENERAL OF JAMAICA

Special Report of Investigation

Conducted into the Award of Contracts by the Jamaica Urban Transit Company

Ministry of Transport and Works

Table of Contents

Executive Summary.....	02
Introduction.....	22
Terms of Reference.....	25
Background.....	26
Methodology.....	28
Findings.....	33
- Award of Contracts to Members of the Board of Directors of the JUTC and to Senior JUTC Management Personnel.....	33
- Award of Contracts to Simber Productions Limited.....	34
<i>Shareholdings in Simber Productions Limited (47)</i>	
<i>Conflict of Interest in the Award of Contracts to Simber Productions Limited (53)</i>	
<i>Minister Michael Henry's Knowledge and Information (56)</i>	
<i>Declarations Made to the OCG in JUTC's QCA Reports (59)</i>	
<i>Breaches of the GPPH, the CG Act and the Corruption Prevention Act (61))</i>	
- Award of Contracts to Protection and Security Limited.....	65
<i>Contract #1: Cash In-Transit Interim Contract Commencing 2008 January 1 (65)</i>	
<i>Contract #2: Interim Contract for the Provision of Security Services (67)</i>	
<i>Contract #3: NCC Endorsed Contract for the Provision of Security Services (70))</i>	
- Award of Contracts to Cool Oasis Petroleum Limited.....	73
- JUTC Procurement Committee.....	78
- JUTC Board of Directors.....	81
Summary of Key Findings.....	84
Key Conclusions.....	92
Referrals.....	96
Recommendations.....	99
Special OCG Comment	103

OFFICE OF THE CONTRACTOR-GENERAL OF JAMAICA

Special Report of Investigation

Conducted into the Award of Contracts by the Jamaica Urban Transit Company

Ministry of Transport and Works

EXECUTIVE SUMMARY

The Investigation into the award of contracts by the Jamaica Urban Transit Company (JUTC) was initiated by the Office of the Contractor General (OCG) on 2008 July 8.

The OCG's Investigation in this matter was prompted by certain allegations, which appeared in an article in the 2008 July 6 edition of the Sunday Herald Newspaper. The allegations implicitly alluded to the award of a contract to Simber Productions Limited, a company in which the late Chairman of the JUTC, Mr. Douglas Chambers, was the majority shareholder.

Mr. Chambers was brutally gunned down on 2008 June 27 outside the gates of the JUTC's bus depot in St. Catherine.

In addition, the article alluded to the award of contracts to other contractors in circumstances which would amount, *inter alia*, to a violation of the Government Procurement Procedures Handbook (GPPH).

The allegations raised a number of concerns for the OCG, particularly having regard to the provisions that are contained in Section 4 (1) of the Contractor General Act (1983) which mandate that Government contracts must be awarded "*impartially and on merit*" and in circumstances which "*do not involve impropriety or irregularity*".

Some of the referenced allegations alluded to impropriety, a lack of transparency and cronyism in the award of contracts, a breach of the procurement guidelines, mismanagement and a breach of applicable Government administrative and accounting procedures.

Pursuant to the discretionary powers that are reserved to a Contractor General by Sections 15(1) and 16 of the Contractor General Act, the OCG, by way of letter, which was dated 2008 July 8, wrote to the Acting Permanent Secretary in the Ministry of Transport and Works, Mrs. Elsa-May Binns, requesting the following information:

1. Particulars of any contracts which may have been awarded to Mr. Douglas Chambers, the late Chairman of the JUTC, or to any entity in which Mr. Chambers was/is a Director, a Partner a Shareholder and/or an Associate;
2. Details of any JUTC contracts which may have been awarded to Simber Productions Limited, a corporate entity in which Mr. Chambers was the Majority Shareholder;
3. Contracts which have been awarded by JUTC to Cool Petroleum Limited for the supply of lubricants, diesel, fuels and/or oils.

By way of letter, which was dated 2008 July 15, Mrs. Binns indicated as follows:

1. There was no **signed** contract in place with Simber Productions Limited. However, the services of Simber Productions Limited were procured, by JUTC, by way of the Limited Tender Methodology;
2. The late JUTC Chairman, Mr. Douglas Chambers, was associated with Simber Productions Limited;
3. No contract was awarded to Cool Petroleum Limited.

In a further letter to the Acting Permanent Secretary, which was dated 2008 July 11, the OCG advised her that its Enquiry would also be focused upon “*A contract which was endorsed on 2008 May 21 by the National Contracts Commission (NCC) in favour of Protection and Security Limited, in the sum of \$124,265,472.00, for the provision of security services for all JUTC locations for two (2) years, from 2008 to 2010*”.

The OCG’s Special Investigation was initiated in accordance with the discretionary powers which are reserved to a Contractor-General under Sections 15 (1) and 16 of the Contractor General Act.

The preliminary review of (1) the Sunday Herald article, which was dated 2008 July 6, and (2) the information that was supplied by the Acting Permanent Secretary, was informed by the Contractor General Act, the GPPH, the Public Bodies Management and Accountability Act, as well as the Corruption Prevention Act.

In general, these references guided the context within which the Investigation was conducted, the methodology which was utilized and the Findings and Conclusions which were reached herein.

The primary means of data collection and evidence-gathering, which were utilized throughout the Investigation, included written Requisitions/Questionnaires which were issued by the OCG in accordance with the provisions of the Contractor General Act, the Voluntary Declarations Act and the Perjury Act.

Requisitions were issued to (1) the Minister with portfolio responsibility in the Ministry of Transport and Works, the Honourable Michael Henry, (2) several key representatives, board members and executives of the JUTC, (3) Ms. Susan Simes of Simber Productions Limited, (4) Mr. Dennis Morgan of Protection and Security Limited and (5) Mr. Joseph Issa of Cool Petroleum Limited.

The OCG's Investigation revealed that Simber Productions Limited is a company in which Mr. Douglas Chambers, the late Chairman of JUTC, was the Majority Shareholder at all material times.

The OCG's Investigation further revealed that JUTC contracts were awarded to Simber Productions Limited for the production of (a) a JUTC SmartCard feature on the Susan Show, (b) a JUTC commercial and (c) the JUTC "Ride and Win Summer Bling" Advertisement.

The contracts were awarded by the JUTC (a) after an unsolicited offer was made to the JUTC by Simber Productions Limited and (b) after the said offer was discussed at a 2008 February 1 JUTC meeting which was convened and facilitated through the Offices of the late Chairman, Mr. Douglas Chambers, and at which both Ms. Simes and Mr. Chambers were in attendance, together with a Mr. Lenworth Simms, the JUTC's Sales and Marketing Manager, and another representative of Simber Productions Limited.

Subsequent to the referenced 2008 February 1 meeting, two (2) unsigned quotations, which were dated 2008 February 7, from Simber Productions Limited, were signed and agreed to by Mr. Lenworth Simms, the Sales and Marketing Manager, for and on behalf of the JUTC, on 2008 February 7 and 11, respectively.

A payment listing which was provided to the OCG, by the JUTC, revealed that between the period 2008 March 14 and 2008 July 29, a total of J\$1,622,032.05 was paid to Simber Productions Limited by the JUTC.

The OCG's Investigation found that there was a conflict of interest on the part of the late Chairman, Mr. Douglas Chambers, insofar as it pertained to the award, by the JUTC, of the referenced contracts to Simber Productions Limited.

It must be noted that Mr. Douglas Chambers had made an oral declaration of his interest in Simber Productions Limited to the Board of the JUTC on 2008 February 27, pursuant to Section 17 (2) (a) of the Public Bodies Management and Accountability Act. **However, his declaration was made approximately two (2) weeks after the JUTC had already contracted the services of Simber Productions Limited on 2008 February 7 and 11.**

It is also necessary to highlight the fact that Mr. Chambers' declaration of interest occurred at the same time that the Board was being advised of the award of the contracts to Simber Productions Limited. Additionally, the OCG has seen no documentary evidence that approval was actually granted at the referenced meeting for the said contracts.

In light of the referenced conflict of interest, on the part of Mr. Douglas Chambers, his participation in the meeting with Ms. Susan Simes and Mr. Lenworth Simms on 2008 February 1, amounted to a breach of Section 17 (1) (a) and/or (b) of the Public Bodies Management and Accountability Act.

Section 17 (1) of the Public Bodies Management & Accountability Act provides that *“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”.*

In addition, the OCG has concluded that Mr. Douglas Chambers, having been the Majority Shareholder of Simber Productions Limited, at all material times, benefitted personally from the irregular and/or improper award of the contracts by the JUTC to Simber Productions Limited.

To further compound the foregoing Findings of the OCG, it is also instructive to note that the OCG found no documentary evidence of a JUTC evaluation report of the bids of Simber Productions Limited.

This observation is buttressed by the fact that, based upon the 2008 August 27 testimony of Mr. Bindley Sangster, a member of the JUTC Board and the Chairman of the JUTC's Procurement Committee, no tender documents were sent to Simber Productions Limited by the JUTC.

In such circumstances, there would therefore be no formal tender documents to evaluate. In point of fact, the OCG has seen no documentary evidence of a tender invitation, or request for quotation, emanating from the JUTC to any of the three (3) bidders, viz. Simber Productions Limited, GETCAUGHT MEDIA and the Jamaica Information Service (JIS).

There was also the very disconcerting appearance of a lack of knowledge on the part of the Members of the JUTC's Procurement Committee with regard to the exact means by which Simber Productions Limited was contracted by the JUTC.

Additionally, there was no documentary evidence that was forthcoming to prove that the other two (2) bidders, GETCAUGHT MEDIA and the JIS, were afforded the same opportunities that had been extended to Simber Productions Limited, namely the facility of a meeting with the JUTC's Chairman and Marketing and Sales Executive, to discuss the specifications of the proposed services.

It should also be emphasized that the quotations, for the production of a 30 second commercial, that were received, by the JUTC, from GETCAUGHT MEDIA and the JIS, were dated 2008 February 8 and 2008 February 11, respectively. These dates, however, came days after the JUTC's meeting with Simber Productions Limited on 2008 February 1- a meeting in which it appears, from all of the evidence that the OCG has reviewed, that

the JUTC had signalled its intention to engage the services of Simber Productions Limited.

Finally, there was no documentary evidence of the Procurement Committee's approval of the bids of Simber Productions Limited, nor was there any evidence that a recommendation was made to the JUTC's Procurement Committee for the said bids to be approved and for the referenced contracts to be awarded to Simber Productions Limited.

Having regard to the foregoing, the OCG's Investigation has concluded that the said contracts were not awarded to Simber Productions Limited impartially, nor on merit and that the circumstances which led to their award involved rank impropriety and irregularity.

To be more specific, the award of the referenced contracts, by the JUTC, to Simber Productions Limited, constituted a flagrant breach of the GPPH and the contract award principles which are enshrined in Section 4 (1) of the Contractor General Act.

Indeed, it is difficult not to find that the matters that are set out above constitute compelling evidence of the commission of an act of corruption, on the part of Mr. Douglas Chambers, in contravention of the provisions of the Corruption Prevention Act, in the JUTC's award of the referenced contracts to Simber Productions Limited.

Section 14 (1) (b) of the Corruption Prevention Act stipulates 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*".

Further, based upon the documents which have been reviewed, as well as the responses which were received from the JUTC representatives and the various contractors which were the subject of the OCG's Investigation, the OCG has been led to conclude that, under the Chairmanship of the late Mr. Douglas Chambers, there were in fact breaches of

the GPPH, the Contractor General Act and the Public Bodies Management Act in the award of contracts at the JUTC.

In addition to the matters which are outlined above, the OCG's Investigation has made the following determinations and/or uncovered the information which is summarized below:

1. The composition of the JUTC's Procurement Committee was, at all material times, not in accordance with Section 1.5.2.3 of the GPPH. Further, the JUTC's Procurement Committee has failed to fulfil its mandate in accordance with the stipulations that are prescribed by Section 1.5.2.3 of the GPPH.
2. The JUTC's Procurement Committee, prior to and subsequent to Mr. Chambers' appointment, was constituted in a manner which raises critical questions as to the objectivity with which successive JUTC Procurement Committees have conducted the procurement activities of the JUTC.
3. Further, given the lack of knowledge on the part of the JUTC's Procurement Committee members, with regard to the JUTC contracts that were awarded to Simber Productions Limited and the interim contracts that were awarded to Protection and Security Limited, it can be construed that the Procurement Committee of the JUTC was not, in all instances, kept abreast of the JUTC's procurement activities.
4. The foregoing assertions are compounded by the contradictions which exist between the information that was contained in (a) the JUTC's 2008 1st and 2nd Quarterly Contracts Award Reports (QCA) and (b) the statements that were provided by the JUTC's Procurement Committee Members in response to the OCG's Requisitions. This evidences a clear failure on the part of the Procurement Committee to adequately scrutinize the JUTC's procurement of services, in accordance with the requirements of the GPPH.

5. Two members of the JUTC's Procurement Committee indicated that they did not influence, recommend and/or approve the procurement of the services of Simber Productions Limited. Further, based upon the representations that were made by the Members of the JUTC Procurement Committee, the OCG found that they were not and are not collectively conversant with the circumstances under which the contracts were awarded to Simber Productions Limited.
6. The records revealed that there has been only one meeting of the JUTC's Procurement Committee since 2007 August 1. The meeting was held on 2008 February 26 and the official records revealed that the deliberations dealt only with the recommendation for the award of a contract to Protection and Security Limited for the provision of security services to all JUTC locations.
7. However, in the JUTC's 2008 1st Quarter and 2nd Quarter Quarterly Contract Awards (QCA) Reports, which were submitted to the OCG, formal declarations were made that the contracts that were awarded by the JUTC to Simber Productions Limited, among others, were evaluated by the JUTC Procurement Committee and had received the approval of the Committee.
8. The referenced two (2) QCA Reports were signed and certified, respectively, by Mr. Douglas Chambers, in his capacity as the then Chairman of the JUTC, and by Mr. Bindley Sangster, in his capacity as the then Chairman of the Finance Committee of the JUTC, and signified their certification of the accuracy of the particulars and information which was being conveyed therein.
9. Section 29 (a) of the Contractor General Act makes it a criminal offence, *inter alia*, for any person to wilfully mislead or to make a false statement to mislead a Contractor General in the execution of his functions.

10. In the circumstances, there is *prima facie* evidence that both Mr. Douglas Chambers and Mr. Bindley Sangster had wilfully made false written declarations to the Contractor General in breach of Section 29 (a) of the Contractor General Act, and, in so doing, had committed a criminal offence under the Contractor General Act.
11. For 3 consecutive years, viz. 2006, 2007 and 2008, the official Annual Returns of Simber Productions Limited were certified and signed by Mr. Douglas Chambers.
12. For the referenced 3 consecutive years, which commenced with the incorporation of Simber Productions Limited on 2005 April 12, Mr. Douglas Chambers was declared and certified, in the said Annual Returns, and in the official records of the Office of the Registrar of Companies (ORC) of Jamaica, as the listed Majority Shareholder of Simber Productions Limited.
13. The OCG's Finding that Mr. Douglas Chambers was purportedly declared and certified as the Majority Shareholder of Simber Productions Limited, is evidenced by the fact that (a) the 2006 Annual Return of the company disclosed that he held 1020 of the company's then allotted share capital of 2000 shares, (b) the 2007 Annual Return of the company disclosed that he held 1100 of the company's then allotted share capital of 2160 shares, and (c) the 2008 Annual Return of the company disclosed that he held 1100 of the company's then allotted share capital of 2160 shares.
14. In all instances, the remaining shares of the company were declared and certified to be held by the company's only other shareholder, Ms. Susan Simes.
15. An Amended Annual Return of Simber Productions Limited was, however, executed and certified to the ORC of Jamaica, by Ms. Susan Simes, on 2008 July 16, as being "*correct*", less than three weeks after the 2008 June 27 death of Mr.

Douglas Chambers. The Annual Return was stamped “*received*” by the ORC on 2008 July 17.

16. A notation which appears on the referenced amended Annual Return states that “*This Annual Return is filed by way of correcting Annual Returns for the years 2007 and 2008 and is deemed necessary by virtue of the fact that the incorrect shareholdings was stated*”.
17. The amendments which were effected to the 2007 and 2008 Annual Returns of Simber Productions Limited, by Ms. Susan Simes, purported to result in her being declared and certified as the Majority Shareholder of the company, thus replacing Mr. Douglas Chambers as the previously declared and certified Majority Shareholder of the company.
18. The OCG’s Finding that Ms. Susan Simes was purportedly declared and certified as the Majority Shareholder of Simber Productions Limited, is evidenced by the fact that the referenced Amended Return disclosed that she held and holds 1060 of the company’s allotted share capital of 2080 shares, with Mr. Douglas Chambers being the holder of the remaining 1020 shares.
19. The purported change in the share allotments in Simber Productions Limited, not only conflicts with the formal and written attestations of Mr. Douglas Chambers which immediately preceded his untimely death, but it also contradicts the written declarations which have existed upon the official records of the ORC for all years preceding. Indeed, the original 2008 Annual Return of Simber Productions Limited, in which Mr. Douglas Chambers – and not Ms. Susan Simes – had been certified and declared as the Majority Shareholder of Simber Productions Limited, was filed with the ORC on 2008 May 6, and had been signed and certified by Mr. Douglas Chambers, himself, on 2008 May 2, only days before his untimely death on 2008 June 27.

20. It is also instructive to note that one common feature of the referenced Annual Returns, inclusive of the Amended Return, is the name and the signature of the representative of Chambers Henry and Associates, who acted as the Company Secretary for Simber Productions Limited.
21. In the absence of a Grant of Probate or Letters of Administration with the Will Annexed (where there is a Will) or Letters of Administration (where there is no Will), no person may lawfully deal with, transfer or otherwise interfere with the assets of a deceased person. This is underscored by the following statement of Parry and Clarke: The Law of Succession, 11th Edition, Page 484: “If the deceased was a shareholder in an incorporated company ..., the deceased’s shares ... devolve on his personal representatives.”
22. Minister Mike Henry, the Minister of Transport and Works and the portfolio Minister for the JUTC, in his written declarations to the OCG of 2008 October 17, asserted, that “**it is my information that at the time of his death, Mr. Douglas Chambers was a stakeholder, but not the majority shareholder, in Simber Production Limited**”. The 2008 July 13 editions of the Gleaner and Sunday Observer Newspapers had attributed a similar statement to the Minister. The Minister had declared this information or belief notwithstanding the following facts, namely (a) the fact that the official records of the ORC, at the time of Mr. Chambers’ death, on 2008 June 27, had indicated a contrary position, (b) the fact that the official records of the ORC, at the time that the Minister made his statement to the Gleaner Newspaper, had also indicated a contrary position, and (c) the fact that Mr. Chambers, himself, had made a formal declaration, in writing, to the contrary, to the ORC, on 2008 May 2 – less than 8 weeks before his death.
23. Despite the foregoing, the Minister has failed, in his responses to the OCG, to explain the reasons for his information or belief that “*Mr. Douglas Chambers was ... not the majority shareholder in Simber Production Limited*”.

24. Protection and Security Limited was contracted by the JUTC in 2007 December to provide Cash-In-Transit security services on a monthly basis, commencing 2008 January 1. In addition, on 2008 February 18, the JUTC contracted Protection and Security Limited, on an interim basis, to provide security services at all JUTC locations pending completion of a competitive tender exercise for the award of another contract.
25. For the period 2008 April to 2008 August, the total sum that was paid to Protection and Security Limited by the JUTC, under the latter interim contract, was approximately J\$31,879,664.28. The contracting of Protection and Security Limited, on an interim basis, was found to be irregular. This was underscored by the fact that the company was engaged at the same rates which were presented in its 2008 bid document.
26. Further, the latter interim contract which was awarded by the JUTC to Protection and Security Limited would have required both NCC and Cabinet Approval. The OCG has seen no evidence that the said approvals were either sought or received. Consequently, these circumstances constituted a flagrant breach, *inter alia*, of the Contractor General Act and Section 2.3 of the GPPH. Section 2.3 of the GPPH requires that contracts that are in excess of J\$15 Million in value must obtain the prior approval of the Cabinet, following formal endorsement of the NCC, before they can be legally awarded.
27. The JUTC commenced a competitive tender process for the provision of security services in 2008 January. The NCC, via letter, which was dated 2008 May 22, endorsed the recommendation for an award of the contract for the provision of security services to Protection and Security Limited.
28. However, according to Protection and Security Limited, as at 2008 October 1, *“the term of contract (for the provision of security services, under the NCC endorsed contract) has not yet commenced”*.

29. The documentation which has been reviewed by the OCG, during the course of its Investigation, has revealed that Cool Petroleum Limited was not awarded a contract for the supply of Fuels and Lubricants to the JUTC. The present contractual arrangement between the JUTC and Cool Petroleum Limited was created as a result of a continuation of the JUTC's contract with Shell Company W.I., whose assets and liabilities were acquired by Cool Petroleum Limited in 2006 February.
30. Though the JUTC attempted to put the contract for the supply of Fuels and Lubricants to competitive tender, it suspended the tender activity in 2007 November. To date, Cool Petroleum Limited continues to honour the terms and obligations of the extended contractual agreement with the JUTC.
31. Based upon the documentary evidence which has been provided to the OCG, it is evident that the price differential between the fuel that is supplied by Cool Petroleum Limited, versus that supplied by PETCOM, is J\$0.03/litre.
32. The OCG has found that the Members of the JUTC Board and, in particular, those members who sat on the JUTC's Procurement Committee, viz. Mr. Bindley Sangster, Mr. Dennis Chung, and Mr. Raphael Barrett, failed to take any action to properly ensure (a) that the circumstances which led to the award of the contracts to Simber Productions Limited, and the interim contracts to Protection and Security Limited, were fair, transparent and impartial; (b) that value for money was obtained by the JUTC in the award of the said contracts; (c) that the proper procurement procedures and/or guidelines were followed in the award of the said contracts; and/or (d) that there was strict compliance with the provisions of the Financial Administration and Audit Act by the management of the JUTC. In the circumstances, there is evidence that the Members of the JUTC Board of Directors have (i) acted negligently in the discharge of their responsibilities as JUTC Directors and/or (ii) abused their authorities and offices as Directors of

JUTC and/or (iii) breached their duties of trust to the JUTC and/or (iv) breached their respective fiduciary or statutory duties to the JUTC.

33. As such, the OCG concludes that there is evidence that the Members of the JUTC Board are in breach of the provisions which are contained in Section 6 and/or Section 17 (1) (b) of the Public Bodies Management and Accountability Act.

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 therefor of the result of that investigation **and make such recommendations as he considers necessary in respect of the matter which was investigated.**” (OCG’s Emphasis).*

In light of the foregoing, and having regard to the other Findings, Information and Conclusions which are discussed in greater detail in this Report, the OCG has respectfully made the following considered Recommendations:

1. The Procurement Committee of the JUTC should be reconstituted and Members of the JUTC Board of Directors ought not to be permitted to act as sitting members of the said Committee.

Transparency and the appearance of fairness require that there is a distinct separation of the sitting members of the Board of Directors of the JUTC and its Procurement Committee. This is with a view to ensuring the highest degree of objectivity in the execution of the functions of the Board of Directors as distinct from that of the Procurement Committee.

The recommended separation will also mitigate against any probable conflict of interest which may arise in the Board’s exercise of its function in ruling on a recommendation from the Procurement Committee.

2. The existing contract between the JUTC and Cool Petroleum Limited should be competitively tendered by the JUTC. In effect, the tender exercise which was initiated in 2007 must now be fully undertaken by the JUTC in accordance with the requirements of the GPPH.
3. As has been indicated in previous OCG Investigation Reports, the Cabinet should move to immediately develop and implement a comprehensive and over-riding policy to be applicable to all Public Body Boards, to govern, restrict or prohibit, as the case may be, the award of Government contracts (or the divestment of publicly owned assets) by a Public Body, to members of its Board of Directors, or to any entity in which a Board member or a close family relative may have a pecuniary interest.
4. The OCG also respectfully recommends that all Appointees to the Board of Directors of any Public Body are duly and fully made aware of their responsibilities and obligations pursuant to the relevant provisions of the Public Bodies Management and Accountability Act.
5. The OCG believes that it is timely to reiterate its previous recommendations made for the Legislature to move with despatch to criminalize certain breaches of the Government's procurement rules. The OCG is aware that the present Administration is committed to this objective and that the process to elevate the GPPH to regulations is well under way. However, the dire need for this new dispensation must never be under-estimated. It should now be crystal clear, to all concerned, that only punitive sanctions will curb the wanton, cavalier and almost seeming disregard for the GPPH that is a common feature of the procurement practices of some Public Bodies.
6. The OCG must again remind all Public Officers, inclusive of Board Members of Public Bodies, who abuse their office and authority for personal gain, 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.

7. Having regard, *inter alia*, to (a) the fact that certain contracts were irregularly and improperly awarded to Simber Productions Limited, by the JUTC, in circumstances which evidence a breach of the GPPH, the Contractor General Act, the Public Bodies Management and Accountability Act, and the Corruption Prevention Act, (b) the fact that the said contracts were awarded to Simber Productions Limited at a time when Mr. Douglas Chambers, the Chairman of the JUTC, was also the Majority Shareholder of Simber Productions Limited, (c) the fact that Mr. Douglas Chambers, for 3 consecutive years, viz. 2006, 2007 and 2008, had certified and declared, in writing, to the ORC, that he was the Majority Shareholder of Simber Productions Limited, (d) the fact that the said 3 consecutive years commenced with the incorporation of Simber Productions

Limited on 2005 April 12, (e) the fact that an Amended Annual Return of Simber Productions Limited was entered upon the records of the ORC on 2008 July 17, just days after the untimely death of Mr. Chambers on 2008 June 27, and (f) the fact that in the said Amended Annual Return, Ms. Susan Simes, on 2008 July 16, in substance, certified and declared to the ORC, that she, and not Mr. Douglas Chambers, was and is the Majority Shareholder of Simber Productions Limited, are all compelling pieces of evidence which would warrant that the matter should be formally referred to the Commissioner of Police, and the Director of Public Prosecutions (DPP), for further investigation.

The OCG believes that a thorough investigation, into the matter, needs to be undertaken with the objective of ensuring, *inter alia*, the propriety of the purported amendment to the pre-existing share allotments of Simber Productions Limited and the impact that it has had, if any, upon the Estate of Mr. Douglas Chambers.

Upon a strict interpretation of Section 21 of the Contractor General, a Contractor General is mandated to make referrals directly to the competent authority only in instances where he has found evidence of “*a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body*”. However, the evidence that is alluded to herein is not related to “*an officer or member of a public body*”.

Consequently, the OCG is constrained to make the foregoing recommendation, namely, that the matter should be so referred to the competent authority - this as opposed to the OCG directly making the referral itself.

The OCG’s recommendation herein that this matter should be formally referred to the Commissioner of Police and to the Director of Public Prosecutions (DPP) for investigation, is being made pursuant to the discretionary powers that are reserved to a Contractor General by Section 20 (1) of the Contractor General Act.

As was indicted above, the OCG, in the conduct of its Investigations, is required to be guided by Section 21 of the Contractor General Act. This provision mandates a Contractor-General to consider whether he has found, in the course of his Investigation, or upon the conclusion thereof, any evidence of a breach of duty, misconduct or criminal offence on the part of an Officer or member of a Public Body, and to formally refer the matter to the appropriate person or authority that is competent to initiate such proceedings in the matter as may be deemed appropriate.

Pursuant to the mandatory statutory obligations which are imposed upon a Contractor-General by Section 21 of Contractor General Act, the OCG is hereby formally referring a copy of this Investigation Report to the Attorney General on the basis that there is evidence which is recorded herein which would suggest that there was a breach of duty on the part of the Board of Directors of the JUTC or on the part of one or more of its members in contravention, *inter alia*, of Section 6 and 17(1) of the Public Bodies Management and Accountability Act. The matter is being referred to the Attorney General particularly in light of the provisions which are contained in Section 6, 17(1) and 25 of the Bodies Management and Accountability Act.

Further, and pursuant to the mandatory statutory obligations which are imposed upon a Contractor-General by Section 21 of Contractor General Act, the OCG is hereby formally referring a copy of this Investigation Report to the Director of Public Prosecutions on the basis that there is *prima facie* evidence that is contained herein which would suggest that Mr. Bindley Sangster, in his capacity as the Chair of the JUTC's Finance Committee, did, *inter alia*, wilfully make a false statement, on a JUTC QCA Report, which was dated 2008 July 28, to mislead a Contractor General, in contravention of Section 29 (a) of the Contractor General Act and, by so doing, committed a criminal offence. The offence is punishable by a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months, or to both such fine and imprisonment.

Special OCG Comment

The OCG wishes to formally record that it regrets the untimely passing of the late Chairman of the JUTC, Mr. Douglas Chambers, and condemns his brutal slaying. The OCG is acutely mindful of the fact that its considered Findings and Conclusions herein, together with the consequential Recommendations and Referrals which it has made, will, in some respects, reflect adversely upon Mr. Chambers. While the OCG regrets this unfortunate circumstance, it is nevertheless obliged, by law, to present the considered results of its Investigation, into the award of certain contracts by the JUTC, having regard to the documentary and sworn evidence and testimony that it has examined.

INTRODUCTION

The Investigation into the award of certain contracts by the JUTC was initiated by the OCG on 2008 July 8.

The said Investigation followed upon certain allegations and comments that were published in an article which was entitled “*Questionable JUTC Contracts*” and which had appeared in the 2008 July 6 edition of the Sunday Herald Newspaper.

The article alleged, *inter alia*, that (1) contracts were awarded by the JUTC to a company in which the late Chairman of the JUTC, Mr. Douglas Chambers, was said to be a “*major player*”, and (2) contracts were awarded by the JUTC to other contractors, in violation of the GPPH.

Mr. Chambers was brutally gunned down on 2008 June 27 outside the gates of the JUTC’s bus depot in St. Catherine.

The referenced article asserted, *inter alia*, that:

1. “*Why would the board at the Jamaica Urban Transit Company (JUTC), which was mandated to root out corruption, approve an untendered contract to a company in which slain chairman, Douglas Chambers, was a major player?*”;
2. “*And the JUTC was said to have been buying fuel from a private marketing company at 28 per cent more than it could get it from the Petroleum Corporation of Jamaica (Petrojam)*”;
3. “*Chambers was an accountant and a specialist fraud investigator brought in by the Golding administration on a token salary, to reform the transit company. Critics questioned the claim of token salary, saying the anti-corruption*

campaigner was provided with a fully maintained SUV, paid telephone bills and other perks, which cost the company thousands of dollars monthly.”

The concerns and allegations which were contained in the article inferred, *inter alia*, (1) impropriety, (2) a lack of transparency, (3) a breach of the Government’s procurement guidelines, (4) mismanagement, (5) a breach of applicable administrative and accounting procedures and (6) cronyism.

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

Section 4 (1) of the Contractor General Act (1983) mandates that Government contracts must be awarded “*impartially and on merit*” and in circumstances which “*do not involve impropriety or irregularity*”.

The OCG’s Investigation focused upon the contracts which are listed below:

- (1) Contracts which may have been awarded by the JUTC to Simber Productions Limited. Simber Productions Limited is a corporate entity in which Mr. Douglas Chambers, the former Chair of the JUTC, was listed as the Majority Shareholder.
- (2) Any other contracts which may have been awarded by the JUTC to any Director of the JUTC or to any entity in which a JUTC Director is or was a Director, a Partner, a Shareholder and/or an Associate;
- (3) A contract which was endorsed on 2008 May 21 by the National Contracts Commission (NCC) in favour of Protection and Security Limited, in the sum of \$124,265,472.00, for the provision of security services for all JUTC locations for two (2) years, from 2008 to 2010.

- (4) Contracts which have been awarded by the JUTC to Cool Petroleum Limited for the supply of lubricants, diesel, fuels and/or oils.

The Terms of Reference of the OCG's Investigation, into the award of contracts by the JUTC, were primarily developed in accordance with the provisions which are contained in Section 4 (1) and Section 15 (1) (a) to (d) of the Contractor General Act, 1983.

Additionally, the OCG was guided by the important responsibilities which are imposed upon Public Officials by the GPPH, the Public Bodies Management and Accountability Act and the Corruption Prevention Act.

The OCG was also guided by Section 21 of the Contractor General Act, which mandates that a Contractor-General shall consider whether he has found, in the course of his Investigation, or upon the conclusion thereof, that there is 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 appropriate authority.

The Findings of the OCG's Investigation into the award of contracts by the JUTC are premised primarily upon an analysis of the statements and the documents which were provided by the respondents who were requisitioned herein.

TERMS OF REFERENCE

The primary aim of the Investigation was to ascertain whether there was compliance with the provisions of the GPPH and the Contractor General Act (1983) in the award of contracts by the JUTC to Simber Productions Limited, any Director of the JUTC, Protection and Security Limited and Cool Petroleum Limited.

Specific Objectives

1. Identify the procurement process which was employed by the JUTC, or anyone acting on its behalf, in the engagement of the referenced contractors;
2. Determine whether there were any breaches of the Government's procurement procedures on the part of the JUTC, in the execution of any aspect of the transactions which were conducted with the referenced contractors;
3. Determine whether the contracts that were entered into with the referenced contractors were awarded fairly and on merit;
4. Determine whether the process which led up to the award of the contracts to the referenced contractors was fair, impartial and transparent;
5. Determine whether there was any evidence that would indicate impropriety on the part of any individual acting on behalf of the entity in the award of any contract to the referenced contractors.

BACKGROUND

The OCG's investigation into the JUTC's award of certain contracts for the provision of goods and services, was initiated after allegations were made in the Media regarding, *inter alia*, the award of a contract to a company in which the late Chairman, Mr. Douglas Chambers, who was killed on 2008 June 27, had an interest.

The article that appeared in the 2008 July 6 edition of the Sunday Herald Newspaper raised the question as to:

“Why would the board at the Jamaica Urban Transit Company (JUTC), which was mandated to root out corruption, approve an untendered contract to a company in which slain chairman, Douglas Chambers, was a major player?”¹

Further, the article alluded to (1) a contract for the provision of fuel to the JUTC, (2) the token remuneration of the late JUTC Chairman, Mr. Douglas Chambers, and (3) the award of other contracts by the JUTC.

The referenced Media report essentially challenged the merit and propriety of the award of certain contracts by the JUTC, a company which the newspaper article stated was “... *being positioned by the government as a model of how mismanaged state companies could be successfully turned around.*”²

Based upon the foregoing, the OCG commenced an Investigation into the procurement of certain contracts by the JUTC, under the Chairmanship of the late Mr. Douglas Chambers.

¹ Sunday Herald – 2008 July 6

² Sunday Herald – 2008 July 6

Pursuant to the discretionary powers that are reserved to a Contractor General by Sections 15(1) and 16 of the Contractor General Act, the Contractor-General, through the OCG, formally convened an Investigation into the matter on 2008 July 8.

By way of letter, which was dated 2008 July 8, the OCG wrote to the Acting Permanent Secretary in the Ministry of Transport and Works, Mrs. Elsa-May Binns, requesting the following information:

1. Particulars of any contracts which may have been awarded to Mr. Douglas Chambers, the late Chairman of the JUTC, or to any entity in which Mr. Chambers was/is a Director, a Partner a Shareholder and/or an Associate;
2. Details of any JUTC contracts which may have been awarded to Simber Productions Limited, a corporate entity in which Mr, Chambers was the Majority Shareholder;
3. Contracts which have been awarded by the JUTC to Cool Petroleum Limited for the supply of lubricants, diesel, fuels and/or oils.

In a further letter to the Acting Permanent Secretary, which was dated 2008 July 11, the OCG advised her that its Enquiry would also be focused upon “*A contract which was endorsed on 2008 May 21 by the National Contracts Commission (NCC) in favour of Protection and Security Limited, in the sum of \$124,265,472.00, for the provision of security services for all JUTC locations for two (2) years, from 2008 to 2010*”.

METHODOLOGY

The Terms of Reference of the Investigation into the award of contracts by the JUTC were primarily developed in accordance with the mandates of the Contractor-General which are stipulated in Section 4 (1) and Section 15 (1) (a) to (f) of the Contractor General Act, 1983.

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 also guided by the OCG's recognition of the far-reaching responsibilities and requirements that are imposed upon Public Officials and Public Officers of the JUTC by the GPPH, the Public Bodies Management and Accountability Act and the Corruption Prevention Act.

In addition, the OCG was guided by Section 21 of the Contractor General Act, which mandates a Contractor-General to consider whether he has found, in the course of his Investigation, any evidence of a breach of duty, misconduct or criminal offence on the part of an Officer or member of a Public Body.

In any such event, a Contractor-General is obliged to formally refer the matter to the appropriate person or authority that is competent to initiate such proceedings in the matter as may be deemed appropriate. The Contractor-General is also required, in all such instances, to lay a special report thereon before Parliament.

A preliminary set of Requisitions/Questionnaires, dated 2008 July 30, was sent by the Contractor-General to Senior Management Representatives of the JUTC as well as to the members of the JUTC Board of Directors.

Further Requisitions/Questionnaires were subsequently directed to representatives of Simber Productions Limited, Protection and Security Limited and to Cool Petroleum Limited.

The form of written Requisition 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 which are reserved to a 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.

The OCG considered the referenced procedure to be necessary in order to secure the integrity and evidentiary cogency of the information which was to be elicited from respondents. The implications of the subject requirements also served to place significant gravity upon the responses as well as upon the supporting documents which were required to be provided by respondents.

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.”

Section 8 of the Perjury Act provides, *inter alia*, as follows:

“Every person who knowingly and wilfully 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”.

Requisitions/Questionnaires were directed by the Contractor-General to the Public Officers/Officials who are listed below. In addition, comprehensive reviews of relevant information were undertaken by the OCG to assist it in its Investigation. Details of these are also summarized below.

1. A preliminary request for information was directed to Mrs. Elsa-May Binns, Acting Permanent Secretary, Ministry of Transport and Works;
2. The following JUTC Officials/Officers were required to provide written responses and documentation to formal Requisitions which were directed to them by the OCG:
 - (a) Mr. Altius Williams, Member of the Board, JUTC
 - (b) Mr. Calvin Samuels, Member of the Board, JUTC
 - (c) Mr. Dennis Chung, Member of the Board and the Procurement Committee, JUTC
 - (d) Mr. Bindley Sangster, Member of the Board and Chairman of the Procurement Committee, JUTC
 - (e) Mr. Raphael Barrett, Member of the Board and the Procurement Committee, JUTC

- (f) Mr. Paul Abrahams, Member of the Board, JUTC
- (g) Mrs. Ann Marie Rhoden, Member of the Board, JUTC
- (h) Mr. Wayne Barrett, General Manager- Depot Operations, JUTC
- (i) Mr. Neville Francis, General Manager Depot Operations, JUTC
- (j) Mr. Lenworth Simms, Manager, Marketing and Sales, JUTC
- (k) Ms. Meva Learmond, Revenue Controller, , JUTC
- (l) Ms. Pamela Walters, Financial Controller, JUTC
- (m)Mr. Lynval Thompson, General Manager Depot Operations, JUTC
- (n) Mr. Kirk Finnikin, Manager, Service Planning, JUTC
- (o) Mr. Jason Brown, Assistant V. P. Engineering & Technical Services, JUTC
- (p) Mr. Easton Allen, Senior V.P. Operations, JUTC
- (q) Ms. Dianna Satterthwaite, Manager, Internal Audit, JUTC
- (r) Ms. Denisha Buchanan, Legal Officer and Company Secretary, JUTC
- (s) Mr. Brian Tulloch, Manager, Information Technology, JUTC
- (t) Mr. Arthur McKenley, Manager, Halfway Tree Transport Centre, JUTC

3. A Requisition was also directed to Ms. Susan Simes, Managing Director, Simber Productions Limited;
4. Detailed Requisitions were also directed to the following contractor representatives who were deemed sufficiently knowledgeable to assist the OCG in its Investigations:
 - a. Mr. Joseph Issa, Chief Executive Officer, Cool Petroleum Limited;
 - b. Mr. Dennis Morgan, Chief Executive Officer, Protection and Security Limited.
5. A detailed Requisition was also directed to the Hon. Michael Henry, MP, in his capacity as the Minister of Transport and Works. The Requisition was deemed necessary to address certain statements and comments which were reported in the Media, concerning the OCG's Investigation, that were attributed to Minister Henry.
6. A detailed review of the certified statements, supporting documents and the records which were provided by the respondents to the OCG's Requisitions, was undertaken.
7. A follow up Requisition/Questionnaire, requesting clarification on certain issues, was directed by the OCG to Ms. Pamela Walters, the Financial Controller of the JUTC.
8. A follow up Requisition/Questionnaire, requesting clarification on certain issues, was also directed by the OCG to Ms. Susan Simes, the Managing Director of Simber Productions Limited.

FINDINGS

Award of Contracts to Members of the Board of Directors of the JUTC and to Senior JUTC Management Personnel

Approximately twenty (20) Senior Management Representatives and Members of the Board of Directors of the JUTC were requisitioned by the OCG, by way of letters, which were dated 2008 July 30.

The written statutory requisitions sought to ascertain, *inter alia*, whether the requisitioned management representatives and Members of the Board of Directors of the JUTC had, between the period 2007 August 1 and 2008 July 30:

1. been the recipient of any contract or contracts awarded by the JUTC; or
2. been and/or is a Director, a Partner, a Shareholder and/or an Associate in any entity to which the JUTC had entered into a contract.

Having regard to the foregoing objectives of the OCG's Requisition, the OCG found that:

1. No Director and/or Senior Management Representative at the JUTC had entered into any contract with the JUTC in their personal capacity beyond that of an employment contract.
2. There were two (2) reported instances in which a Director and a Senior Management Representative of the JUTC had been a Director, a Partner, a Shareholder and/or an Associate in any entity to which the JUTC had entered into a contract. These were as follows:

i. Mrs. Ann-Marie Rhoden

ii. Mr. Arthur Mckenley

Mrs. Rhoden indicated that she is a Director of Greater Grace Temple, which contracted the JUTC to transport children to and from a youth camp in Moneague, St. Ann, on 2008 August 10 and 16. According to Mrs. Rhoden, the consideration under the contract was J\$72,000 and no disclosure was made to the Board of Directors of the JUTC.

Mr. McKenley advised the OCG that he is associated with Balmoral Automotive Manufacturing Company Limited, to which a JUTC contract was awarded in 2003. He further indicated that he had disclosed this information to the Board of the JUTC on 2008 July 17, during a job interview.

The contracts which were disclosed by Mrs. Rhoden and Mr. McKenley were entered into outside of the 2007 August 1 to 2008 July 30 period which is under review by the OCG.

Without prejudice to the aforementioned, however, the award of contracts, by the JUTC, to Simber Productions Limited, a company in which it was alleged that Mr. Douglas Chambers, the late JUTC Chairman, was a “*major player*”, was disclosed by the OCG’s Investigations.

Award of Contracts to Simber Productions Limited

In the early stages of its Investigation, the OCG was provided with certain information and documentation by Mrs. Elsa-May Binns, the Acting Permanent Secretary in the Ministry of Transport and Works.

By way of letter, which was dated 2008 July 15, Mrs. Binns, in regard to Simber Productions Limited, stated that, *“There is no contract in place. However the late Chairman, Mr. Douglas Chambers was associated with Simber Productions Limited.”*³

The referenced correspondence also indicated that, *“The JUTC does not have on record a signed contract with Simber Productions Limited. However promotional features for the JUTC Smart Card were placed with Simber Productions Limited.”*⁴

The OCG has found on record four letters of quotation from Simber Productions Limited dated 2008 February 7, 2008 February 7, 2008 February 22 and 2008 March 28. All four letters were addressed to Mr. Lenworth Simms, the JUTC’s Manager, Marketing and Sales, and were in relation to:

- A JUTC Commercial
- A JUTC Smart Card Feature on the Susan Show
- Advertising on the Susan Show
- Advertising on the Susan Show

It is instructive to note that all four letters indicated that, *“If you are in agreement with the above terms and conditions, please sign and return the enclosed copy of this letter.”*

In regard to the procurement of the services of Simber Productions Limited, Mrs. Binns informed the OCG that the Limited Tender Methodology was utilized by the JUTC.

In support of this assertion, the documentary evidence that was provided by the Permanent Secretary indicated that quotations were received from the companies as per the table below:

³ Letter from Mrs. Elsa-May Binns dated 2008 July 15

⁴ Letter from Mrs. Elsa-May Binns dated 2008 July 15

Company	Date of Quotation	Costs	Proposed Services
Simber Productions Limited	2008 February 7	J\$261,250.00 + GCT	Production of a 30 Second Commercial with three (3) edited versions.**
GETCAUGHT MEDIA	2008 February 8	J\$540,000.00 + GCT	Production of a 30 Second Commercial
The Jamaica Information Service (JIS)	2008 February 11	J\$191,000.00	Production of a 30 Second Commercial

**Hereinafter referred to as "Quotation A"

Based upon the foregoing information, the listed bid from the JIS was the lowest bid that was submitted in regard to the production of a television commercial. However, it was noted by the OCG that handwritten on the quotation from the JIS, was a modification which was apparently made by the JUTC, which effectively multiplied the JIS bid by three (3) times the original sum that the JIS had formally quoted.

The JUTC's apparent and unauthorized modification of the JIS bid by a multiplicand of three (3), resulted in the JIS' final bid price amounting to J\$573,000.00. It was this irregular action, and one which was carried out in breach of Section 6.1.24 of the GPPH, which made the price quoted from Simber Productions Limited the lowest bid. Section 6.1.24 provides that "*The procuring entity may ask tenderers for clarification of the tenders in writing, cable, fax or email, but no change in price or substance of the tender shall be ... permitted*".

Correspondence that was received by the OCG from the Acting Permanent Secretary in the Ministry of Transport and Works, revealed that Simber Productions Limited was "*chosen as the lowest price.*"

However, the OCG has seen no documentary evidence of a JUTC tender evaluation report which addresses the rationale for the purported adjusted increase in the price of the JIS bid, nor the basis upon which the Simber Productions Limited bid was selected as the lowest bid.

This observation is buttressed by the fact that, based upon the 2008 August 27 testimony of Mr. Bindley Sangster, no tender documents were sent to Simber Productions Limited by the JUTC. In such circumstances, there would therefore be no formal tender documents to evaluate. To be clear, Mr. Bindley's verbatim statement to the OCG was that "*no tender documents sent to the best of my knowledge*".

It is instructive to note that "Quotation A" from Simber Productions Limited stated that, "*Subsequent to our meeting (Simber/JUTC) on Friday, February 1, 2008, we now provide the following information for your perusal.*"

Detailed in "Quotation A", was an outline of the features of the commercial and information indicating that there would be "*three edited versions: (1) One with the promotion for February (2) One with the promotion for March (3) One with no promotion.*"⁵

In regard to the quotation from GETCAUGHT MEDIA, which was dated 2008 February 8, the quotation explicitly stated, "*Option 1 – Production of one (1) 30 Seconds TV Advert for JUTC's production...*"⁶

The Quotation, which was received from the JIS and which was dated 2008 February 11, had as its caption, "**Quotation for the Production of a 30 Second Commercial**" whilst the body of the quotation explicitly stated, "*As per your request, please find below, the cost breakdown of the above mentioned caption.*"⁷

⁵ Letter/Quotation from Simber Productions Limited dated 2008 February 7

⁶ Quotation from GETCAUGHT MEDIA dated 2008 February 8

⁷ Quotation from the JIS dated 2008 February 11.

All three quotations were addressed to Mr. Lenworth Simms, the JUTC's Marketing and Sales Manager.

It must be noted that there appeared to be a lack of consistency in the services which were to be provided by the selected contractors.

The dissimilarity is evidenced by the fact that "Quotation A" from Simber Productions Limited included three edited versions of the proposed commercial whereas the quotations from GETCAUGHT MEDIA, and the JIS, were solely in reference to the production of a 30 second commercial.

It must be highlighted that "Quotation A" from Simber Productions Limited, which was dated 2008 February 7, and the associated terms and conditions that were embodied therein, were accepted and agreed to by Mr. Lenworth Simms on 2008 February 11.⁸

"Quotation A", which was not signed by any Representative of Simber Productions Limited, was signed and agreed to by Mr. Lenworth Simms, for and on behalf of the JUTC, on 2008 February 11. Subsequently, the JUTC made payments to Simber Productions Limited on 2008 March 14. It is notable that "Quotation A" was not signed by any representative of Simber Productions Limited.

It is also necessary to emphasize that, included in the correspondence from the Acting Permanent Secretary, was another Quotation from Simber Productions Limited, which was dated 2008 February 7, in respect of the **JUTC Smart Card Feature on the Susan Show. (hereinafter referred to as "Quotation B")**

"Quotation B" also referred to a meeting between Simber Productions Limited and the JUTC on 2008 February 1 and further indicated that, "*We would like to thank the Jamaica Urban Transit Company Limited (JUTC) for their interest in partnering with*

⁸ Signed acceptance Agreement in Quotation from Simber Productions Limited dated 2008 February 7

The Susan Show to highlight the Smart Card system and the services of the bus company.”⁹

According to “Quotation B”, the feature was to cover the Smart Card and the Transport Centre and was to be shot on Friday, 2008 February 15, for airing on the Susan Show on Thursday, 2008 February 28.

Incidentally, “Quotation B” described the product being offered as a promotional feature, a very distinct description from that which is contained in the “Quotation A” for the **JUTC Commercial**.

“Quotation B”, which was not signed by any representative of Simber Productions Limited, was signed and agreed to by Mr. Lenworth Simms, for and on behalf of the JUTC, on 2008 February 7. Subsequently, the JUTC made payments to Simber Productions Limited on 2008 March 14.

By way of a written response, which was dated 2008 September 26, to the OCG’s requisition, Ms. Susan Simes indicated that:

“Simber Productions Limited approached the JUTC to offer its services in the Public Relations and Media fields. A meeting was requested through the Chairman, Mr. Douglas Chambers. Subsequently I had a meeting with Mr. Lenworth Simms, the marketing manager.

I indicated that we thought a good medium for the promotion of the JUTC’s Smart Card product was through the Susan Show based on the discussion and proposal we prepared for the JUTC. These proposals also included the shooting of commercials for the JUTC.

⁹ Letter from Simber Productions Limited dated 2008 February 7 re: JUTC Smart Card Feature on the Susan Show

Simber Productions Limited was contracted to do a ten minute feature to boost the JUTC's image for the Susan show. The usual fees for a ten minute feature in the Susan Show is \$150,000. The feature turned out to be 20 minutes in length. However Simber Productions decided to waive the additional costs.

Three commercials were also produced for a JUTC Smartcard Promotion at a cost of \$261,250.00.”¹⁰

The three commercials which were produced are as follows:

- Smartcard Promotion for February 2008
- Smartcard Promotion for March 2008
- Smartcard Promotion for April 2008

Ms. Simes' response to the OCG further revealed, *inter alia*, that:

1. *“Both JUTC and Simber Productions agreed that the feature for the Susan show which also spoke to a Smartcard promotion would best be followed up with commercials in the Susan show, since this is where it was first introduced and the show has a wide audience which also represents JUTC's market share.”*
2. *“Subsequently ads were placed in the Susan show in March 2008 at a cost of \$192,000.00.”*
3. *“There was an extension to the promotion in April 2008 and additional ads were placed in the show at a reduced cost of 172,800.00 (10% discount)”*
4. *“An adjustment was made to the Smartcard commercial for April 2008 in which talent was employed for the change. This was done at a cost of \$20,000.00.”*

¹⁰ Statement by Ms. Susan Simes: Response to Question # 5

5. *“It was decided by JUTC that they would repeat the feature aired in the Susan show on CVM-TV and JNN. The feature was then edited into a half hour show (28 minutes) at a cost of \$30,000.00.”*
6. *“These commercials were produced and booked (by Simber) with TVJ, CVM-TV and JNN in June 2008 at no cost to the JUTC.”*

In explaining the circumstances which led to the award of another contract to Simber Productions Limited, Ms. Simes indicated that, *“Out of a meeting of the minds (JUTC and Simber) it was decided to seek the assistance from Simber on a subsequent promotion. This promotion (JUTC Ride & Win Summer Bling) was conceptualized by Simber to help the JUTC to increase its sales and build brand loyalty as well as to get riders to retain their tickets.”*¹¹

Ms. Simes was further required by the OCG to indicate by whom, how, when and the circumstances under which, the services of Simber Productions Limited was engaged.

In response, Ms. Simes indicated to the OCG that the services offered by Simber Productions Limited were contracted by *“Lenworth Simms in written contracts between February and June 2008.”*

According to Ms. Simes, the services were contracted because *“... it was believed that the Susan show (produced by Simber) would yield the best results in terms of getting information about the Smartcard to the public.”*

Mr. Lenworth Simms, in his statement to the OCG, corroborated the assertion which was made by Ms. Simes that Simber Productions Limited had initiated contact with the JUTC.

According to Mr. Simms:

¹¹ Statement by S. Simes: Response to Question # 5.

“Sometime before February 01, 2008, representatives of Simber production contacted JUTC regarding the possibility of running a feature on SmartCard on the Susan Show that is aired on CVM TV.

On February 01, 2008 I convened a meeting in my office. In attendance were: Douglas Chambers (the late Chairman JUTC), Susan Simes, Deidre Chen and Lenworth Simms. The proposed SmartCard feature was discussed. After a presentation all agreed that the Susan Show would have been a good vehicle to utilize in getting the message of the JUTC into the launch of the cashless/SmartCard campaign.”¹²

Ms. Simes declared to have known Mr. Simms solely in a “*business*” capacity for seven (7) years and Mr. Douglas Chambers solely in a “*business*” capacity for eight (8) years.

To be specific, Ms. Simes was asked the following question by the OCG: “*Do you know, or do you have, or have had a personal, business or other relationship with any Public Official/Officer or Employee of the JUTC who was involved in the award of any contract(s) to Simber Productions Ltd? If yes, please indicate:*

- (a) The full name of the Public Official/Officer or Employee of the JUTC;*
- (b) The length of time that you have known the Public Official/Officer or Employee of the JUTC;*
- (c) A full description of the nature of the relationship between yourself and the JUTC representative.”*

In answer to the foregoing OCG question, Ms. Simes formally declared in writing, under cover of a letter, which was dated 2008 September 29, as follows:

- “a. Lenworth Simms and Douglas Chambers*
- b. Lenworth Simms – 7 years/Douglas Chambers – 8 years*
- c. Lenworth Simms (business)/Douglas Chambers (business)”*

¹² Statement by Lenworth Simms: Response to Question # 4

Mr. Simms also formally declared in writing, to the OCG, that, *“I am acquainted with the Managing Director of Simber Productions, Ms. Susan Simes, since 2001 on a professional basis...I also knew Mr. Douglas Chambers, since 2001 only on a professional basis.”*

A payment listing that was provided by the JUTC revealed that between the period 2008 March 14 and 2008 July 29, a total of J\$1,622,032.05 was paid to Simber Productions Limited by the JUTC.

The first payment which was made by the JUTC to Simber Productions Limited, was made on 2008 March 14 in the sum of J\$411,250.00, whilst the last payment was made on 2008 July 29 in the sum of J\$110,000.00.

By way of written Voluntary Declarations, made to the OCG, the members of the JUTC Procurement Committee provided information regarding the JUTC’s award of contracts to Simber Productions Limited.

(a) Mr. Bindley Sangster

In his capacity as a Member of the JUTC Procurement Committee, Mr. Bindley Sangster stated that *“At the meeting of the Board on 27 February 2008, the Board was advised that JUTC would be doing a special promotion of Smart Cards and its services in general with SIMBER Productions. The Chairman declared that he had an interest in said entity and wished to apprise the Board. The value of the said contract was \$750k.”*¹³

It must be noted that Mr. Sangster was quoted in the 2008 July 6 edition of the Sunday Herald Newspaper as saying that, *“The late chairman did advise the board that a company connected to him initiated contact with the JUTC to provide services without his knowledge. And they were discussing some public relations programme. We were satisfied that everything was above board.”*

¹³ Statement by Bindley Sangster: Response to Question # 4

In response to his knowledge of and the veracity of the referenced quote, Mr. Sangster indicated that, *“I am sure I said something approximating the quote but cannot remember the actual words of the interview.”*

Further, in response to another OCG question regarding the referenced quote, Mr. Sangster indicated that Simber Productions Limited is the company which initiated contact with the JUTC and that the Chairman advised the Board of his interest in the company at a Board meeting of 2008 February 27 *“By oral statement”*.

Further, Mr. Sangster indicated that the Board was satisfied that, *“everything was above board”* because, *“I had no evidence which would leave me to believe otherwise.”*¹⁴

The OCG asked Mr. Sangster the following question: *“Did you in any way (a) recommend, (b) influence and/or (c) approve the award of any contract(s) to Simber Productions Ltd? If yes, please provide all relevant particulars.”*¹⁵

In this regard, Mr. Sangster’s response was, *“I approved the Simber contract at the Board Meeting of 27 February 2008.”*¹⁶

Further, when asked about his knowledge of the capabilities of Simber Productions Limited, prior to the engagement of the company, Mr. Sangster indicated that he had no such knowledge.

It is instructive to note that the Minutes of the JUTC Board of Directors Meeting, which was dated 2008 February 27, do not reflect any approval of a contract to Simber Productions Limited. Rather, the Minutes revealed that the Board was informed by the Chairman that the JUTC had entered into contracts with Simber Productions Limited.

¹⁴ Statement by Bindley Sangster: Response to Question # 14

¹⁵ Requisition to Mr. Bindley Sangster

¹⁶ Statement by Mr. Bindley Sangster: Response to Question # 8

The first two JUTC contracts with Simber Productions Limited were signed by Mr. Lenworth Simms on 2008 February 7 and 2008 February 11, two weeks prior to the Board being advised at a meeting of 2008 February 27. The OCG has seen no documentary evidence that approval was actually granted at the referenced meeting.

(b) Mr. Dennis Chung

In his response to the OCG, Mr. Chung, in reference to the procurement of the services of Simber Productions Limited, indicated that, *“I am not aware of whom, how and when these services were engaged.”*¹⁷

With reference to the procurement methodology that was utilized in the procurement of the services of Simber Productions Limited, Mr. Chung indicated that, *“I am not aware of the procurement process in relation to the contracts that was undertaken. Am aware that in the case of Simber around February/March the late chairman did declare to the board that the company’s management had engaged the services of Simber and it came to his knowledge after the contract was already in progress.”*¹⁸

Mr. Chung, in his statement to the OCG, also confirmed that the late Chairman had verbally advised the Board of his interest in Simber Productions Limited.¹⁹

The OCG asked Mr. Chung the following question: *“Did you in any way (a) recommend, (b) influence and/or (c) approve the award of any contract(s) to Simber Productions Ltd? If yes, please provide all relevant particulars.”*²⁰

In that regard Mr. Chung informed the OCG that *“...my influence has been in relation to being advised of the selection but have not directly influenced the selection.”*²¹

¹⁷ Statement by Dennis Chung: Response to Question # 4

¹⁸ Statement by Dennis Chung: Response to Question # 5

¹⁹ Statement by Dennis Chung: Response to Question # 5

²⁰ Requisition of 2008 July 30 to Mr. Dennis Chung: Question # 8

²¹ Statement by Dennis Chung: Response to Question # 8

When asked about his knowledge of the capabilities of Simber Productions Limited, prior to the engagement of the company, Mr. Chung indicated that he *“Was aware that Simber was a production company that produces the Suzanne show based on friendship with the late chairman”*.²²

Mr. Chung acknowledged knowing Mr. Douglas Chambers for approximately twenty (20) years and Ms. Simes for approximately one (1) to two (2) years. Mr. Chung also divulged that he knew Mr. Chambers via a personal friendship and Ms. Simes as an acquaintance through Mr. Chambers.²³

(c) Mr. Raphael Barrett

Mr. Raphael Barrett, in response to the OCG’s requisition, asserted that Simber Productions Limited was *“Engaged by management.”*²⁴

In regard to the procurement methodology that was utilized by the JUTC, he expressly stated that, *“This information should be obtained from company.”*²⁵

When asked about his knowledge of the capabilities of Simber Productions Limited, prior to the engagement of the company, Mr. Barrett asserted that he was aware of the capability of the company and that, *“the information came from the principals: D. Chambers and S. Simes.”*²⁶

The OCG also asked Mr. Raphael Barrett the following question:

*“Did you in any way (a) recommend, (b) influence and/or (c) approve the award of any contract(s) to Simber Productions Ltd? If yes, please provide all relevant particulars.”*²⁷

²² Statement by Dennis Chung: Response to Question # 11

²³ Statement by Dennis Chung: Response to Question # 15

²⁴ Statement by Raphael Barrett: Response to Question # 4

²⁵ Statement by Raphael Barrett: Response to Question # 5

²⁶ Statement by Raphael Barrett: Response to Question # 11

²⁷ Requisition to Mr. Raphael Barrett: Question # 8

In response, Mr. Barrett indicated “No”.

Mr. Barrett also indicated that he had known Mr. Douglas Chambers in a personal capacity for twelve (12) years.²⁸

(d) Other Responses and Information

Mrs. Ann-Marie Rhoden, a member of the JUTC Board of Directors stated that, “I was advised that the contract with Simber Productions Limited resulted from an unsolicited proposal.”²⁹

Mrs. Rhoden indicated that she was aware of the alleged quote by Mr. Bindley Sangster that “everything was above board”. In this regard Mrs. Rhoden asserted that, “The Board felt everything was above board because the service was being rendered to JUTC by Simber, **for free**.”³⁰ (OCG’s Emphasis).

However, Mrs. Rhoden’s assertion is contrary to the documentary evidence which is contained in the Minutes of the Board of Directors, which was dated 2008 February 27, that explicitly stated, “The Board was advised that JUTC would be doing a special promotion of Smart Cards and its services in general with SIMBER Productions. The Chairman declared that he had an interest in said entity and wished to apprise the Board. The value of the said contract was \$ 750 K.”³¹

Shareholdings in Simber Productions Limited

The OCG’s Investigation was interested, *inter alia*, in establishing the relationship that existed between Mr. Douglas Chambers, Simber Productions Limited and Ms. Susan Simes in light of the assertions which were made in the Media that a contract was awarded to a company in which Mr. Douglas Chambers was a ‘major player’.

²⁸ Statement by Raphael Barrett: Response to Question # 1

²⁹ Statement by Ann Marie Rhoden: Response to Question # 5

³⁰ Statement by Ann Marie Rhoden: Response to Question # 14 ii

³¹ Minutes of Meeting of the JUTC Board held on February 27, 2008.

On 2008 July 9, the OCG issued a Media Release in which it announced that it had “taken a decision to commence a preliminary enquiry into the procurement practices of the Jamaica Urban Transit Company Limited (JUTC), particularly as they relate to the award of certain contracts”.

The Release stated, *inter alia*, that “The OCG will enquire into the circumstances of the award of the following contracts, among others: (1) Contracts which may have been awarded by JUTC to Simber Productions Limited. *Simber Productions Limited is a corporate entity in which Mr. Douglas Chambers, the former Chair of the JUTC, is listed as the majority shareholder.*” (OCG’s Emphasis).

In articles which were prominently published in the 2008 July 13 editions of both the Gleaner and Sunday Observer Newspapers, the Minister of Transport and Works and Portfolio Minister of the JUTC, the Hon. Michael Henry, was reported to have either criticized, questioned and/or challenged the veracity of the representations which had been made by the OCG in its 2008 July 9 Media Release.

In a statement which was attributed to the Minister by the Sunday Observer, the Minister was reported to have stated thus: “In respect of a contract to Simber Production Limited, to which Douglas Chambers was connected, it has also been mistakenly reported that he was the majority shareholder”. (OCG’s Emphasis).

In a similar manner, The Gleaner reported as follows: “The Transport Minister also sought to correct the media report that Douglas Chambers was the majority shareholder in Simber Production Limited, to which the late JUTC chairman was connected. Henry said the JUTC board, having conducted a yet-incomplete investigation of the ‘clearly politically motivated assertions’ against the company and its late chairman, has found no truth to the apparently red-herring approach being taken to discredit his character.”³² (OCG’s Emphasis).

³² Sunday Gleaner 2008 July 13.

The OCG’s review, as at 2008 July 8 (the day prior to the issue of its 2008 July 9 Media Release), of the official Annual Returns for Simber Productions Limited, for the years 2006, 2007 and 2008, that were filed with the Office of the Registrar of Companies of Jamaica (ORC), had conclusively revealed that Mr. Douglas Chambers was indeed the Majority Shareholder of Simber Productions Limited at all material times.

Summarised below is the **original** share allotment for Simber Productions Limited as per the three (3) Annual Returns for the company which were filed with the ORC, from the date of its incorporation, and to which the OCG had access prior to 2008 July 9. Simber Productions Limited was incorporated on 2005 April 12.

Name of Shareholder	No. of Shares Held at 12/4/06	No. of Shares Held at 12/4/07	No. of Shares Held at 12/4/08
Susan Simes	980	1060	1060
Douglas Chambers	1020	1100	1100
Total	2000	2160	2160

Ms. Simes, in her statement to the OCG articulated that, “*The listed shareholders are the beneficial owners of Simber Productions.*”³³

It is instructive to note that for each of the referenced Annual Returns, Mr. Douglas Chambers is the person whose name appears as having **signed** and **certified** that the content of the Reports were correct and factual.

Of note, is the fact that, according to the 2007 Annual Return, one hundred and sixty (160) Shares were issued during the period starting 2006 April 13 and ending 2007 April 12.³⁴

³³ Statement by Susan Simes: Response to Question # 3

³⁴ 2007 Annual Return: Page 4

The increase in the share allotment, during the 2006/2007 period, placed the total number of shares taken up, from the time of the incorporation of Simber Productions Limited, on 2005 April 12, at two thousand one hundred and sixty (2160) shares.

The records revealed that both Ms. Susan Simes and Mr. Douglas Chambers acquired eighty (80) shares each during the 2006/2007 period bringing their respective share balance as at 2007 April 4 to **1060** and **1100** shares, respectively.

The 2008 Annual Return, which was signed and certified by Mr. Douglas Chambers on 2008 May 2, and stamped “*received*” at the ORC on 2008 May 6, less than 8 weeks before his death on 2008 June 27, indicated that the share allotment for the two shareholders of Simber Productions Limited, viz. Ms. Susan Simes and Mr. Douglas Chambers, had remained at 1060 and 1100 shares respectively.

Based upon Simber Productions Limited’s share allotment as at 2008 May 2, and the official records of the ORC, Mr. Douglas Chambers was in point of fact the registered **Majority Shareholder** of Simber Productions Limited at all material times.

Of particular note is the fact that Mr. Douglas Chambers was the registered Majority Shareholder of Simber Productions Limited at the time of the issue of the OCG’s Media Release on 9 July 2008 **and** at the time that the Hon. Mike Henry was reported to have challenged the assertions of the OCG to that effect, as was reported by The Gleaner and the Sunday Observer Newspapers on 2008 July 13.

However, it is instructive to note that Ms. Susan Simes, in response to the OCG’s Requisition and by way of letter, which was dated 2008 October 2, asserted that the “*number of Shares held by Susan Simes is 1060 (980 from January 2005 to August 23, 2006) and the number of shares held by Douglas Chambers is 1020.*”³⁵

³⁵ Statement by Susan Simes: Response to Question # 2

Ms. Simes, in her response to an OCG question which required her to provide details of any share transfers and or changes that were made in the allotment of shares which occurred during the period January 2005 to August 2008, asserted that the “*Allotment in shares occurred in August 23, 2006, when 80 shares were allotted to Susan Simes.*”

It is instructive to note that the statement which was made by Ms. Simes contradicted the available information from the ORC, as at 2008 July 8, which indicated that there had been an equal increase in the share allotment to the two shareholders of Simber Productions Limited.

Subsequent to Ms. Simes’ response to the OCG, a further check of the ORC database revealed that an Amended Annual Return was filed with the ORC on 2008 July 17, for Simber Productions Limited, less than 3 weeks after the death of Douglas Chambers. This Amendment purported to make Mr. Chambers the Minority Shareholder of Simber Productions Limited and Ms. Simes the Majority Shareholder.

The ORC Records have revealed that a notation which appears on the Amended Return reads as follows: “*This Annual Return is filed by way of correcting Annual Returns for the years 2007 and 2008 and is deemed necessary by virtue of the fact that the incorrect shareholdings was stated.*”³⁶

The Amended Annual Return which was filed with the ORC on 2008 July 17, declared that the number of shares that had been taken up from the incorporation of Simber Productions Limited to 2008 April 12, was now 2080 shares, eighty (80) shares less than that which was previously reported in the 2007 and 2008 Annual Returns and which had been signed and certified by Mr. Douglas Chambers.

In effect, the Amended Annual Returns resulted in Ms. Susan Simes having 1060 shares in the company and Mr. Douglas Chambers, 1020 shares.

³⁶ Amended Annual Return received at the OCR on 2008 July 17.

The OCG must place upon the record the fact that the Amended Annual Returns for the period 2007 and 2008 were signed and certified to be “*correct*” by Ms. Susan Simes, in her capacity as a Director of Simber Productions Limited, on 2008 July 16.

In summary, therefore, the OCG’s Findings are as follows:

1. For three consecutive years, 2006, 2007 and 2008, the official Annual Returns of Simber Productions Limited were certified and signed by Mr. Douglas Chambers;
2. For the referenced three consecutive years, which commenced with the incorporation of Simber Productions Limited on 2005 April 12, Mr. Douglas Chambers was at all material times, the Majority Shareholder of Simber Productions Limited and was so declared and certified in the company’s relevant Annual Returns
3. For the three (3) consecutive years under review, the Company Secretary for Simber Productions Limited has been Chambers Henry and Associates;
4. An amended Annual Return of Simber Productions Limited was executed by Ms. Susan Simes on 2008 July 16, less than 3 weeks after the 2008 June 27 death of Mr. Douglas Chambers. The Amended Annual Return was stamped “received” by the ORC on 2008 July 17.
5. The amendments to the 2007 and 2008 Annual Returns of Simber Productions Limited have resulted in Ms. Susan Simes being registered on the records of the ORC as the Majority Shareholder of Simber Productions Limited, and Mr. Douglas Chambers, as the Minority Shareholder.

6. One common factor to all of the Annual Returns which have been filed by Simber Productions Limited is the name and signature of the representative of Chambers Henry and Associates who acted as Company Secretary for Simber Productions Limited.

In each instance, the 'Certificates' section of the 2006, 2007 and 2008 Annual Reports, for Simber Productions Limited, was signed by both Mr. Douglas Chambers and a representative of Chambers Henry and Associates, the firm which acted as the Company Secretary for Simber Productions Limited.

Conflict of Interest in the Award of Contracts to Simber Productions Limited

Regardless of the shareholder status of Mr. Douglas Chambers, the OCG's Investigation has found that there was a conflict of interest on the part of the late JUTC Chairman, Mr. Douglas Chambers, insofar as it pertained to the award, by the JUTC, of certain contracts to Simber Productions Limited.

The fact that Mr. Chambers was, in fact, the Majority Shareholder of the company, at all material times, only serves to strengthen the OCG's conflict of interest assertion. Were he the Minority Shareholder of the company, as the above-referenced Amended Annual Return is purporting to claim, he would have been, notwithstanding, a substantial beneficial owner of Simber Productions Limited.

The OCG's assertion of a conflict of interest, on the part of Mr. Douglas Chambers in the JUTC's award of contracts to Simber Productions Limited, is compounded by the appearance of impropriety in the conduct of Mr. Chambers which is premised, *inter alia*, upon the following respective written declarations of Ms. Simes and Mr. Simms:

The written statements and declarations that were made to the OCG by Ms. Susan Simes and Mr. Simms indicated the following, respectively:

- “*Simber Productions Limited approached the JUTC to offer its services in the Public Relations and Media fields. A meeting was requested through the Chairman, Mr. Douglas Chambers. Subsequently I had a meeting with Mr. Lenworth Simms, the marketing manager*”.
- “*On February 01, 2008 I convened a meeting in my office. In attendance were: Douglas Chambers (the late Chairman JUTC), Susan Simes, Deidre Chen and Lenworth Simms. The proposed SmartCard feature was discussed. After a presentation all agreed that the Susan Show would have been a good vehicle to utilize in getting the message of the JUTC into the launch of the cashless/SmartCard campaign*”. (OCG’s Emphasis).

It instructive to note, however, that the fact of the above-referenced meeting, and the presence and participation therein of Mr. Douglas Chambers, conflicts with the statements of Mr. Dennis Chung who has declared to the OCG, in writing, that “... *the late chairman did declare to the board that the company’s management had engaged the services of Simber and it came to his knowledge after the contract was already in progress.*”³⁷ This would suggest that Mr. Chambers had no knowledge of, and did not participate in, the engagement, by the JUTC, of the services of Simber Productions Limited.

However, Mr. Chung’s statement is not supported, in its entirety, by the Minutes of the JUTC’s Board Meeting of 2008 February 27. The Board Meeting Minutes clearly indicate that no statement was made by Mr. Chambers to the Board that the matter “*came to his knowledge after the contract was already in progress*”.

The relevant extract from the Board’s Minutes reads as follows: “*The Board was advised that JUTC would be doing a special promotion of Smart Cards and its services in general*”

³⁷ Statement by Dennis Chung: Response to Question # 5

with SIMBER Productions. The Chairman declared that he had an interest in said entity and wished to apprise the Board. The value of the said contract was \$ 750 K.”³⁸

The Findings of the OCG have revealed that in consequence of the meeting of 2008 February 1, between Ms. Simes of Simber Productions Limited and representatives of the JUTC, inclusive of Mr. Douglas Chambers, two (2) JUTC contracts were subsequently signed by Mr. Lenworth Simms, acting on behalf of the JUTC, on 2008 February 7 and 11, respectively, in favour of Simber Productions Limited.

According to the GPPH, a conflict of interest, “*arises where a public officer has a private or personal interest sufficient to appear to influence or to appear to be capable of influencing, the objective exercise of his official duties.*”³⁹

It is noted that a conflict of interest may be deemed to exist under any of the following circumstances, *inter alia*:

1. Engagement in private activity similar to official functions;
2. Using information and/or any material gained from an official position for private gain of relatives or family members or an organization in which relatives or family members have interest;
3. Exploiting the status and privilege of one’s position for private gain;

Further, it is important to note that **Section 17(2) of the Public Bodies Management and Accountability Act** provides as follows:

(2) A director who is directly or indirectly interested in any matter which is being dealt with by the board-
(a) shall disclose the nature of his interest at a board meeting;
(b) shall not take part in any deliberation of the board with respect to that matter

³⁸ Minutes of Meeting of the JUTC Board held on February 27, 2008.

³⁹ Conflict of Interest Statement for Inclusion in the GPPH.

The instant case of a conflict of interest on the part of Mr. Douglas Chambers, and his involvement in the JUTC's award of contracts to Simber Productions Limited, is underscored by the fact that:

1. Mr. Chambers was a member of the JUTC's Procurement Committee;
2. Mr. Chambers facilitated and attended the meeting between the JUTC and Simber Productions Limited on 2008 February 1, which culminated in the signing of contracts on 2008 February 7 and 11.

Further, Mr. Chambers' interest in Simber Productions Limited was declared to the Board in accordance with Section 17(2) of the Public Bodies Management and Accountability Act. However, this was only done subsequent to the award of the contracts being made to Simber Productions Limited.

Minister Michael Henry's Knowledge and Information

The OCG, by way of letter, which was dated 2008 September 17, sent a formal Requisition to Minister Michael Henry requesting that he provide, *inter alia*, answers regarding his knowledge of the circumstances surrounding the award of certain contracts at the JUTC and, in particular, his awareness of the share allotments of Simber Productions Limited.

After reproducing, verbatim, the statement that was attributed to the Minister in The Gleaner Newspaper of 2008 July 13 to the following effect, namely: "*The Transport Minister also sought to correct the media report that Douglas Chambers was the majority shareholder in Simber Production Limited, to which the late JUTC chairman was connected. Henry said the JUTC board, having conducted a yet-incomplete investigation of the 'clearly politically motivated assertions' against the company and its late chairman, has found no truth to the apparently red-herring approach being taken to discredit his character*", the Minister was asked the following questions by the OCG:

- i. *Are you aware of the referenced quote? If yes, please provide full particulars as to the veracity, or otherwise, of the quote.*

- ii. *If the above quote is factual, please indicate:*
 - a. *Please detail the extent of your knowledge of Mr. Douglas Chamber's involvement in and/or association with Simber Productions Ltd.;*

 - b. *Please state what is your knowledge of the status of Mr. Douglas Chamber's interest in and/or share allotments in Simber Productions Ltd. and the circumstances under which you became aware of same.*

Where possible, please provide documentary evidence in support of your response.

Minister Mike Henry, by way of letter, which was dated 2008 October 17, formally responded to the OCG and provided the following information:

"I am aware of the above statement by the Sunday Gleaner, which generally speaking, accurately reflected my position at the time.

a) It is my information that at the time of his death, Mr. Douglas Chambers was a stakeholder, but not the majority shareholder, in Simber Production Limited.

b) It is my understanding that Mr. Chambers was the majority shareholder of the company up to a point where that position was changed in respect of his interest in the company"⁴⁰

No further information on the shareholdings of Simber Productions Limited was forthcoming from the Minister.

⁴⁰ Statement by Minister Michael Henry dated 2008 October 17

It is particularly instructive to note the Minister's statement to the effect that "*it is my information that at the time of his death, Mr. Douglas Chambers was a stakeholder, but not the majority shareholder, in Simber Production Limited*".

The Minister had declared this information or belief notwithstanding the following facts:

- (1) The fact that the official records of the ORC, at the time of Mr. Chambers' death, on 2008 June 27, had indicated a contrary position;
- (2) The fact that the official records of the ORC, at the time that the Minister made his statement to the Gleaner, had also indicated a contrary position;
- (3) The fact that Mr. Chambers, himself, had made a formal declaration, in writing, to the contrary, to the ORC, on 2008 May 2 – less than 8 weeks before his death.

Despite the foregoing, the Minister has failed, in his responses to the OCG, to explain the reasons for his information or belief that "*Mr. Douglas Chambers was not the majority shareholder, in Simber Production Limited*".

It is also instructive to recall that the Amended Return, which purported to alter the share allotments of Simber Productions Limited, such that Ms. Susan Simes was purported to replace Mr. Douglas Chambers as the company's Majority Shareholder, was one which was certified by Ms. Simes on 2008 July 16 and received by the ORC on 2008 July 17.

These dates are 3 and 4 days, respectively, after The Gleaner and the Sunday Observer had carried the above-referenced reports regarding Mr. Henry's information and belief that Mr. Douglas Chambers was not the Majority Shareholder of Simber Productions Limited.

The OCG's research has revealed that in the absence of a Grant of Probate or Letters of Administration with the Will Annexed (where there is a Will) or Letters of Administration (where there is no Will), no person may lawfully deal with, transfer or otherwise interfere with the assets of a deceased person. This is underscored by the following statement of *Parry and Clarke: The Law of Succession, 11th Edition, Page 484:*

“If the deceased was a shareholder in an incorporated company ..., the deceased's shares ... devolve on his personal representatives.

Declarations Made to the OCG in Respect of the JUTC's Quarterly Contract Awards (QCA) Reports

The OCG conducted a review of the JUTC's Quarterly Contracts Award (QCA) Reports for the 2008 1st and 2nd Quarter and found as follows:

- On 2008 February 12, a contract was awarded to Simber Productions Limited via the Limited Tender Methodology, for the “*Production of Feature*” in the sum of J\$411,250.⁴¹

It must be noted that in the instant case the relevant QCA report indicates that only one quote was received and that the contract had received the approval of the JUTC's Procurement Committee.

- On 2008 April 28, Simber Productions Limited was awarded a contract in the sum of J\$310,000, via the Selective Tender Methodology, for “*Advertisement JUTC Ride and Win Summer Bling*”. It was also reported that only one quote or tender was received and that the contract had received the approved of the JUTC's Procurement Committee.⁴²

⁴¹ JUTC 1st Quarter 2008 QCA Report.

⁴² JUTC 2nd Quarter 2008 QCA Report.

The 2008 JUTC 1st Quarter QCA Report was signed and certified by Mr. Douglas Chambers, on 2008 May 1, in his capacity as the Chairman of the JUTC. The 2008 JUTC 2nd Quarter QCA Report was signed and certified by Mr. Bindley Sangster, on 2008 July 28, in his capacity as the Chairman of the JUTC's Finance Committee.

By signing the QCA Reports, both Mr. Chambers and Mr. Sangster would have certified the accuracy and truthfulness of the information which was embodied within the Reports.

QCA Reports are required to be completed, certified, signed and submitted to the Contractor General, by all Procuring Public Bodies, within one calendar month following the quarter to which they apply.

The two (2) JUTC QCA Reports in the instant matter, indicate that the referenced Simber Production Limited contracts were approved by the JUTC Procurement Committee. However, two members of the JUTC's Procurement Committee, in formal declarations to the OCG, indicated that they did not influence, recommend and/or approve the procurement of the services of Simber Productions Limited.

Two (2) members of the JUTC's Procurement Committee have also indicated that they were advised of the contracts in a Board Meeting of 2008 February 27, subsequent to the award of the contracts on 2008 February 7 and 11.

The records of the JUTC have revealed that there has been only one meeting of the JUTC's Procurement Committee since 2007 August 1. The meeting was held on 2008 February 26 and the official records suggest that the deliberations of the Committee were confined to the recommendation for the award of a contract to Protection and Security Limited for the provision of security services to all JUTC locations.

The certification and submission, to the OCG, of QCA Reports by Public Officials, is made on the clear understanding that a false declaration as to any information which is conveyed therein, is liable to constitute the commission of a criminal offence under the provisions of the Contractor General Act.

These positions are clearly articulated, *inter alia*, in a formal Statutory Requisition of the OCG, dated 2006 July 11, which was directed by the OCG to the Principal and/or Accounting Officers of all of the country's Procuring Public Bodies, inclusive of the JUTC.

Section 29 (a) of the Contractor General Act makes it a criminal offence, *inter alia*, for any person to wilfully mislead or to make a false statement to mislead a Contractor General in the execution of his functions. The verbatim provisions of Section 29 are reproduced herein as follows:

“Every person who –
(a) wilfully makes a false statement to mislead 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,
shall be guilty of an offence ...”.

In the circumstances, there is *prima facie* evidence that both Mr. Douglas Chambers and Mr. Bindley Sangster had wilfully made false written declarations to the Contractor General in contravention of Section 29 (a) of the Contractor General.

Breaches of the GPPH, the Contractor General Act and the Corruption Prevention Act

The Investigations of the OCG into the JUTC's award of contracts to Simber Productions Limited have revealed the following information, among other relevant disclosures and discoveries:

1. There was no documentary evidence of an evaluation report of the bids of Simber Productions Limited;

2. This observation is buttressed by the fact that, based upon the 2008 August 27 testimony of Mr. Bindley Sangster, no tender documents were sent to Simber Productions Limited by the JUTC. In such circumstances, there would therefore be no formal tender documents to evaluate. In point of fact, the OCG has seen no documentary evidence of a tender invitation, or request for quotation, emanating from the JUTC to any of the three (3) bidders.
3. There was the very disconcerting appearance of a lack of knowledge on the part of the Members of the JUTC's Procurement Committee with regard to the exact means by which Simber Productions Limited was contracted by the JUTC;
4. There was no documentary evidence that the other two (2) bidders, GETCAUGHT MEDIA and the JIS, were afforded with the same opportunities that had been extended to Simber Productions Limited, namely the facility of a meeting with the JUTC's Chairman and Marketing and Sales Executive, to discuss the specifications of the proposed services;
5. There was no documentary evidence of the Procurement Committee's approval of the bids of Simber Productions Limited nor was there any evidence that a recommendation was made to the JUTC's Procurement Committee for the said bids to be approved and for the referenced contracts to be awarded to Simber Productions Limited;
6. Mr. Douglas Chambers, the Chairman of the JUTC, was, at all material times, the Majority Shareholder of Simber Productions Limited and was the said Majority Shareholder at the time of the award of the contracts. In the circumstances, he would stand to benefit substantially from the award of the said JUTC contracts to Simber Productions Limited.

7. At the time of the award of the contracts to Simber Productions Limited, Mr. Douglas Chambers was an ex-officio member of the Procurement Committee and the Chairman of the JUTC Board of Directors.
8. Mr. Douglas Chambers' involvement in the discussions at the meeting that was held on 2008 February 1, compromised the procurement process and raised doubt as to the integrity of the process.
9. The contracts were awarded by the JUTC (a) after an unsolicited offer was made to the JUTC by Simber Productions Limited and (b) after the said offer was discussed at a 2008 February 1 JUTC meeting which was convened and facilitated through the Offices of the late Chairman, Mr. Douglas Chambers, and at which both Ms. Simes and Mr. Chambers were in attendance, together with a Mr. Lenworth Simms, the JUTC's Sales and Marketing Manager and another representative of Simber Productions Limited.
10. Subsequent to the referenced 2008 February 1 meeting, two (2) unsigned quotations, which were dated 2008 February 7, from Simber Productions Limited, were signed and agreed to by Mr. Lenworth Simms, the Sales and Marketing Manager, for and on behalf of the JUTC, on 2008 February 7 and 11, respectively.
11. A payment listing which was provided to the OCG, by the JUTC, revealed that between the period 2008 March 14 and 2008 July 29, a total of J\$1,622,032.05 was paid to Simber Productions Limited by the JUTC.
12. The OCG's Investigation found that there was a conflict of interest on the part of the late Chairman, Mr. Douglas Chambers, insofar as it pertained to the award, by the JUTC, of the referenced contracts to Simber Productions Limited.

13. It must be noted that Mr. Douglas Chambers had made an oral declaration of his interest in Simber Productions Limited to the Board of the JUTC on 2008 February 27, pursuant to Section 17 (2) (a) of the Public Bodies Management and Accountability Act. However, his declaration was made approximately two (2) weeks after the JUTC had already contracted the services of Simber Productions Limited on 2008 February 7 and 11.

Section 4 (1) of the Contractor General Act mandates that Government contracts must be awarded “*impartially and on merit*” and in circumstances which “*do not involve impropriety or irregularity.*”

Section 14 of the Corruption Prevention Act (Acts of Corruption) provides, *inter alia*, as follows:

*“14. (1) (b) A public servant commits an act of corruption if he-
(b) 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”.*

Having regard to the foregoing, the OCG’s Investigation has found that the said contracts were not awarded impartially, nor on merit and that the circumstances which led to their award involved rank impropriety and irregularity.

To be more specific, the award of the referenced contracts, by the JUTC, to Simber Productions Limited, constituted a flagrant breach of the GPPH and the contract award principles which are enshrined in Section 4 (1) of the Contractor General Act.

Further, it is difficult not to find that the matters that are set out above constitute compelling evidence of the commission of an act of corruption, on the part of Mr. Douglas Chambers, in contravention of the provisions of the Corruption Prevention Act, in the JUTC’s award of the referenced contracts to Simber Productions Limited.

Award of Contracts to Protection and Security Limited

In addition to the contracts that were awarded to Simber Productions Limited, the OCG also sought to investigate the circumstances which involved the award of certain contracts to Protection and Security Limited, by the JUTC, under the JUTC's Chairmanship of Mr. Douglas Chambers.

During its Investigation, the OCG found that Protection and Security Limited had been providing security services to the JUTC without any formal contract being in place and in circumstances which flagrantly contravened the Contractor General Act and the GPPH. Mr. Dennis Morgan, the Chief Executive Officer of Protection and Security Limited, who is also the Chairman of the National Solid Waste Management Authority (NSWMA), was formally requisitioned by the OCG to provide information in response to the following question, among others:

“Has any company or other entity in which you are a principal, shareholder, director, partner, officer and/or employee ever entered into a contract(s) with the Jamaica Urban Transit Company between August 1 2007 and present?”

Mr. Morgan, in his response, indicated three (3) instances in which Protection and Security Limited was engaged by the JUTC to provide security services. These were as follows:

Contract #1: Cash In-Transit Interim Contract Commencing 2008 January 1

Mr. Morgan, in his statement to the OCG, advised that *“On the 20th day of December 2007 Protection and Security Limited entered into a contract, commencing on January 1, 2008 ending on January 31, 2008 with an option to renew at the end of the period for a further calendar month, for securing the movement of cash in transit from Jamaica Urban Transit Company Limited's location at Rockfort, Portmore, Twickenham Park,*

Papine, East Parade and Spanish Town Lay-by to The Bank of Nova Scotia Jamaica Limited, Centralized Processing Unit."⁴³

In support of his response to the OCG, Mr. Morgan provided documentary evidence in the form of correspondence between the JUTC and Protection and Security Limited.

By way of letter, which was dated 2007 December 13, written under the hand of Mr. Douglas Chambers, the JUTC wrote to Protection and Security Limited regarding a Proposal for Cash-In-Transit Services.

The referenced letter indicated that, "*The JUTC will be going to tender in the new year for the provision of security guard as well as, cash in transit services. However, we are in the market presently, for the movement of cash from our various locations... on a temporary basis starting **January 1, 2008**.*"⁴⁴ (OCG's Emphasis).

By way of letter, which was dated 2007 December 17, Protection and Security Limited wrote to the JUTC in response to the request for a proposal for the provision of Cash-In-Transit Services to the JUTC.

The JUTC subsequently wrote to Protection and Security Limited by way of letter, which was dated 2007 December 20, indicating that "*We are in receipt of your proposal dated 2007, December 17... we write to confirm the agreed rates as below to take effect 2008, January 1 on a temporary month-by-month basis, until the conclusion of our tender process early in the New Year.*"⁴⁵

The OCG has not found any evidence to indicate that this contract went through the required approval channels before it was finalised, approved and awarded. There was also no indication that this contract was approved by the Procurement Committee or the Board of Directors of the JUTC.

⁴³ Statement by D. Morgan. Response to Question # 6

⁴⁴ Letter from the JUTC to Protection and Security dated 2007 December 13.

⁴⁵ Letter from the JUTC to Protection and Security dated 2007 December 20

More importantly, it must be recorded that in answer to the OCG's Requisitions, none of the members of the JUTC Procurement Committee could provide information regarding the captioned contract. Their responses were confined to the JUTC/Protection and Security Limited contract which is classified herein-after as "Contract #3".

From all indications, it appears that Protection and Security Limited was hand-picked by Mr. Douglas Chambers for the award of this Cash-In-Transit Contract, in flagrant breach of the GPPH and the Contractor General Act.

Section 2.1.3.4 of the GPPH states that "*Sole or Direct Contracting Procurement method must have prior written approval from the Accounting Officers for Contracts less than \$1M. This Approval and the justification for its use must form part of the procurement record. All Sole source or Direct Contracting greater than \$1M must receive prior written approval from the NCC through the Accounting Officer.*"

The OCG has seen no evidence which would suggest that the requirements of the GPPH were complied with in the award of this contract.

Contract #2: Interim Contract for the Provision of Security Services at all JUTC Locations

In respect of the captioned contract, Mr. Morgan articulated that, "*On the 18th day of February 2008 Protection and Security Limited entered into a contract commencing on March 1, 2008 ending on March 31, 2008, with an option to renew at the end of the period for a further calendar month, for the provision of security services for all Jamaica Urban Transit Company Limited's locations.*"⁴⁶

Correspondence from Protection and Security Limited, which was dated 2008 February 18, and addressed to Mr. Douglas Chambers, indicated that, "*Further to your letter of even date regarding the captioned, we write to inform you that we are in a position to*

⁴⁶ Statement by D. Morgan. Response to Question # 6 b

undertake the provision of security guard service on a month-by-month basis during your evaluation period.”⁴⁷

The JUTC again wrote to Protection and Security by way of letter, which was dated 2008 February 19, and advised that “... *treating with our agreement for you to be our security provider on a month by month basis, during the evaluation process. A decision was made for you to start on February 25th, 2008 on phased basis.*” (sic)⁴⁸

Further correspondence from the JUTC, which was dated 2008 February 19, and written under the hand of Mr. Douglas Chambers, to Protection and Security Limited, acknowledged receipt of Protection and Security Limited’s letter of 2008 February 18 and further stated that, “*We are agreeing to use the rates that you have presented in your tender document of January 29, 2008*”⁴⁹

The Minutes of the JUTC Board Meeting, which was convened on 2008 February 27, stated that “*The Board approved the recommendation to award Protection and Security a two year security contract to take effect March 1, 2008. Whilst the company awaits final approval, Protection and Security Company has been asked to provide services on a month by month basis. The tender documents were to be round robin to all Board members.*”⁵⁰

Up to 2008 August, payments were still being made and services were still being provided by Protection and Security Limited, to the JUTC, pursuant to the captioned interim contract.

⁴⁷ Letter dated 2008 February 18 from Protection and Security addressed to D. Chambers

⁴⁸ Letter from the JUTC to Protection and Security dated 2008 February 19.

⁴⁹ Letter from the JUTC to Protection and Security dated 2008 February 19 Signed by Mr. Douglas Chambers.

⁵⁰ Minutes of Board Meeting held on 2008 February 27. Page 8

As at 2008 August 8, the total sum of \$31,879,664.28 had been paid by the JUTC to Protection and Security Limited for the provision of security services, with all individual total monthly payments being in excess of \$4 million.

A copy of the payment schedule in respect of the foregoing payments is reproduced, herein below, for ease of reference.

Protection & Security Limited

Payments 01 August 2007 to 12 August 2008

Cheque Date	Cheque #	Payment Amount
4/4/2008	000000695324	1,139,172.92
4/15/2008	000000695394	1,548,626.00
4/25/2008	000000695658	1,501,148.64
5/2/2008	000000695699	500,000.00
5/6/2008	000000695717	2,000,000.00
5/16/2008	000000695943	1,000,000.00
5/22/2008	000000695983	677,710.76
5/30/2008	000000696026	2,000,000.00
6/5/2008	000000696205	1,074,871.32
6/13/2008	000000696257	2,759,880.00
6/20/2008	000000696310	1,000,000.00
6/27/2008	000000696386	538,958.00
6/30/2008	000000696443	1,522,802.36
7/1/2008	000000696406	2,526,135.60
7/17/2008	000000696516	3,018,427.00
7/24/2008	000000696588	2,629,707.00
7/24/2008	000000696590	370,578.00
7/31/2008	000000696758	3,000,000.00
8/8/2008	000000696822	3,071,646.68

\$31,879,664.28

The OCG's Investigation has found that the JUTC, in its award of this interim contract, has acted in breach of Section 2.1.3.4 of the GPPH which stipulates that the "*Sole or Direct Contracting Procurement method must have prior written approval from the Accounting Officers for Contracts less than \$1M. This Approval and the justification for its use must form part of the procurement record. All Sole Source or Direct Contracting greater than \$1M must receive prior written approval from the NCC through the Accounting Officer.*"

It must also be noted that in respect of the captioned interim contract, the JUTC has, as at 2008 August, expended in excess of J\$30 Million without obtaining prior NCC or Cabinet Approval, pursuant to Section 2.3 of the GPPH which provides that expenditure in excess of J\$15 Million requires Cabinet approval "*on the recommendation of the NCC and Minister.*"

It is also a trite rule of the GPPH, that no Government contract for an amount which exceeds \$4 Million in value can be validly awarded unless and until it is formally endorsed by the NCC.

The OCG has seen no evidence that any of these requirements has been complied with in the instant matter.

Contract #3: NCC Endorsed Contract for the Provision of Security Services

The OCG's Investigation has revealed that on 2008 May 21, the NCC endorsed the JUTC's recommendation for the award of a contract to Protection and Security Limited in the sum of J\$ 124,265,472.00 for the provision of security services at all JUTC locations.

During the course of its Investigation, the OCG reviewed the tender exercise which was undertaken by the JUTC for the procurement of the referenced security services and found as follows:

(a) Invitation and Opening of Bids

The JUTC placed an Invitation to bid for security guard services, in the Friday, 2008 January 4 and Wednesday, 2008 January 9 editions of The Gleaner Newspaper.

Bidders were required to complete and return bid documents no later than 3:00 pm. on 2008 January 29 to the Jamaica Urban Transit Company, Michael Manley Drive, Twickenham Park, St. Catherine.

At the time of the tender opening, on 2008 January 29, five (5) companies submitted bids by the deadline. These companies were:

- Guardsman Limited
- Protection & Security Limited
- Vanguard Security Limited
- Ranger Protection & Security Company
- Atlas Protection Limited

Tenders were opened publicly on 2008 January 29, at 3:07 pm, in the presence of representatives from the afore-mentioned organizations and the JUTC.

According to the tender evaluation report, all five (5) bidders were deemed to be compliant and responsive.

Tenders were evaluated based upon the criteria which were set out in the bid document and were accorded scores as follows:

- Guardsman Limited - 79.6%
- Protection & Security Limited - 84.9%
- Vanguard Security Limited - 79.2%
- Ranger Protection & Security Company - 82.2%
- Atlas Protection Limited - 59.7%

(b) Recommendation for Award of Contract

The Evaluation Committee recommended that Protection & Security Limited be awarded the two-year contract to provide security services to the JUTC’s seven (7) locations, in the sum of One Hundred and Twenty-Four Million Two Hundred and Sixty-Five Thousand Four Hundred and Seventy-Two dollars (\$124,265,472).

By way of letter, which was dated 2008 May 22, the NCC communicated its endorsement of the recommendation of the Sector Committee to award the contract to Protection and Security Limited in the sum of One Hundred and Twenty-four Million, Two Hundred and Sixty-five Thousand, Four Hundred and Seventy-two Dollars (\$124,265,472.00).

On 2008 June 11, the JUTC wrote to Protection and Security Limited requesting an “*extension of sixty (60) days to allow Cabinet to consider the submission for approval.*”

Further, in his 2008 October 1 response to the Requisition of the OCG, Mr. Morgan confirmed and formally declared that (as at 2008 October 1) “*the term of the contract has not yet commenced*”.

The three requisitioned members of the JUTC’s Procurement Committee, Messrs. Bindley Sangster, Raphael Barrett and Dennis Chung, were all asked, “*By whom, how and when were the services of the following Contractors engaged? Please provide, where possible, documentary evidence in support of your answer/assertion.*”

- i. *Simber Productions Ltd;*
- ii. *Protection and Security Ltd;*
- iii. *Cool Petroleum Ltd.”*

All three respondents indicated that the services of Protection and Security Limited were procured via competitive tender. However, none of the respondents provided information in respect of the interim services which Protection and Security Limited had been contracted to provide to the JUTC (under Contract #2) whilst the tender exercise was being finalized by it for the award of the competitively awarded contract (namely, Contract #3).

Ms. Pamela Walters, the JUTC's Financial Controller, confirmed the findings of the OCG that Protection and Security Limited was contracted on an interim basis, and under the terms of an interim contract, to provide security services to the JUTC, when she stated that, "*Based upon the termination of security services from Atlas Security the request for the provision of security services was put to tender. During which time by letter dated 19 February 2008 Protection and Security was engaged on a month to month basis pending the outcome of the tender security services.*"⁵¹

Award of Contracts to Cool Oasis Petroleum Limited

An article in the Sunday Herald, which was dated 2008 July 5, alleged that "... *the JUTC was said to have been buying fuel from a private marketing company at 28 per cent more than it could get it from the Petroleum Corporation of Jamaica (Petrojam).*"

⁵¹ Statement by Ms. Pamela Walters: Response to Question # 4

In this regard, Ms. Pamela Walters, the JUTC's Financial Controller, asserted that, *"By an agreement dated 22 November 2005, Shell Company Limited agreed to supply the JUTC with Petrol and Petroleum products. Shell was acquired by Cool Petroleum and accordingly the obligations of the existing contract."*⁵²

Mr. Joseph Issa, in his statement of 2008 September 23, to the OCG, asserted that *"On the 23rd day of February 2006, Cool Petroleum Holdings Limited (CPHL), an International Business Corporation (IBC) out of St. Lucia, acquired the Jamaica business and assets of Shell Company W.I. Limited (Shell)...The Jamaican assets and business acquired from Shell were later transferred to Cool Petroleum Limited (CPL) a company incorporated in Jamaica and owned by CPHL. Among the assets transferred by Shell were the assets owned by Shell at the JUTC depots and the Fuel and Lubricants Supply Agreement between Shell and JUTC was assigned to CPL."*⁵³

Further, Mr. Issa stated that, *"By letters dated the 22nd November 2005, Mr. Roger Bryan, Country Chairman for Shell Companies in Jamaica wrote to Mr. Lynval Thompson of JUTC, Windward Road, Ms Jacqueline Darwood of JUTC, Portmore and Mr. Bill Allen of JUTC, Lyndhurst Road and informed them of the assignment."*⁵⁴

Upon a review of the terms and conditions of the Fuel Lubricants Supply Agreement (hereinafter referred to as *"the Agreement"*), the OCG found that Clause 1 of the Agreement stipulated an initial term of five (5) years, commencing at the date of the agreement and ending on 2004 November 14. Thereafter, the Agreement would remain in force until either party gives three (3) months notice to terminate.

It is also instructive to note that the "SCHEDULE B- PRICE" of the Fuel and Lubricants Supply Agreement, dated 1999 November 15, provides that:

⁵² Statement by Pamela Walters: Response to Question # 4

⁵³ Statement by Joseph Issa: Response to Question # 2

⁵⁴ Statement by Joseph Issa: Response to Question # 2

“FUEL

Automotive Diesel Oil

Ex-Shell + 4%

NB: *Whenever the Ex-refinery price falls below the Ex-Shell Price then the Ex-Shell price in the formula would default to the current Ex-refinery price”.*

Ms. Pamela Walters, the JUTC’s Financial Controller, in her statement of 2008 August 27 to the OCG, provided a copy of a letter, dated 2006 September 13, under the signature of Mr. Patrick McIntosh, the former President of the JUTC. The letter was addressed to Mrs. Elsa-May Binns, the then Senior Director Policy Planning & Evaluation in the Ministry of Housing, Transport, Water and Works, regarding JUTC’s Fuel Contracts. The referenced letter indicated that:

“The pricing mechanism per litre of fuel that governed these contracts were re-negotiated and now stands as below:

- 1. PETCOM – Ex-Refinery +\$0.32/liter*
- 2. SHELL (COOL) – Ex-Refinery +\$0.35/liter*

Formally (sic), the pricing mechanism was a percentage add-on to the Ex-Refinery price.”

The letter of 2006 September 13 also revealed that, *“Finally, the JUTC does not pay any taxes on the fuel it receives as we lobbied for and received a waiver from the Ministry of Finance in (sic) August 20, 2003 on the Special Consumption Tax usually added by PETROJAM to its Ex-Refinery price which is usually J\$6.6645/liter.”*

The OCG, by way of a written Requisition which was dated 2008 September 17, further requested Ms. Pamela Walters to reconcile the provisions of the ‘SCHEDULE B-PRICE’ of the ‘Fuel and Supply Agreement’, with certain allegations that were made in the Media.

In response, Ms. Walters indicated that she was not aware of the quote in the media that the JUTC had been buying fuel at 28 percent higher than the market rate. Ms. Walters asserted that, *“I am not in a position to reconcile the provisions of schedule B price of the Fuel and Lubricants supply agreement with the “reported assertion”⁵⁵.*

Further, when asked if there had been any amendment to the ‘Fuel and Lubricants Supply Agreement’, which was dated November 15, 1999, Ms. Walters declared that, *“There has been no amendment to the Fuel and Lubricant Supply Agreement as Cool Petroleum has been honouring the full terms and conditions of the agreement.”⁵⁶*

Based upon the documentary evidence which has been provided to the OCG, it is evident that the price differential between the fuel that is supplied by Cool Petroleum Limited, versus that supplied by PETCOM, is J\$0.03/liter.

It is evident that there was no formal award of a contract by the JUTC to Cool Petroleum Limited for the supply of Fuel and Lubricants. The contract was inherited under the acquisition of the assets of Shell by Cool Petroleum Limited.

Mr. Issa confirmed that, *“On the 23rd day of February, CPL acquired the assets and business of Shell, which included the rights, and obligation under contract... Outstanding payments of J\$29,650,030.96 was assumed by CPL on that date.”⁵⁷*

By way of letter, which was dated 2005 November 22, the Country Chairman for the Shell Companies in Jamaica wrote to the JUTC informing the company that, *“On Tuesday 22nd, November 2005, Shell Jamaica announced that it has signed a Sales and Purchase Agreement with Cool Petroleum Holdings Limited for the sale of its Downstream businesses in Jamaica.”⁵⁸*

⁵⁵ Statement by Pamela Walters dated 2008 September 24: Response to Question # 2

⁵⁶ Statement by Pamela Walters dated 2008 September 24: Response to Question # 5

⁵⁷ Statement by Mr. Joseph Issa: Response to Question # 3

⁵⁸ Letter dated 2005 November 22 from Shell Companies in Jamaica to the JUTC.

The referenced letter also advised the JUTC to, “... be ensured that Cool Petroleum will respect all contracts therefore ensuring business continuity.”⁵⁹

It is instructive to note that by way of letter, which was dated 2007 July 13, the JUTC wrote to the Chief Operating Officer of Cool Petroleum Limited advising that, “... we write to confirm that we will be guided by the terms and conditions of our previous Agreement with the Shell Company (W.I.) Limited. This is subject to an extension of the time referred to in Clause 1 of the Agreement, the tenure of which will expire on the outcome and award of our tender.”⁶⁰

Subsequently, a tender advertisement for the Supply of Automotive Diesel Oil was placed in the Daily and Sunday Gleaner of 2007 September 28 and 30 respectively. The subject tender advertisement had a scheduled tender opening date of 2007 November 30.

However, by way of a facsimile, which was dated 2007 November 7, the JUTC wrote to Cool Petroleum Limited advising that “The JUTC has re-organized its operation and based on its review has decided to modify the original tender as advertised Friday September 28, 2007 and Sunday September 30, 2007”⁶¹

The referenced facsimile also intimated that, “New tender documents are being prepared and advertisement with both the withdrawal and the new advertisement will be in the Gleaner shortly. You are being invited to collect it without the payment of any new non-refundable fee.”⁶²

⁵⁹ Letter dated 2005 November 22 from Shell Companies in Jamaica to the JUTC.

⁶⁰ Letter dated 2007 July 13 from the JUTC to Cool Petroleum Limited.

⁶¹ Facsimile dated 2007 November 7 from the JUTC to Cool Petroleum Limited

⁶² Facsimile dated 2007 November 7 from the JUTC to Cool Petroleum Limited

In a subsequent statement to the OCG, Ms. Pamela Walters, in response to a question regarding any amendments to the Fuel & Lubricants Supply Agreement, indicated that *“There has been no amendment to the Fuel and Lubricant Supply Agreement as Cool Petroleum has been honouring the full terms and conditions of the agreement.”*⁶³

Payments to Cool Petroleum Limited between 2007 August and 2008 August

Ms. Pamela Walters provided the OCG with a payment schedule detailing all payments which were made to Cool Petroleum Limited for the period 2007 August to 2008 August, which revealed that approximately J\$548,413,068.87 had been paid.

In his closing statement to the OCG, Mr. Issa revealed that, *“To date J\$100,410,721.00, exclusive of interest, is overdue by the JUTC to CPL.”*

JUTC’s Procurement Committee

By way of letter, which was dated 2008 July 11, the OCG requested from the Acting Permanent Secretary in the Ministry of Transport and Works, a listing of the Members of the JUTC’s Procurement Committee.

The referenced information, as summarized below, revealed that the Members of the JUTC’s Procurement Committee pre- 2007 October 9 and post 2007 October 8 were as follows:

Prior to 2007 October 9

- Mr. Sylvester Anderson - Also Board Member
- Dr. Judith Robinson - Also Board Member
- Mr. Ryan White - Also Board Member

⁶³ Statement by Pamela Walters dated 2008 September 24: Response to Question # 5

- Mr. Robert Cranston
- Mr. Altius Williams - Also Board Member
- Mrs. Ann Marie Rhoden - Also Board Member

From 2007 October 9 to Present

- Mr. Bindley Sangster - Also Board Member
- Mr. Raphael Barrett - Also Board Member
- Mr. Dennis Chung - Also Board Member
- Mr. Ryan White - Resigned 2007 November 7 (Also President and Board Member)
- Mr. Douglas Chambers, Ex-Officio, Died 2008 June 27 - Chairman of the Board
- Mr. Wayne Smith- Vice President of Finance – Invitee

A subsequent cross reference of the named members of the JUTC's procurement committee, pre-2007 October 9 and post-2007 October 8, against the list of Management personnel and members of the Board of Directors, revealed that:

1. The Procurement Committee, prior to 2007 October 9, consisted of six (6) individuals, five (5) of whom were also sitting members of the JUTC's Board of Directors.
2. The Procurement Committee, post 2007 October 8, consisted of six (6) individuals, four (4) of whom were also sitting members of the JUTC's Board of Directors.
3. It must be noted that Mr. Douglas Chambers, the former Chairman of the JUTC, was listed as an Ex-Officio Member of the JUTC's Procurement Committee.

In regard to the Constitution of the Procurement Committee, Section 1.5.2.3 of the GPPH stipulates that:

“The Procurement Committee shall be comprised as follows:

- *Chairman*
- *Senior Financial Management Personnel;*
- *Secretary; and*
- *Procurement Officer (non-voting member).*

Technical personnel should be co-opted as necessary, pursuant to the nature of the procurement.”

Section 1.5.2.3 of the GPPH further stipulates that the Procurement Committee is mandated to⁶⁴:

- *ensure compliance with relevant policies, guidelines and procedures*
- *effect objective evaluation processes with respect to quotations, tenders and requests for proposals;*
- *facilitate response to contractor inquiries;*
- *maintain proper record of Committee meetings, including records of the procurement; and*
- *ensure compliance with reporting obligations.*

Pursuant to Section 1.5.2.3 of the GPPH, the composition of the JUTC’s Procurement Committee amounts to a breach of the GPPH as there is a conflict in the functions of the Board of Directors and that of the Procurement Committee.

In addition, the exclusion of operational and/or technical officers from the Procurement Committee amounts to a failure to comply with Section 1.5.2.3 of the GPPH.

⁶⁴ GPPH- Section I Introduction. Page 6

Further, it must also be noted that, according to Mr. Bindley Sangster, “*One meeting of the Procurement Committee has been held since 1 August 2008. Copy of the minutes attached.*”⁶⁵ However, Mr. Sangster’s assertion as to “*since 1 August 2008*” appears to be a typographical error which should have, instead, read “*1 August 2007*”. This is evidenced by the ‘*Notes from the Procurement Meeting*’ which were submitted by Mr. Sangster to the OCG, in support of his statements, and which clearly indicate that the Procurement Meeting, in question, was convened on 2008 February 26.

It is instructive to note that the ‘*Notes from Procurement Meeting*’, which was held on 2008 February 26, reflect only matters pertaining to the tender for the provision of Security Services to the JUTC. There was no discussion in respect of the interim contract for Cash-In-Transit Services provided by Protection and Security Limited, nor was there any discussion about any of the contracts that were awarded to Simber Productions Limited.

The Procurement Committee, at its meeting of 2008 February 26, dealt specifically with the Security Evaluation Report which had been prepared by the JUTC’s Evaluation Committee and recorded the Procurement Committee’s agreement with the recommendation to “*...utilise the services of Protection and Security Limited, which will commence on February 29, 2008 on a month-by-month basis until the process was complete.*”⁶⁶

JUTC’s Board of Directors

The OCG has found that the members of the JUTC Board of Directors were wholly ignorant of the circumstances which surrounded the award of the contracts to Simber Productions Limited, save for the fact that the Chairman, Mr. Douglas Chambers, subsequently advised them that the JUTC had entered into said contracts.

⁶⁵ Statement by Mr. Bindley Sangster: Response to Question # 6

⁶⁶ Notes from Procurement Meeting held on February 26, 2008 in the Conference Room, NHF.

The OCG has also found that, upon being advised by Mr. Douglas Chambers, the Board took no further actions in respect of the referenced contracts. Neither did the Board request any further information in respect of the same.

Further, in respect of the interim contract which was entered into by the JUTC with Protection and Security Limited, for the provision of security services, the OCG found that the Board approved a month by month contract without ensuring that the requisite provisions of the GPPH and the Contractor General Act were adhered to by the JUTC.

Additionally, the OCG has seen no evidence that the Cash-In-Transit contract that was awarded to Protection and Security Limited was either considered or approved by the JUTC's Procurement Committee and by the company's Board of Directors.

In the foregoing circumstances, the OCG has found that the JUTC Board of Directors has failed to take any action to properly ensure (a) that the circumstances leading to the award of the contracts to Simber Productions Limited and the interim contracts to Protection and Security Limited were fair, transparent, impartial and devoid of irregularity and impropriety, (b) that value for money was obtained by the JUTC in the award of the said contracts, (c) that the proper procurement procedures and/ or guidelines were followed in the award of the said contracts, and (d) that there was strict compliance with the provisions of the Financial Administration and Audit Act by the management of the JUTC. These failures can be deemed to have amounted to a breach, by the Board of Directors, of the provisions of the Public Bodies Management and Accountability Act.

Section 6 of the Public Bodies Management and Accountability Act provides that:

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 & Accountability Act provides that:

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.

In light of the breaches of Section 6 and 17 (1) of the Public Bodies Management and Accountability Act, the provisions of Section 25, which stipulates the applicable sanctions, should be noted.

Section 25 (1) and (2) of the Public Bodies Management and Accountability Act provide as follows:

“(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)”.

SUMMARY OF KEY FINDINGS

1. Two consecutive Procurement Committees of the JUTC have been composed primarily of Members of the JUTC Board of Directors;
2. The late Mr. Douglas Chambers was an ex-officio member of the JUTC's Procurement Committee;
3. The members of the JUTC Procurement Committee could not unanimously agree upon the circumstances surrounding the procurement of the services of Simber Productions Limited by the JUTC. In point of fact, there was the very disconcerting appearance of a lack of knowledge on the part of the Members of the JUTC's Procurement Committee with regard to the exact means by which Simber Productions Limited was contracted by the JUTC;
4. Two members of the JUTC's Procurement Committee indicated that they did not influence, recommend and/or approve the procurement of the services of Simber Productions Limited;
5. Despite the assertions of two Members of the JUTC's Procurement Committee to the contrary, the QCA Reports that were submitted by the JUTC, to the OCG, for the 1st and 2nd Calendar Quarters of 2008, have declared that the JUTC's award of the contracts to Simber Productions Limited were evaluated by the JUTC Procurement Committee and had received the approval of the Committee;
6. There has been only one meeting of the JUTC's Procurement Committee since 2007 August 1. The meeting was held on 2008 February 26 and the official record reveals that the deliberations dealt only with the recommendation for the award of a contract to Protection and Security Limited;

7. The referenced two (2) QCA Reports were signed and certified, respectively, by Mr. Douglas Chambers, in his capacity as the then Chairman of the JUTC, and by Mr. Bindley Sangster, in his capacity as the then Chairman of the Finance Committee of the JUTC, and signified their certification of the accuracy of the particulars and information which was being conveyed therein;
8. Simber Productions Limited made an unsolicited offer to the JUTC to provide to it certain services. Its subsequent audience with the JUTC was facilitated through the Offices of the late JUTC Chairman and Majority Shareholder of Simber Productions Limited, Mr. Douglas Chambers, in the form of a meeting which was convened on 2008 February 1 between Ms. Susan Simes, Mr. Douglas Chambers and Mr. Lenworth Simms, and another. In consequence of, and following after this meeting, contracts were awarded by the JUTC to Simber Productions Limited;
9. There was no documentary evidence of an evaluation report of the bids that were submitted by Simber Productions Limited to the JUTC;
10. This observation is buttressed by the fact that, based upon the 2008 August 27 testimony of Mr. Bindley Sangster, no tender documents were sent to Simber Productions Limited by the JUTC. In such circumstances, there would therefore be no formal tender documents to evaluate. In point of fact, the OCG has seen no documentary evidence of a tender invitation, or request for quotation, emanating from the JUTC to any of the three (3) bidders.
11. There was no documentary evidence that the other bidders were afforded the same opportunities that had been extended to Simber Productions Limited, namely the facility of a meeting with the JUTC's Chairman and Marketing and Sales Executive, to discuss the specifications of the proposed services.

12. The quotations, for the production of a 30 second commercial, that were received, by the JUTC, from the other two (2) bidders, viz. GETCAUGHT MEDIA and the JIS, were dated 2008 February 8 and 2008 February 11, respectively. These dates, however, came days after the JUTC's meeting with Simber Productions Limited on 2008 February 1- a meeting in which it appears, from all the evidence that the OCG has reviewed, that the JUTC had already signalled its intention to engage the services of Simber Productions Limited.
13. There was no documentary evidence of the Procurement Committee's approval of the bids of Simber Productions Limited nor was there any evidence that a recommendation was made to the JUTC's Procurement Committee for the said bids to be approved and for the referenced contracts to be awarded to Simber Productions Limited.
14. Mr. Douglas Chambers, the Chairman of the JUTC, was, at all material times, the Majority Shareholder of Simber Productions Limited and was the said Majority Shareholder at the time of the JUTC's award of the referenced contracts to Simber Productions Limited. In the circumstances, he would stand to benefit substantially from the award of the said JUTC contracts to Simber Productions Limited;
15. At the time of the JUTC's award of the contracts to Simber Productions Limited, Mr. Douglas Chambers was an ex-officio member of the Procurement Committee and the Chairman of the JUTC Board of Directors;
16. Mr. Douglas Chambers' involvement in the discussions at the meeting that was held on 2008 February 1, compromised the procurement process and raised doubt as to the integrity of the process;
17. Subsequent to the referenced 2008 February 1 meeting, two (2) unsigned quotations, which were dated 2008 February 7, from Simber Productions Limited, were signed and agreed to by Mr. Lenworth Simms, the Sales and Marketing

Manager, for and on behalf of the JUTC, on 2008 February 7 and 11, respectively;

18. A payment listing which was provided to the OCG, by the JUTC, revealed that between the period 2008 March 14 and 2008 July 29, a total of J\$1,622,032.05 was paid to Simber Productions Limited by the JUTC;
19. Mr. Douglas Chambers made an oral declaration of his interest in Simber Productions Limited to the Board of the JUTC on 2008 February 27 pursuant to Section 17 (2) (a) of the Public Bodies Management and Accountability Act. However, his declaration was made approximately two (2) weeks **after** the JUTC had already engaged the services of Simber Productions Limited.
20. For 3 consecutive years, viz. 2006, 2007 and 2008, the official Annual Returns of Simber Productions Limited were certified and signed by Mr. Douglas Chambers.
21. For the referenced 3 consecutive years, which commenced with the incorporation of Simber Productions Limited on 2005 April 12, Mr. Douglas Chambers was declared and certified, in the said Annual Returns, and in the official records of the Office of the Registrar of Companies (ORC) of Jamaica, as the listed Majority Shareholder of Simber Productions Limited.
22. The OCG's Finding that Mr. Douglas Chambers was declared and certified as the Majority Shareholder of Simber Productions Limited, is evidenced by the fact that (a) the 2006 Annual Return of the company disclosed that he held 1020 of the company's then allotted share capital of 2000 shares, (b) the 2007 Annual Return of the company disclosed that he held 1100 of the company's then allotted share capital of 2160 shares, and (c) the 2008 Annual Return of the company disclosed that he held 1100 of the company's then allotted share capital of 2160 shares.

23. In all instances, the remaining shares of the company were declared and certified to be held by the company's only other shareholder, Ms. Susan Simes.
24. An amended Annual Return of Simber Productions Limited was, however, executed and certified to the ORC of Jamaica, by Ms. Susan Simes on 2008 July 16, as being "*correct*", less than three weeks after the 2008 June 27 death of Mr. Douglas Chambers. The Annual Return was stamped "*received*" by the ORC on 2008 July 17.
25. A notation which appears on the referenced amended Annual Return states that "*This Annual Return is filed by way of correcting Annual Returns for the years 2007 and 2008 and is deemed necessary by virtue of the fact that the incorrect shareholdings was stated*".
26. The amendments which were effected to the 2007 and 2008 Annual Returns of Simber Productions Limited, by Ms. Susan Simes, purported to result in her being declared and certified as the Majority Shareholder of the company, thus replacing Mr. Douglas Chambers as the previously declared and certified Majority Shareholder of the company.
27. The OCG's Finding that Ms. Susan Simes was purportedly declared and certified as the Majority Shareholder of Simber Productions Limited, is evidenced by the fact that the referenced Amended Return disclosed that she held and holds 1060 of the company's allotted share capital of 2080 shares, with Mr. Douglas Chambers being the holder of the remaining 1020 shares.
28. The purported change in the share allotments in Simber Productions Limited, not only conflicts with the formal and written attestations of Mr. Douglas Chambers which immediately preceded his untimely death but also contradicts the written declarations which have existed upon the official records of the ORC for all years preceding. Indeed, the original 2008 Annual Return of Simber Productions

Limited, in which Mr. Douglas Chambers – and not Ms. Susan Simes – had been certified and declared as the Majority Shareholder of Simber Productions Limited, was filed with the ORC on 2008 May 6, and had been signed and certified by Mr. Douglas Chambers, himself, on 2008 May 2, only days before his untimely death on 2008 June 27.

29. The common feature of the referenced Annual Returns, inclusive of the Amended Return, is the name and the signature of the representative of Chambers Henry and Associates, who acted as the Company Secretary for Simber Productions Limited.

30. Minister Mike Henry, the Minister of Transport and Works and the portfolio Minister for the JUTC, in his written declarations to the OCG of 2008 October 17, asserted, that **“it is my information that at the time of his death, Mr. Douglas Chambers was a stakeholder, but not the majority shareholder, in Simber Production Limited”**. The 2008 July 13 editions of the Gleaner and Sunday Observer Newspapers had attributed a similar statement to the Minister. The Minister had declared this information or belief notwithstanding the following facts, namely (a) the fact that the official records of the ORC, at the time of Mr. Chambers’ death, on 2008 June 27, had indicated a contrary position, (b) the fact that the official records of the ORC, at the time that the Minister made his statement to the Gleaner Newspaper, had also indicated a contrary position, and (c) the fact that Mr. Chambers, himself, had made a formal declaration, in writing, to the contrary, to the ORC, on 2008 May 2 – less than 8 weeks before his death.

31. Despite the foregoing, the Minister has failed, in his responses to the OCG, to explain the reasons for his information or belief that *“Mr. Douglas Chambers was ... not the majority shareholder in Simber Production Limited”*.

32. Protection and Security Limited was awarded a contract, by the JUTC, in 2007 December, to provide Cash-In-Transit security services to the company on a monthly basis, commencing 2008 January 1. There is no evidence that this contract received the requisite internal or external approvals. Further, from all indications, it appears that Protection and Security Limited was hand-picked by Mr. Douglas Chambers for the award of this contract.
33. Subsequently, on 2008 February 18, the JUTC awarded another interim contract to Protection and Security Limited to provide security services at all JUTC locations pending the completion of the tender exercise for what was to be a competitively awarded contract. For the period 2008 April to 2008 August, the total sum that was paid to Protection and Security Limited, by the JUTC, under this interim contract, was approximately J\$31,879,664.28.
34. This latter interim contract with Protection and Security Limited would have required the internal approval of the JUTC Procurement Committee as well as the prior endorsement of the NCC and the subsequent approval of the Cabinet. No evidence was produced to the OCG to establish that any of these approvals were either sought or received.
35. The JUTC commenced the competitive tender for the provision of security services in 2008 January. The NCC, via letter, which was dated 2008 May 22, advised its endorsement of the recommendation for an award of the contract for the provision of Security Services to Protection and Security Limited.
36. However, as at 2008 October 1, and in so far as the said NCC endorsed contract for the provision of security services by Protection and Security Limited, was concerned, “... *the term of the contract has not yet commenced*”. (Ref. Written declaration of Mr. Dennis Morgan, dated 2008 October 1).

37. The existing contractual agreement between Cool Petroleum Limited is premised upon the acquisition of Shell's downstream business in Jamaica by Cool Petroleum Limited in 2006 February.
38. Based upon the documentary evidence which has been provided to the OCG, it is evident that the price differential between the fuel that is supplied by Cool Petroleum Limited, versus that supplied by PETCOM, is J\$0.03/litre.

KEY CONCLUSIONS

Based upon the documents which have been reviewed as well as the responses which have been received from the JUTC representatives and the various contractors which were the subject of the OCG's Investigation, the OCG has concluded that under the Chairmanship of the late Mr. Douglas Chambers, there is evidence of breaches of the GPPH, the Contractor General Act, the Public Bodies Management Act and the Corruption Prevention Act, in the award of contracts by the JUTC.

1. The information which has been provided is sufficient to support the conclusion that Simber Productions Limited made an unsolicited offer to the JUTC. The Majority Shareholder of Simber Productions Limited was at all material times the Chair of the JUTC, Mr. Douglas Chambers. The subsequent award of contracts by the JUTC to Simber Productions Limited was facilitated through the Office of Mr. Douglas Chambers in February 2008, via a meeting which was convened, *inter alia*, between Ms. Susan Simes of Simber Productions Limited and Mr. Douglas Chambers and Mr. Lenworth Simms of the JUTC. The contracts were not approved or evaluated by the JUTC's Procurement Committee, nor by the JUTC's Board of Directors, and were only reported to the JUTC's Board of Directors, by Mr. Chambers, after they had been awarded
2. In addition, the OCG has concluded that Mr. Douglas Chambers, having been the Majority Shareholder of Simber Productions Limited, at all material times, benefitted personally from the irregular and/or improper award of the contracts by the JUTC to Simber Productions Limited.
3. Having regard to the foregoing, the OCG's Investigation has found that the said contracts were not awarded impartially, nor on merit and that the circumstances which led to their award involved rank impropriety and irregularity.

4. To be more specific, the OCG has concluded that the award of the referenced contracts, by the JUTC, to Simber Productions Limited, constituted a flagrant breach of the GPPH, the Public Bodies Management and Accountability Act, and the contract award principles that are enshrined in Section 4 (1) of the Contractor General Act.
5. Further, it is difficult not to conclude that the Findings that are set out in this Report constitute compelling evidence of the commission of an act of corruption, on the part of Mr. Douglas Chambers, in contravention of the provisions of the Corruption Prevention Act, in the JUTC's award of the referenced contracts to Simber Productions Limited. Accordingly, the OCG has concluded that the circumstances of the matter are such that there is *prima facie* evidence upon which the OCG would have had a justifiable basis to refer the matter to the Director of Public Prosecutions and to the Corruption Prevention Commission,
6. The OCG has also concluded that the JUTC Board of Directors has failed in its duty to ensure that the Procurement Committee of the JUTC discharged those of its mandates as are prescribed by Section 1.5.2.3 of the GPPH.
7. The OCG is of the view that, given the lack of knowledge on the part of the members of the JUTC's Procurement Committee, regarding the contracts that were awarded to Simber Productions Limited and to Protection and Security Limited, it can be construed that the Procurement Committee of the JUTC was not, in all instances, kept abreast of the JUTC's procurement activities.
8. The OCG has also concluded that there is *prima facie* evidence that both Mr. Douglas Chambers and Mr. Bindley Sangster had willfully made false written declarations to the Contractor General, respectively, in the JUTC's 2008 1st and 2nd Quarter QCA Reports, in breach of Section 29 (a) of the Contractor General and, in so doing, had committed a criminal offence under the Contractor General Act.

9. It is also the case that there was a conflict of interest on the part of the late Chairman, Mr. Douglas Chambers, insofar as the award of the contracts to Simber Productions Limited is concerned.

Mr. Douglas Chambers was listed as the Majority Shareholder of Simber Productions Limited at all material times and, more particularly, at the time of the JUTC's award of the referenced contracts to Simber Productions Limited.

The OCG acknowledges that there was a purported and subsequent change in the company's share allotments. However, even if the change was made to have a lawful and valid retroactive effect, it would not remove the OCG's finding of a conflict of interest on the part of Mr. Chambers, as he would still have been a significant beneficial owner of Simber Productions Limited at the time that the said JUTC contracts were awarded to this company.

10. Protection and Security Limited was contracted in 2008 January to provide Cash-In-Transit Security Services to the JUTC on a monthly basis, following which a further interim contract was awarded to the company, by the JUTC, for the provision of monthly security services at all JUTC locations, pending the finalization of the JUTC's competitive tender exercise.

The interim contracts that have been awarded to Protection and Security Limited were irregularly and flagrantly awarded in breach of the GPPH and the Contractor General Act.

It is also concluded that the accumulated JUTC payments to date, to Protection and Security Limited, whose competitively tendered contract with the JUTC had not yet commenced as at 2008 October 1, were in excess of J\$30 Million and would have therefore required the prior approval of the NCC and the Cabinet – neither of which was sought and neither of which was received.

11. Cool Petroleum Limited was not awarded a contract for the supply of Fuels and Lubricants to the JUTC. The present and subsisting contractual arrangement between the JUTC and Cool Petroleum Limited was created as a result of a continuation of the JUTC's contract with Shell Company W.I., whose assets and liabilities were acquired by Cool Petroleum Limited in 2006 February.

Though the JUTC attempted to put the contract for the supply of Fuels and Lubricants to competitive tender, it suspended the tender activity in 2007 November. To date, Cool Petroleum Limited continues to honour the terms and obligations of its extended contractual arrangements with the JUTC.

12. In respect of the JUTC Board, the OCG has concluded that the Board, has, at all material times, generally operated in breach of Section 6 and 17 (1) (a) and (b) of the Public Bodies Management and Accountability Act, with regard to the procurement matters which are the subject of this OCG Investigation.

REFERRALS

The OCG, in the conduct of its Investigation, is required to be guided by Section 21 of the Contractor General Act. This provision mandates a Contractor-General to consider whether he has found, in the course of his Investigation, or upon the conclusion thereof, any evidence of a breach of duty, misconduct or criminal offence on the part of an Officer or member of a Public Body, and to formally refer the matter to the appropriate person or authority that is competent to initiate such proceedings in the matter as may be deemed appropriate.

Additionally, the Contractor-General is also required, in all such instances to lay a special report thereon before Parliament.

The OCG finds that there is sufficient *prima facie* evidence to suggest that one and/or more Members of the Board of Directors of the JUTC were negligent in the exercise of those of their duties that are prescribed by Sections 6 and 17 (1) (a) and (b) of the Public Bodies Management and Accountability Act.

The Members of the JUTC Board and, in particular, those members who sat on the JUTC's Procurement Committee, viz. Mr. Bindley Sangster, Mr. Dennis Chung, and Mr. Raphael Barrett, failed to take any action to properly ensure (a) that the circumstances which led to the award of the contracts to Simber Productions Limited and the interim contracts to Protection and Security Limited were fair, transparent and impartial; (b) that value for money was obtained by the JUTC in the award of the said contracts; (c) that the proper procurement procedures and/or guidelines were followed in the award of the said contracts; and/or (d) that there was strict compliance with the provisions of the Financial Administration and Audit Act by the management of the JUTC.

In the circumstances, there is evidence that the Members of the JUTC Board of Directors have (i) acted negligently in the discharge of their responsibilities as JUTC Directors and/or (ii) abused their authorities and offices as Directors of JUTC and/or (iii) breached their duties of trust to the JUTC and/or (iv) breached their respective fiduciary or statutory duties to the JUTC.

Further, it is instructive to record that Sections 6 and 17(1) of the Public Bodies Management and Accountability Act impose certain 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 irregularities and improprieties which were unearthed in respect of the JUTC's procurement processes would not have occurred.

In the premises, and 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 on the basis that there is evidence which is recorded herein which would suggest that there was, *inter alia*, a clear and unambiguous breach of duty specifically on the part of (a) Mr. Bindley Sangster, (b) Mr. Raphael Barrett (c) Mr. Dennis Chung and/or (d) the former Board of Directors of the JUTC and/or one or more of the members, all in contravention, *inter alia*, of Sections 6 and 17 of the provisions of the Public Bodies Management and Accountability Act.

The matter is being referred to the Attorney General particularly, *inter alia*, in light of the provisions that are contained in Sections 6, 17 and 25 of the Public Bodies Management and Accountability Act.

Additionally, the matter is being referred to the Attorney General for consideration as to what actions, if any, may be pursued against any of the offending JUTC Board Members, having regard to all of the circumstances of the case.

Further, and pursuant to the mandatory statutory obligations which are imposed upon a Contractor-General by Section 21 of Contractor General Act, the OCG is hereby formally referring a copy of this Investigation Report to the Director of Public Prosecutions on the basis that there is *prima facie* evidence that is contained herein which would suggest that Mr. Bindley Sangster, in his capacity as the Chair of the JUTC's Finance Committee, did, *inter alia*, wilfully make a false statement, on a JUTC QCA Report, which was dated 2008 July 28, to mislead a Contractor General, in contravention of Section 29 (a) of the Contractor General Act and, by so doing, committed a criminal offence.

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 therefor of the result of that investigation **and make such recommendations as he considers necessary in respect of the matter which was investigated.**” (OCG’s Emphasis).*

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

1. Transparency and the appearance of fairness require that there is a distinct separation of the sitting members of the Board of Directors of the JUTC and the Procurement Committee. This should be done with a view of ensuring the highest degree of objectivity in the execution of the functions of the Board of Directors as distinct from that of the Procurement Committee.

As such, the Procurement Committee of the JUTC should be reconstituted and the Members of the Board ought not to be permitted to act as sitting members of the said Committee.

The recommended separation will also mitigate against any probable conflict of interest which may arise in the Board’s exercise of its functions in ruling upon a recommendation which emanates from the JUTC Procurement Committee.

2. The current JUTC contract with Cool Petroleum Limited should be competitively tendered by the JUTC. In effect, the tender exercise which was initiated in 2007 must now be fully undertaken by the JUTC in accordance with the requirements of the GPPH.

3. As indicated in previous Investigation Reports, the Cabinet should move to immediately develop and implement a comprehensive and over-riding policy to be applicable to all Public Body Boards, to govern, restrict or prohibit, as the case may be, the award of Government contracts (or the divestment of publicly owned assets) by a Public Body, to members of its Board of Directors, or to any entity in which a Board member or a close family relative may have a pecuniary interest.
4. The OCG also respectfully recommends that all Appointees to the Board of Directors of any Public Body are duly and fully made aware of their responsibilities and obligations pursuant to the relevant provisions of the Public Bodies Management and Accountability Act.
5. The OCG believes that it is timely to reiterate its previous recommendations made for the Legislature to move with despatch to criminalize certain breaches of the Government's procurement rules. The OCG is aware that the present Administration is committed to this objective and that the process to elevate the GPPH to regulations is well under way. However, the dire need for this new dispensation must never be under-estimated. It should now be crystal clear, to all concerned, that only punitive sanctions will curb the wanton, cavalier and almost seeming disregard for the GPPH that is a common feature of the procurement practices of some Public Bodies.
6. The OCG must again remind all Public Officers, inclusive of Board Members of Public Bodies, who abuse their office and authority for personal gain, 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.

7. Having regard, *inter alia*, to (a) the fact that certain contracts were irregularly and improperly awarded to Simber Productions Limited, by the JUTC, in circumstances which evidence a breach of the GPPH, the Contractor General Act, the Public Bodies Management and Accountability Act, and the Corruption Prevention Act, (b) the fact that the said contracts were awarded to Simber Productions Limited at a time when Mr. Douglas Chambers, the Chairman of the JUTC, was also the Majority Shareholder of Simber Productions Limited, (c) the fact that Mr. Douglas Chambers, for 3 consecutive years, viz. 2006, 2007 and 2008, had certified and declared, in writing, to the ORC, that he was the Majority Shareholder of Simber Productions Limited, (d) the fact that the said 3 consecutive years commenced with the incorporation of Simber Productions Limited on 2005 April 12, (e) the fact that an Amended Annual Return of Simber Productions Limited was entered upon the records of the ORC on 2008 July 17, just days after the untimely death of Mr. Chambers on 2008 June 27, and (f) the fact that in the said Amended Annual Return, Ms. Susan Simes, on 2008 July 16, in substance, certified and declared to the ORC, that she, and not Mr. Douglas Chambers, was and is the Majority Shareholder of Simber Productions Limited,

are all compelling pieces of evidence which would warrant that the matter should be formally referred to the Commissioner of Police, and the Director of Public Prosecutions (DPP), for further investigation.

The OCG believes that a thorough investigation, into the matter, needs to be undertaken by the Commissioner of Police or by the DPP, with the objective of ensuring, *inter alia*, the propriety of the change in the purported share allotments of Simber Productions Limited and the impact that it has had, if any, upon the Estate of Mr. Douglas Chambers.

Upon a strict interpretation of Section 21 of the Contractor General, a Contractor General is mandated to make referrals directly to the competent authority only in instances where he has found evidence of “*a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body*”. However, the evidence that is alluded to herein is not related to “*an officer or member of a public body*”.

Consequently, the OCG is constrained to make the recommendation that it has done, namely that the matter should be so referred to the competent authority - this as opposed to the OCG directly making the referral itself.

The OCG’s recommendation herein that this matter should be formally referred to the Commissioner of Police and to the Director of Public Prosecutions (DPP) for investigation, is being made pursuant to the discretionary powers that are reserved to a Contractor General by Section 20 (1) of the Contractor General Act.

SPECIAL OCG COMMENT

The OCG wishes to formally record that it regrets the untimely passing of the late Chairman of the JUTC, Mr. Douglas Chambers, and condemns his brutal slaying. The OCG is acutely mindful of the fact that its considered Findings and Conclusions herein, together with the consequential Recommendations and Referrals which it has made, will, in some respects, reflect adversely upon Mr. Chambers. While the OCG regrets this unfortunate circumstance, it is nevertheless obliged, by law, to present the considered results of its Investigation, into the award of certain contracts by the JUTC, having regard to the documentary and sworn evidence and testimony that it has examined.

THIS PAGE IS INTENTIONALLY LEFT BLANK