



Any reply or subsequent reference to this communication should be addressed to the Contractor-General and the following reference quoted:-

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JAMAICA, W.I

MEDIA RELEASE

Contractor General Writes to Prime Minister to Express Increasing Concerns About Divestment of State Assets without Transparency and Competition

Kingston; October 18, 2011 – Contractor General, Greg Christie, has written to Prime Minister Bruce Golding to express the increasing concerns of the Office of the Contractor General (OCG) regarding what it sees as the bold attempts by the Government to divest State-owned assets in a manner which does not ensure competition, transparency and the attainment of a fair market value.

In his letter, which was dated October 14, 2011, the Contractor General expressed his consternation that the Cabinet was apparently far advanced in revising the Government's Privatization Policy and Procedures, without any consultation whatsoever with the OCG, to make provision for the validation of State asset privatizations via the facility of what is called an 'Unsolicited Proposal'.

An Unsolicited Proposal occurs in a situation where a single contractor purportedly approaches the State with what is classified as a unique contracting proposal. The State then negotiates solely with that contractor, to the exclusion of all others, without public advertisement and competition, and without the involvement of the OCG, and then awards the contract to the contractor.

The OCG, in its letter of October 14, to the Prime Minister, has strongly recommended that the facility of the Unsolicited Proposal should be excised from the revised Privatization Policy and Procedures, in the event that it has already been included therein.

The OCG has, on previous occasions, stridently and unequivocally ventilated its concerns regarding Unsolicited Proposals, as it fervently believes that the acceptance of such proposals are contrary to the principles of competition and transparency, and is a corruption enabling facility.

Indeed, the OCG's October 2009 Special Report of Investigation, which implicated Member of Parliament Joseph Hibbert in bribery and corruption allegations, in the Jamaica bridge building contracts that were awarded to the British firm of Mabey and Johnson, had raised the issue and requested that the Government should immediately cease the practice. The OCG, at the time, had made the following formal Recommendation:



“The OCG is of the view that the concept of the Unsolicited Proposal, which has found its way into the country's procurement conventions, should be excised from the Government's Procurement Guidelines.

The OCG is concerned that the unsolicited proposal mechanism is a corruption enabling device which can be utilized by unscrupulous Public Officials to direct lucrative multi-million dollar State contracts to connected, undeserving or desired contractors.

This can be easily accomplished by influential but corrupt Public Officials who are willing to clandestinely conspire with a contractor to have the contractor approach the State with what appears to be a unique contracting proposal.

It is the OCG's considered contention that all such proposals must be tested for propriety, legitimacy, cost-effectiveness, quality, value for money and competitiveness in the open market place.”

Between April and October of this year, the OCG has had cause to write to the Government to further raise its concerns and strong objections regarding the attempted use of the conduit of the Unsolicited Proposal to privatize, without open competition and public advertisement, (a) the Jamaica Railway Corporation, (b) Nutrition Products Limited, (c) the Montego Bay Free Zone, and (d) certain assets that are held by the Urban Development Corporation (UDC).

In the case of the Montego Bay Free Zone, by way of a letter that was dated October 5, 2011, the Port Authority of Jamaica (PAJ), in response to a letter from the OCG which requested, *inter alia*, a status update on the matter, had the audacity to respond in the following terms:

*“In light of the Government’s recently approved policy on privatization of Government assets, to include **unsolicited proposals** such as this one from Caribbean Telecoms, we think it prudent to await the release of this new Policy before advancing this transaction further.”*

The OCG, which found the assertion and stance of the PAJ to be preposterous, deliberate and highly manipulative, will be taking the requisite steps to formally address the matter directly with the PAJ.

Also, in the case of the UDC, the corporation has proceeded to enter into a sale agreement, dated August 11, 2011, for a certain property which is situated at 35 West Parade, Kingston, for the sum of JA\$31.4 million, in response to what it says was “*an **unsolicited proposal** from Bashco Trading Company Limited vide its principal Mr. Gazzan Azan*”.

The UDC, in a blatant contravention of the pre-existing Government Privatization Policy and Procedures, has proceeded with the sale of the subject property without advertising same to the public, and despite the alleged prior stated interest and repeated offers of the current tenant, Mr. Michael Mahfood and M. Mahfood & Sons Limited, to purchase the property.



The attorneys for the tenant, Hart Muirhead Fatta (HMF), have contended that their clients, who have occupied the premises for “*some thirty years, (have), on several occasions, offered to purchase or take a long term lease of the property (but) the UDC has consistently rejected those offers on the basis that the property is required for road-widening*”. (OCG emphasis).

HMF, by way of letter to the OCG, dated September 28, 2011, has also contended that its “*Client has gathered that the property is being sold to Bashco Trading Company for \$30 million, whereas our client is prepared to pay substantially more to acquire the property, having regard to perceived market value and our client’s being prepared to pay a premium to continue business there*”.

In light of the extremely troubling circumstances which surround this specific UDC asset divestment, the OCG, by way of another letter that was dated October 14, 2011, has advised the Prime Minister and the Permanent Secretary in the Prime Minister’s Office that the OCG has commenced a formal Investigation into the sale of the said West Parade property to Bashco.

The OCG, by way of letter to the UDC, which was dated October 13, 2011, has also recommended that the UDC “*immediately terminates the arrangement with Bashco Trading Company Limited*”.

The OCG wishes to make it public that it is extremely concerned about the continuing failure of the Administration to act decisively upon its many considered remedial Recommendations to secure greater transparency, competition and accountability in public contracting in Jamaica, and to close the several loop holes which presently exist in the system which continue to vividly facilitate the perpetuation of corruption in the award of Government of Jamaica contracts.

The verbatim texts of the Contractor General’s two (2) letters to the Prime Minister, dated October 14, 2011, regarding (a) the OCG’s concerns about the Government’s purported or intended validation of the concept of the Unsolicited Proposal in privatization issues, and (b) the OCG’s Investigation into the UDC’s sale of its 35 West Parade property, are now being made public and are appended herewith.

Only in January of this year did the OCG have cause to strongly and publicly protest the manner in which the Government proceeded with the sale of its interest in the Sandals Whitehouse Hotel property to the Gordon ‘Butch’ Stewart owned Sandals Group. The sale was, among other things, facilitated by secret negotiations which, from all indications, were **deliberately** concealed from the OCG until they were far advanced and brought to public light by a local newspaper.

-END-

Contact: The Communications Department, Office of the Contractor General of Jamaica
C/o Craig Beresford, Senior Director of Monitoring Operations, Corporate Communications and Special Projects
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URGENT AND IMMEDIATE

October 14, 2011

The Honourable Orette Bruce Golding, M.P.
Prime Minister of Jamaica
Office of the Prime Minister
1 Devon Road
Kingston 6

Dear Prime Minister:

Re: Government of Jamaica Privatization Policy and Procedures – Acceptance of Unsolicited Proposals

I am privileged to write to you in the captioned regard and with particular reference to certain occurrences that are associated thereto, which have become of increasing concern to the Office of the Contractor General (OCG) during its monitoring of the divestment of several Government of Jamaica owned assets.

As you are aware, the OCG is empowered by the provisions of the Contractor General Act to, *inter alia*, monitor the award and implementation of government contracts, with a view to ensuring that same are awarded impartially and on merit, and in circumstances which do not involve impropriety or irregularity.

In the fulfilment of its mandate, the OCG has been actively monitoring the privatization of government-owned assets, including lands. Although there have been legal opinions in the past which have questioned and/or challenged the jurisdiction of the OCG in said matters, the Office has remained resolute in its position that said transactions are subject to the provisions of the Contractor General Act.

The OCG's position and resolve has been fortified by (a) a legal opinion, dated January 25, 2000, from eminent Senior Counsel, Dr. the Hon. Lloyd G. Barnett, (b) a Policy Statement on the issue that was mandated by former Prime Minister, the Most Hon. Percival James Patterson, (c) the various requests, over the years, which have from the present and past Administrations for the OCG to monitor and/or to investigate such transactions, and (d) the cooperation which has been received from members of the current Administration, inclusive of yourself, during the course of such monitoring exercises and/or investigations.

As such, the OCG has been monitoring (and/or investigating) the privatization of government-owned assets for the better part of the past two (2) decades and, in doing so, has been guided, among other things, by Ministry Paper # 34 which is entitled "Privatization Policy and Procedures", 1991. It is noteworthy that embedded in the said Ministry Paper, are, *inter alia*, the principles of competition, transparency, and fair market value for each transaction.



Further to same, information received by the OCG suggests that (a) there has been a revision of the Privatization Policy and Procedures, and (b) that the said revision makes allowance for the acceptance of Unsolicited Proposals. **The OCG has, on previous occasions, stridently and unequivocally ventilated its concerns regarding Unsolicited Proposals, as it fervently believes that the acceptance of such proposals are contrary to the principles of competition and transparency, and is a corruption enabling tool.** (OCG's Emphasis)

Further, the very principle, concerning unsolicited proposals, as stated in Ministry Paper # 34 – “Privatization Policy and Procedures” provides as follows:

“Premature applications can only be acknowledged, and it must be stressed that there should be no expectations that privatization will be accomplished with undue or reckless speed considering that it is a fiduciary responsibility of government to find the best optimal mix of transferring risk to the private sector and maximizing the proceeds whilst conducting the process competently and expeditiously”.

It is beyond doubt that the referenced fundamental principles of competition and transparency, are central to Ministry Paper # 34, which was mandated by the then Prime Minister, the Hon. Michael Manley, in 1991, and are principles which, for the sake of good governance and probity, ought to be retained.

Having regard to the gravity of the proposed inclusion of the concept of Unsolicited Proposals in the revised Privatization Policy and Procedures, it is of utmost importance that the OCG enunciates the following:

OCG's Special Report of Investigation - Mabey and Johnson Limited

Detailed below, is an extract of Recommendation #6 from the OCG's Special Report of Investigation Conducted into the Allegations of Corruption and Irregularity that are Related to Certain Government of Jamaica Bridge Building Contracts that were Awarded to the British Firm of Mabey and Johnson Limited, October 2009. The extract states that “...*the OCG is of the view that the concept of the **unsolicited proposal**, which has found its way into the country's procurement conventions, should be excised from the Government's Procurement Guidelines.*

*The OCG is concerned that the **unsolicited proposal** mechanism is a corruption enabling device which can be utilized by unscrupulous Public Officials to direct lucrative multi-million dollar State contracts to connected, undeserving or desired contractors. This can be easily accomplished by influential but corrupt Public Officials who are willing to clandestinely conspire with a contractor to have the contractor approach the State with what appears to be a unique contracting proposal.*

It is the OCG's considered contention that all such proposals must be tested for propriety, legitimacy, cost-effectiveness, quality, value for money and competitiveness in the open market place.”

The OCG maintains a similar position as regards the concept of the Unsolicited Proposal in the Privatization of State Owned Assets.

OCG's letters to the Prime Minister – May 2011

By way of letter, dated May 13, 2011, the OCG wrote to you, Hon. Prime Minister, with reference to your Budget Presentation which was made on May 10, 2011, wherein you discussed the disposal of assets through the privatization and outsourcing of certain functions. In the said letter, the OCG highlighted the general principles which are outlined in Ministry Paper #34, inclusive of the principle that “*Premature applications can only be acknowledged*” and that “*the selection of items to be privatized will be announced to the public by way of advertisements*”.



The OCG's letter had intentionally highlighted, for your direct attention, the need for the **public advertisement** of Assets which are slated to be privatized, in order to ensure transparency, equity and fairness in such transactions, which are ultimately consummated for and on behalf of the People of Jamaica.

By way of letter, dated May 17, 2011, you responded to the OCG and advised, *inter alia*, as follows: "*Please be assured that the procedures outlined in Ministry Paper 34 for the privatization of government-owned assets **will be observed in relation to any such activity.***" (OCG's Emphasis)

List of Assets to be Privatized

By way of letters, which were dated February 16, 2010 and January 31, 2011, from the Cabinet Secretary, the OCG has been provided with a listing of assets which are slated for divestment during the Financial Years 2010/2011 and 2011/2012, respectively.

The OCG is of the considered opinion that assets which are owned by the Government of Jamaica and, by extension, the Jamaican People, cannot and should not be privatized without proper planning and due diligence. As such, the OCG cannot foresee any instance wherein the intention to divest an asset will not be known ahead of time. Further, the acceptance of an Unsolicited Proposal will essentially circumvent the competitive process, and is, without due consideration, more likely to result in a transaction which does not offer the best value to the People of Jamaica.

Listed below are matters involving Unsolicited Proposals which the OCG has recently encountered and has had cause to raise concerns about:

1. Divestment of Montego Bay Free Zone

Reference is made to a letter, dated October 5, 2011, from the Port Authority of Jamaica (PAJ), in response to a letter from the OCG requesting, *inter alia*, a Status Update on the captioned matter. In response to the OCG's letter, the PAJ stated, *inter alia*, that "**In light of the Government's recently approved policy on privatization of Government assets, to include unsolicited proposals such as this one from Caribbean Telecoms, we think it prudent to await the release of this new Policy before advancing this transaction further.**"

The OCG finds the foregoing assertion and stance of the PAJ to be preposterous, deliberate and highly manipulative. The OCG will be taking the requisite steps to formally and fully address the said matter directly with the PAJ.

2. Pending sale of 35 West Parade, Kingston

By way of letter, dated September 28, 2011, from the Law Firm Hart Muirhead Fatta, representing Mr. Michael Mahfood, the OCG was advised of the pending sale of the captioned property and certain perceived irregularities associated therewith. The letter alleged, *inter alia*, that the Urban Development Corporation (UDC) intended to divest the property to Bashco Trading Company Limited without advertising same to the public and despite the prior interest and repeated offers of the current tenant to purchase the property.

The OCG, by way of a letter dated September 30, 2011, sought to enquire into the allegations which were received. The UDC subsequently requested an extension to the deadline for submission as it had reportedly sought the opinion of the Attorney General.



Hon. Prime Minister, we must now advise that following upon the exchange of several pieces of correspondence, the UDC, through its General Manager, has formally confirmed and conceded that the subject property is in the late stages of being divested without same being subjected to the principles of competition which are contained in Ministry Paper # 34, "Privatization Policy and Procedures".

In effect, the lack of adherence to the referenced Ministry Paper, coupled with the allegations regarding the less than transparent circumstances under which the referenced property is being divested has shrouded the process with an air of suspicion and has brought the divestment into disrepute. The matter, as you are aware, will be formally investigated by the OCG and a public announcement, in this regard, will be made shortly.

3. Jamaica Railway Corporation

The OCG has been monitoring the project related to the Rehabilitation of the Jamaica Railway System, and has had serious concerns with the process. The OCG has had occasion to write to highlight its concerns. In this regard, reference is made to the OCG's letter which is dated April 26, 2011 at which time the OCG raised, *inter alia*, its concerns related to the receipt and acceptance of Unsolicited Proposals in contravention of the established Government of Jamaica Guidelines.

Amongst the other concerns which had been raised, and which had been highlighted in the referenced letter, were the OCG's previously documented positions, dating back to September 2010, and certain allegations which were made by a Company, which has an interest in the matter, of impropriety and irregularity.

4. Divestment of the Nutrition Products Limited

The OCG received a letter, dated April 26, 2011, from the Ministry of Education, in the captioned regard. The letter indicated that arising out of the Government's Public Sector Transformation Programme, the National School Feeding Programme is one area that the Government should divest. The letter stated, *inter alia*, that "**... a private sector entity has approached the MoE and made an unsolicited proposal to take over the entity.** *We would like to benefit from the guidance and direction of the Office of the Contractor General. To this end, the Honourable Minister and senior members of staff of the Ministry would like to meet with you and your staff to discuss the matter...*"

Further to the referenced letter, on May 9, 2011, an OCG Team, led by its Senior Director of Monitoring Operations, Corporate Communications and Special Projects, attended a meeting with the Honourable Minister of Education, the Hon. Andrew Holness, and his Team, at which time the matter was ventilated.

The OCG stated its position that, in accordance with the provisions of Ministry Paper #34, the Unsolicited Proposal should only be acknowledged, and that the privatization should be governed by the principles that are stated in said document, chief of which being that the divestment rightfully ought to be advertised.

By way of a letter dated July 12, 2011, the Ministry of Education advised the OCG that the Unsolicited Proposal had been acknowledged, and that the approval of the Cabinet was being awaited to further proceed with the divestment, and that same would be conducted with the support of the Development Bank of Jamaica.

The OCG must place upon the record the fact that in two (2) of the above instances, wherein the Unsolicited Proposals were accepted and/or considered, a cloud of doubt and an aura of suspicion regarding the probity and propriety of the said transactions now subsists.



Exclusion of the OCG from the process for the Revision of the Privatization Policy and Procedures

Reference is made to a discussion between the OCG's Senior Director of Monitoring Operations, Corporate Communications and Special Projects, and the Permanent Secretary in the Office of the Prime Minister, Ms. Onika Miller, on October 6, 2011. During the referenced discussion, the Permanent Secretary confirmed that the revision of the Privatization Policy and Procedures is well advanced, and that the move to include, therein, the acceptance of the concept of the Unsolicited Proposal was informed by, *inter alia*, research and trends that were observed in other jurisdictions.

Firstly, the OCG is disheartened that as the Regulatory Body, which is mandated by law to monitor and to investigate the award of Government Contracts, it was not consulted and/or involved in the revision of the subject Privatization Policy and Procedures. Further, the OCG is of the belief that its involvement in the process could have provided invaluable insight and, as such it would have been an important partner in said revision.

Secondly, it is unclear which country(ies) was/were used as the model to inform the inclusion of the concept of the Unsolicited Proposal in the referenced Privatization Policy and Procedures. The OCG wishes to make reference to Jamaica's historical ranking on Transparency International's Corruption Perception Index (CPI) as one of the most corrupt countries in the Americas and the 2nd most corrupt country in the English Speaking Caribbean, and posits that countries at the higher end of the spectrum, if any, which were used as a Case Study, may have introduced a similar provision, due to their maturity, political will, and good governance practices, and consequently their high rating on the CPI.

The OCG, from its strategic vantage point and given its institutional knowledge, is of the considered and informed opinion that Jamaica's governance structures and institutional checks and balances are not yet sufficiently robust and mature to withstand the possible negative and adverse implications of the introduction of such a provision in the revised version of the divestment procedures.

Suffice it to say, however, should the concept of the Unsolicited Proposal be endorsed, legitimised and authorised, as is now being contemplated by your Administration, the same, single-handedly, poses a significant threat to the strides and gains in securing probity, transparency and competition, which have been made over the years, in the divestment and sale of State-owned assets.

OCG's Considered Position

The OCG fully recognizes and respects the authority of the Government of Jamaica and, specifically the Cabinet, in the exercise of its functions, which includes the promulgation of Public Policy.

However, the OCG, as the Regulatory Body with oversight responsibility for the award of GOJ contracts, and which was created as an independent Anti-Corruption Commission of the Parliament of Jamaica, must raise its **strong opposition**, based upon the information that is within its possession, to any allowance for the inclusion and/or acceptance of the concept of the Unsolicited Proposal in the subject revised Privatization Policy and Procedures.

While the OCG can appreciate the **perceived** need for expedience in certain transactions, it does not believe that this should come at the cost of equity, fairness, transparency, competition and probity in the expenditure of the taxpayers money. The acceptance of Unsolicited Proposals is counter to the principles of transparency, competition and fairness, and may not result in the best value for the country. These are principles which the OCG, and I, as the Contractor General, am committed to forcefully and fervently defend.



As such, the OCG respectfully posits the following recommendations:

1. That the notion of the consideration and acceptance of the concept of the Unsolicited Proposal be excised from the revised Privatization Policy and Procedures, if same is currently included ; and
2. That the OCG be given the opportunity to conduct a review of the revised Privatization Policy and Procedures, prior to it being presented to and/or approved by the Cabinet.

In the circumstances, the OCG is hereby requesting that a copy of the revised Privatization Policy and Procedures be submitted to its Office on or before **Wednesday, October 19, 2011.**

Given the gravity of this issue, and the OCG's principled stance that provision for the concept of the Unsolicited Proposal should not be made in any revision to the subject Privatization Policy and Procedures, the OCG will make the appropriate representations, and take the necessary actions, at it deems fit, including making its positions herein public, to ensure that this matter is fully exposed and ventilated.

I avail myself of this opportunity to renew to you the assurance of my highest considerations.

Very respectfully yours,

Greg Christie (Signed)

Greg Christie
Contractor General

Copy: The Most Hon. Portia Simpson Miller, ON, MP, Leader of the Opposition
The Hon. Andrew Holness, MP, Minister, Leader of Government Business in the House of Representatives
The Hon. Michael Peart, MP, Leader of Opposition Business in the House of Representatives
Ms. Onika Miller, Permanent Secretary, Office of the Prime Minister
Ambassador The Hon. Douglas Saunders, CD, OJ, Cabinet Secretary, Office of the Cabinet
Dr. Wesley Hughes, CD, Financial Secretary, Ministry of Finance
Mr. Milverton Reynolds, CD, Managing Director, Development Bank of Jamaica
Dr. Wykham McNeil, MP, Chairman of the Public Administrations and Appropriations Committee
Dr. Peter Philips, MP, Chairman of the Public Accounts Committee



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VERY URGENT AND IMMEDIATE

October 14, 2011

The Hon. Orette Bruce Golding, MP
Prime Minister of Jamaica
Office of the Prime Minister
1 Devon Road
Kingston 6

Ms. Onika Miller
Permanent Secretary
Office of the Prime Minister
1 Devon Road
Kingston 6

Dear Hon. Prime Minister and Madame Permanent Secretary:

Re: Formal Notice of Commencement of Special Statutory Investigation – Concerning Divestment of Government of Jamaica Owned Assets - The Pending Sale of Property Located at 35 West Parade, Kingston, to Bashco Trading Company Limited by the Urban Development Corporation

Pursuant to the powers which are vested in me, by the Contractor General Act, I hereby formally write to notify you that the Office of the Contractor General (OCG), acting on behalf of the Contractor General, has commenced an investigation into the circumstances surrounding the pending sale of a Government of Jamaica owned property which is located at 35 West Parade, Kingston, to Bashco Trading Company Limited, by the Urban Development Corporation (UDC).

The OCG's decision to commence the Investigation has been prompted by certain considerations which include, *inter alia*, the following:

1. The gravity of the formal written allegations and representations which have been made to the OCG, by the Law Firm, Hart Muirhead Fatta, under cover of a letter which was dated September 28, 2011. The Law Firm, Hart Muirhead Fatta represents Mr. Michael Mahfood (H. Mahfood & Sons Limited), a current tenant of the premises, who has reportedly occupied same for approximately thirty (30) years. The referenced allegations and representations include, *inter alia*, the following:
 - a. A concern regarding the process by which the property is being divested by its registered proprietor, the UDC;



- b. The assertion that “on several occasions our client has offered to purchase or take a long term lease of the property. The UDC has consistently rejected those offers on the basis that the property is required for road-widening.”;
 - c. The assertion that “Not only was Mr. Mahfood not given any opportunity to purchase the property, but the desire to sell this public asset was not advertised or otherwise made public”;
 - d. The allegation that “... the property is being sold to Bashco Trading Company Limited (“Bashco”) for JMD30,000,000, whereas our client is prepared to pay substantially more to acquire the property, having regard to perceived market value and our client’s being prepared to pay a premium to continue business there.”
2. The failure of the General Manager of the UDC, Ms. Joy Douglas, to address and satisfy, in a timely and fulsome manner, the concerns and questions which had been raised with her in the OCG’s Statutory Requisition, which was dated September 30, 2011.

In point of fact, as at the stipulated deadline date of October 10, 2011, Ms. Douglas formally wrote to the OCG and advised, *inter alia*, that “An Agreement for Sale was executed on August 11th 2011 for the sum of Thirty One Million Four Hundred Thousand Dollars (\$31,400,000.00).”

The referenced response did not address the OCG’s concerns regarding the procedures which were undertaken by the UDC in the divestment of the property nor the method by which the referenced sale was advertised. Further, there was no indication in the referenced response that additional information would have been forthcoming.

3. The fact that by way of a letter which was dated October 11, 2011, Ms. Joy Douglas again wrote to the OCG, subsequent to an OCG letter of the same date, and advised, *inter alia*, as follows:
 - a. That the UDC received an unsolicited proposal from Bashco Trading Company Limited, vide its principal, Mr. Gazzan Azan, to purchase property in the West Parade/Beckford Street area;
 - b. That Mr. Gazzan Azan had made contact with the Urban Development Corporation from February 2011;
 - c. That a developmental plan had been submitted by Mr. Gazzan Azan, which, upon review, coincided with the Urban Development Corporation’s plan for redevelopment of the area;
 - d. That “... **one of the principles as stated in Ministry Paper #34 reflecting Public Sector divestment was breached in that the property was not publicly advertised... but can be explained on the basis of the Corporation’s historical operation and we genuinely erred.**”
4. The fact that the UDC has a provision in its ‘Procedural Manual’ which runs counter to the principles which are embodied in Ministry Paper # 34, “Privatization Policy and Procedures”. The referenced provision stipulates, *inter alia*, that “The disposal of land from direct offers will not be subject to any tendering procedures, except in circumstances where the Corporation deems this necessary.”

As it currently stands, the foregoing provision of the Urban Development Corporation’s ‘Procedural Manual’ is also in direct contravention of the provisions of Section 4 of the Contractor General Act.

5. The fact that the foregoing allegations and the concession by the General Manager of the Urban Development Corporation has raised rather invidious questions regarding the propriety of the



transaction, particularly in light of the fact that the referenced premises was in fact one for which two (2) separate parties had an expressed interest.

I am of the considered view that the foregoing considerations are singularly and collectively grave in their import and have raised several governance and public interest issues which would warrant the institution of a formal OCG Statutory Investigation into the allegations which have been made in this matter.

In light of the aforementioned considerations, the OCG's formal Statutory Investigation into the referenced matter will be directed, *inter alia*, at making a statutory determination with respect to the following:

1. The full particulars of the award of the contract to Bashco Trading Company Limited, and whether the circumstances which surrounded the award of the contract, *viz*: divestment of the referenced property, by the UDC, complied, *inter alia*, with the provisions and/or requirements of:
 - a. The Contractor General Act, 1983, and, in particular, whether the proposed transaction has been negotiated and/or settled in full compliance with the Government contract award principles which are enshrined in Section 4 (1) of the Contractor General Act, namely that Government contracts must be "*awarded impartially and on merit*" and "*in circumstances ... which... do not involve impropriety or irregularity*"
 - b. The applicable Ministry Paper # 34, Privatization Policy and Procedures;
 - c. The Public Bodies Management and Accountability Act.
2. The full particulars regarding between whom, where, when and how was the pending transaction negotiated and settled with Bashco Trading Company Limited and/or any of its agents;
3. The full particulars of all prospective arrangements and deals which were discussed, negotiated and/or contemplated by the GOJ with Bashco Trading Company Limited and/or any of its agents, and the identity of the Public Officials/Public Officers and persons who were involved in the said discussion and/or negotiations;
4. The personal, business and/or professional relationships, if any, which currently exist or which have previously existed between any public official or person who may have been involved, or who is currently involved, whether directly or indirectly, in any of the aforementioned prospective arrangements;
5. Whether there is any evidence which would suggest that any public officer or person, whether by his or her conduct or participation in the above-referenced arrangement, may have contravened the Corruption Prevention Act and/or Section 29 of the Contractor General Act;
6. Whether any other Laws of Jamaica may have been contravened, wittingly or unwittingly, by any Public Officer/Public Official who was involved in this matter, or whether there is any evidence of a breach of duty or misconduct on the part of any such Public Officer/Public Official.

Pursuant to Section 15(1) of the Contractor General Act, the Contractor General is empowered to conduct an investigation into any or all of the following matters:

- (a) the registration of contractors;
- (b) the tender procedures relating to contracts awarded by public bodies;
- (c) the award of any government contract;
- (d) the implementation of the terms of any government contract;



- (e) the circumstances of the grant, issue, use, suspension or revocation of any prescribed licence;
- (f) the practice and procedures relating to the grant, issue, suspension or revocation of prescribed licences.

You should also be guided by the provisions which are embodied in Sections 4, 16, 17, 18, 20, 21, 28 and 29 of the Act.

The OCG's Investigation Team in this matter will be headed by Mr. Maurice Barrett, the OCG's Chief Investigator, who will be directly responsible to me for the conduct of the Investigation.

Mr. Barrett will be in touch in due course with certain officers and officials of the UDC, as well as other persons of interest, inclusive of the Hon. Orette Bruce Golding, M.P., Prime Minister of Jamaica, to advise them of the Investigation process and the Requisitions which we will be making of them in pursuit of the conduct of the Investigation.

Please accept my gratitude for your anticipated cooperation and assistance in this very important matter.

Very respectfully yours,

Greg Christie (Signed)

Greg Christie
Contractor General

Copy: Ms. Joy Douglas, Managing Director, Urban Development Corporation
Mr. Ransford Braham, Attorney General, Attorney General's Department
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