



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

No. :

TELEPHONE No.:876-929-8560/6466

FAX No. : 876-929-2476

E-mail: communications@ocg.gov.jm

OFFICE OF THE CONTRACTOR-GENERAL

PIOJ Building

16 Oxford Road

P.O. BOX 540

KINGSTON 5

JAMAICA, W.I

Open Statement by the OCG Regarding the Proposed Highway 2000 North South Link and the Container Transshipment Hub Projects

Introduction

The Office of the Contractor General wishes to publicly express its grave and serious concerns regarding the Government of Jamaica's (GOJ's) decision to embark upon two (2) multimillion dollar investment projects, against the considered recommendations which have been advanced to the GOJ, and its representative officers, by the OCG.

The OCG also wishes to utilize this Statement to publicly explain and to highlight the very worrying and credible reasons for its concerns, and to expose and dispel what appears to be the deliberate and disingenuous attempts that have been made to mislead the public on the entire matter, inclusive of the false and patently malicious notion that is being propagated in the public domain that the Government has acted, in the captioned matter, in the way that it has because the OCG is holding up the process of the approval of major national investment projects.

Additionally, the OCG will also conclusively and credibly address, herein, a separate but false and misleading suggestion that has been advanced by a prominent Gleaner Columnist and attorney-at-law, Mr. Gordon Robinson, that the OCG is acting, in this matter, contrary to the laws of the land.

The first of the two (2) projects that have been referenced in this matter by the GOJ, in relation to the OCG, is the North/South Link of the Highway 2000 Project.

This project essentially has two components – namely (a) the construction of the entire Highway 2000 North/South corridor which is estimated to cost approximately US\$600 million, with a commitment on the part of the intended contractor/investor, China Harbour Engineering Company (CHEC), to reimburse the GOJ with approximately US\$120 million for the Mount Rosser leg of the corridor and, (b) a consequential fifty (50) year toll road concession which is to be granted by the GOJ to the CHEC to enable it to recoup its capital investment.

The second project which has been referenced by the GOJ, in relation to the OCG, concerns the Development of the Gordon Cay Container Transshipment Hub. The GOJ will be leasing lands for between 25 and 35 years, and the prospective investor will be required to undertake the Development, and will ensure revenue which, it is assumed, will be based upon certain equity allocations which will be associated with the operation of the Hub.

The third Project that has been identified by the GOJ, in relation to the OCG, is the Development of the Fort Augusta Container Terminal Project. However, and contrary to a statement that was made by Dr. the



Hon. Omar Davies, the Minister of Transport, Works and Housing, the GOJ, to this date, has not provided the OCG with any information or documentation regarding this project, nor has the OCG communicated with the GOJ or exchanged any correspondence whatsoever with any Public Body regarding this matter.

Unsolicited Proposals – A Corruption Enabling Device

The two (2) Projects which have attracted the OCG's intervention and concern, namely the North/South Link Project and the Gordon Cay Container Transshipment Hub Project, were initiated pursuant to the receipt of Unsolicited Proposals that were submitted to the GOJ by CHEC and by CMA CGM, respectively.

At this juncture, it is critical to highlight the fact that the OCG has long documented its position that the concept of the Unsolicited Proposal, which has found its way into the country's procurement and contract award conventions, should be excised from the Government's Procurement Guidelines and should not form the GOJ's preferred basis for engaging contractors to undertake multi-million dollar investment opportunities or projects.

The OCG is, and has always been, 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 has Lawful Jurisdiction in the Relevant Matters

For the avoidance of doubt, the OCG must also make it clear that both Projects, which are currently under consideration, fall squarely within its remit, since one concerns the award of a fifty (50) year toll concession, by the GOJ to CHEC, and the other concerns, *inter alia*, the Lease of GOJ lands, by the GOJ to CMA CGA, for the purpose of the development of the proposed container transshipment hub.

The OCG's primary mandate, as is prescribed by Section 4 (1) of the Contractor General Act, is to, on 'behalf of the Parliament of Jamaica' – and not on behalf of the Cabinet nor on behalf of the Minister of Transport and Works – 'monitor the award and implementation of Government Contracts and Prescribed Licenses to ensure that such contracts and prescribed licenses are awarded or terminated, as the case may be, impartially and on merit, and in circumstances which do not involve impropriety and irregularity'.

It is also instructive to note that Section 2 of the Contractor General Act specifically states that a Government Contract "...***includes*** any license, permit or ***other concession*** or authority issued by a public body or ***agreement entered into by a public body***...."

Further, there have been recent suggestions in the public domain, by Gleaner columnist and attorney-at-law, Mr. Gordon Robinson, that the OCG is acting *ultra vires* the law.



For the avoidance of doubt, it is instructive to note that there are many persons, like Mr. Robinson, who are misguided in the belief that the powers of the Contractor General, to monitor or to investigate the “award” of contracts etc., do not arise until the subject contract or licence/permit is actually awarded or issued, as the case may be.

The OCG is obliged to advise that any such belief is unfounded and has absolutely no validity in law. In the case of *Lawrence v. Ministry of Construction (Works) and the A.G. (1991) 28 J.L.R. 265*, the Supreme Court of Jamaica was moved by way of originating summons, at the instance of the then Contractor General, to rule on this very point. Mr. Justice Courtney Orr, in that case, held unequivocally as follows:

“The proper interpretation of the (Contractor General) Act is one which empowers the Contractor General to monitor the pre-contract stages of government contracts and to obtain information from public bodies prior to the award of such contracts (OCG emphasis)... The ordinary meaning of the words of the statute in light of the context and grammar suggest no other interpretation”.

The OCG has long advised Mr. Robinson in writing of the foregoing decision. However, for reasons that are known only to him, and as an officer of the court, he has not only chosen to ignore the duly considered decisions of the Supreme Court of Jamaica, but he has gone beyond the pale to seek to slaughter the credibility, the integrity and the work of one of Jamaica’s leading national institutions by misleading the media and the public into believing that the OCG is acting arbitrarily, irresponsibly, recklessly and unlawfully.

Misleading Statements Reportedly Made by the Minister of Transport and Works and Member of Parliament, Daryl Vaz

The OCG has also noted assertions which have been attributed to certain Public Officials, including Minister Davies and Member of Parliament, Mr. Daryl Vaz, regarding the OCG being an impediment to economic development and that the OCG has caused delays in the execution of certain GOJ multimillion dollar transactions and, in particular, (a) the Development of the Fort Augusta Container Terminal Project, (b) the Development of the Gordon Cay Container Trans-Shipment Hub Project and, (c) the North South Link Highway 2000 Project.

These reported assertions, which have taken flight in the media and the public domain, are patently false, misleading and malicious.

For the purpose of clarity, and to correct and address any inaccuracies which have been irresponsibly placed in the public domain regarding this matter, the OCG, herein, now details the extent of its involvement and interaction with the GOJ regarding all three (3) projects. The OCG openly challenges the Minister or any other Public Official to deny what is stated herein.

- a) **Development of the Fort Augusta Container Terminal Project** - The OCG has no direct institutional involvement in this Project and has never directly received any correspondence from the GOJ, nor has it sent any correspondence to the GOJ, regarding this Project.
- b) **Development of the Gordon Cay Container Trans-Shipment Hub Project** – The OCG, since August 10, 2011, has been communicating with the Port Authority of Jamaica regarding this Project, and has never made any demand of the Port Authority to cease and/or otherwise terminate



the said Project. By way of documents that were sequestered from the PAJ, it was gleaned that discussions regarding this Project started from as early as January 2011. In point of fact, the negotiations concerning the referenced Project, and its approval process, have continued apace, and ended with a Cabinet Decision on August 15, 2011, for the GOJ to enter into a Memorandum of Understanding with CMA CGM. This was done, notwithstanding the OCG's opinion and recommendation that the Project should have been undertaken pursuant to Ministry Paper #34 – Privatisation Policy.

- c) **North South Link Highway 2000 Project** – The OCG's intervention in this matter commenced in March 2011, although discussions between the GOJ and/or the National Road Operating Construction Company (NROCC) and CHEC started from as early as February 2009. The OCG's involvement in the matter continued to the period leading up to November 2011, when a recommendation was made by the OCG on November 30, 2011 for the GOJ to cease all direct negotiations with CHEC, pending the resolution of certain issues and concerns which were documented in its letter to the NROCC, or to put the opportunity to competitive tender.

Consequently, the allegations which have been spuriously placed in the public domain that the OCG has caused extensive delays to the referenced Projects are baseless, patently false, malicious, misleading and cannot be supported by the documentary evidence which is on record.

Quite curiously, and what should be even of greater concern to the public, is evidence which suggests that the GOJ has deliberately bypassed the OCG, despite the OCG's prior written recommendations, given the following fact circumstances:

- a) The previous Administration ceased the negotiations between the GOJ and CHEC having regard to the documented concerns which were raised by the OCG, by way of letter dated November 30, 2011.
- b) The OCG wrote to the current Prime Minister, the most Honourable Portia Simpson Miller on January 6, 2012, her very first day in office, regarding the GOJ's posture, having regard to the fact that there was an OCG recommendation on record for negotiations to cease between the GOJ and CHEC or for the contracting opportunity to be put to competitive tender. The OCG also advised that it stood ready to meet with the GOJ to discuss the matter. A copy of the OCG's letter to the Prime Minister was released to the media on January 9, 2012 and can be reviewed on the OCG's website. However, and despite the foregoing, to date, the OCG is yet to receive either (i) an acknowledgment of its letter or (ii) the GOJ's formal and documented positions given the OCG's considered recommendations.

It must also be noted that on January 12, 2012, during a meeting with Dr. the Honourable Omar Davies, the current Portfolio Minister, the OCG, in a proactive move, provided him with a complete set of documents pertaining to the OCG's concerns regarding this instant matter for his information and guidance. It is instructive to note that to date, the OCG has received no written communication whatsoever from the Minister regarding the documents which were conveyed to him.

- c) No attempts whatsoever have been made by the GOJ to formally communicate with the OCG to resolve the OCG's concerns. Instead the GOJ, in March 2012, went directly to the National Contracts Commission (NCC) to legitimize the transaction, despite being seized with the



knowledge that the matter was not a procurement related issue. In this regard, the NCC curiously offered its no objection and recommended that “...***the merits of the proposal*** be discussed with the Ministry of Finance & Planning for guidance and further action” (OCG’s emphasis).

- d) Thereafter, the Cabinet took the decision to proceed with the negotiations in the absence of any resolution to the issues which were highlighted by the OCG, whilst, at the same time, has, from all appearances, sought to disingenuously cast public blame on the OCG for delaying the process and for being a ‘stumbling block’ in the path of the GOJ and Jamaica’s economic development progress.

CHEC and The Proposed North/South Link of Highway 2000

The OCG is aware that CHEC has certain alleged antecedents which have brought into question the company’s *modus operandi* and its adherence to the principles of probity in its contracting processes. CHEC’s presence in the Caribbean and Latin America, inclusive of the Cayman Islands and Guyana has come under increased scrutiny as a number of governments have sought to engage the entity in a similar fashion, without the benefit of competitive tendering.

One of the OCG’s concerns, regarding CHEC, arose subsequent to the patently false representations which had been made by the former Minister of Transport and Works, Mr. Michael Henry, regarding CHEC’s selection as the main contractor under the Jamaica Development Infrastructure Programme (JDIP). At the time, public representations were made by the Minister that the selection of CHEC was a specific and mandatory conditionality of the relevant loan agreement. This has since proven to be untrue and incapable of any credible substantiation.

As a result of the patently false statements which were made in the media, by the then Minister of Transport and Works, Mr. Michael Henry, and which could not be substantiated by the then Permanent Secretary in the MTWH, Dr. Alwin Hales, the OCG, on July 22, 2011, via the issuance of a formal Media Release, announced its commencement of a Special Statutory Investigation, under the Contractor General Act, into the circumstances surrounding the contractual agreements with CHEC which had been undertaken by the GOJ for the execution of the JDIP project.

Subsequently, and through a media report which was published in the UK Guardian on June 23, 2011, entitled ***“Bangladesh: Ex-PM’s son sentenced over bribes”***, the OCG was again made aware of the sentencing, in a Bangladesh Court, of the son of the former Prime Minister of Bangladesh, Arafat Rahman, for laundering money taken as bribes from two global companies – with one of the two companies allegedly being China Harbour Engineering Company (CHEC). The referenced bribes were allegedly paid out to secure the award of Government contracts.

It must also be noted that as recently as Wednesday, April 25, 2012, a news article entitled ***“Government must find another \$19M - Sewerage divestment ‘unrealistic’ by June”*** was published in the CayCompass in the Cayman Islands, regarding the cruise berthing project for downtown George Town, Grand Cayman.

The referenced article revealed that strong indications had been given by the Overseas Territories Minister, Mr. Henry Bellingham, that the *“UK government was not pleased with how the agreement with China Harbour Engineering had been carried out thus far.”* **The referenced article also revealed, *inter alia*, that a request had been made of the Cayman Islands Premier, Mr. McKeever Bush, to grant assurances as to how the process, which currently involves CHEC, will be brought back in line with**



international best practices. (OCG's emphasis)

Against the background of the foregoing, the OCG is also acutely aware that the award of the US\$400 Million Jamaica Development Infrastructure Programme (JDIP) contract to CHEC has been the subject of grave controversy and is currently the subject of two major Investigations in Jamaica – namely the ongoing OCG Investigation, as well as a GOJ commissioned Forensic Audit.

The referenced GOJ Forensic Audit, it should be noted, was initiated by the previous Administration but was finalised by the current Administration, under the guidance of Dr. the Honourable Omar Davies, himself, and has recently resulted in the engagement of a Foreign Based Consultant with clearly defined Terms of Reference.

It is critically important for the public to be aware that the primary objective of the listed Consultancy Objectives, of the Forensic Auditor, is to **“Determine whether there was any fraudulent transaction or acts of fraud”** which would have ostensibly occurred between the representatives of the Government of Jamaica, former and/or present, and CHEC.

Without imputing any improper conduct to CHEC, it is the OCG's considered opinion that having regard to the foregoing objectives of the Forensic Audit, which is yet to be concluded, the current actions of the Administration in seeking to grant another sole source US\$600 multimillion investment opportunity to CHEC, in the prevailing circumstances, would constitute a clear conflict of interest and is at best premature.

In addition, the OCG's consternation regarding the GOJ's continued engagement of CHEC, and its stated intention to allow CHEC to be a beneficiary of future works projects, inclusive of a US\$600 million project, via the submission and acceptance of other Unsolicited Proposals, raises significant concerns and critical and seeming unanswerable questions for the OCG, given certain tape-recorded disclosures which have recently been made to the OCG, under oath, by Mr. Ivan Anderson, Managing Director, NROCC, some of which will be detailed herein.

- (a) **No Chinese/Jamaica Bilateral Agreement or Chinese or CHEC Concession.** The Ministry of Transport, Works and Housing (MTWH) and the NROCC, have squarely and unequivocally placed upon the formal record the fact that there is no Bilateral Agreement between the GOJ and the Chinese Government which is informing and/or which has informed the GOJ's acceptance of the 'unsolicited proposal' from CHEC. It is also the case that the GOJ is purportedly not in receipt of any form of concession from either the Chinese Government and/or CHEC, as it regards the construction of the North-South Link for Highway 2000.
- (b) **CHEC Proposal not Financially Viable.** The OCG is acutely aware that the 'unsolicited proposal' which was submitted by CHEC, to the GOJ, has been held out and marketed by the current Minister of Transport and Works, Dr. Omar Davies, and at least by one Opposition Member of Parliament, Mr. Mike Henry, as a financially viable and strictly commercial transaction, which is to be undertaken by CHEC at its own cost. This, however, as will be seen, is patently false. The OCG, for the approximate year that it had been monitoring and questioning the genesis and efficacy of the proposed construction of the referenced highway, had been advised that the GOJ would offer to CHEC a 50-year Concession, to permit it to be the toll operator, from which it could recoup its entire investment. The foregoing was what had informed the OCG's contention that same ought to have been the subject of a competitive tender process.



- (c) **CHEC will not Recover its Investment.** Initially, neither the NROCC nor the MTW had made formal and written disclosures to the OCG regarding the substantive and material financial elements of the ‘Unsolicited Proposal’ which was made by China Harbour Engineering Company (CHEC), as it regards, in particular, the funding and viability of the project.

However, and quite to the OCG’s alarm was the OCG’s receipt of NROCC’s position, as was detailed in its March 13, 2012 letter to the NCC, that the project was not financially viable in terms of the return on investment over the life of the proposed 50 year toll concession, and that, CHEC would not, on the basis of the Government’s projections, and its consultant’s advice, recoup the overwhelming majority of its US\$720 million investment on the Project.

- (d) **CHEC Proposal Highly Irregular.** The purported Tender, in the form of an “unsolicited proposal”, which has been submitted by CHEC, is a highly irregular transaction which cannot, based upon the recent disclosures of the Managing Director of NROCC, be matched by any other entity and/or person and would, as a consequence, have no relevance in a competitive tender process. The following are the reasons for same:

- a. NROCC, in a presentation to the NCC, on March 13, 2012, advised the NCC that “*In order to determine the viability of the project [it] also commissioned its own advisors Steer Davies Gleave (SDG) to review the project.*” Based upon the aforementioned study, NROCC was able to make the following determinations and to advise the NCC as follows:
 - i. “*The results of the analysis using SDG revenues projections show that the project is not viable if it is to be undertaken on commercial terms at available interest rates.*”
 - ii. Differences in projected SDG vs. CHEC Revenues ranged between 268% and 277% for the period 2015 through to 2019.
 - iii. **“Based on the foregoing the ability of the project even over 50 years to repay the loans is extremely doubtful and could not be undertaken by any other Company but a Chinese Firm given their availability of Cash.”**

It must be noted that SDG has been the traffic advisor to NROCC since 2000.

- b. It must also be noted that the OCG, by way of a letter which was dated March 19, 2012, required the Permanent Secretary in the Ministry of Transport, Works and Housing, to provide information regarding, *inter alia*:
 1. “*The basis upon which the Unsolicited Proposal was considered by the procuring entity;*
 2. “*...the unique nature of the purported new concept or technology that CHEC’s Unsolicited Proposal presents...*”

Upon a review of the responses which were provided, to the OCG, by the Permanent Secretary, by way of letter dated April 04, 2012, the OCG was left with more questions than answers and as such took the decision to raise its concerns directly with the Managing Director of NROCC, Mr. Ivan Anderson, in a tape-recorded meeting, in an effort to obtain clarity surrounding the proposal which had been forwarded by CHEC.



- c. The Managing Director of NROCC, during the taped interview with the OCG, which was held on April 12, 2012, asserted, *inter alia*, as follows – “*We have given them (i.e. CHEC) this study, which is the SDG study with the traffic projections. We have given them our projections and this is based on what we know about the market place, so they have the benefit of our information ...they have given us their own projections, and there is a big gulf between them, they are making a lot more assumptions about how much traffic they will be able to attract. **We don’t believe on a normal commercial scenario that the project will be able to stand on its own.**”*

It must also be noted, that as at December 20, 2011, the CEO of NROCC advised the OCG, *inter alia*, that “*...we believe that the Proposed Agreement could not be matched by any other developer operating on a commercial basis, it is only through the support of the Government of China that this is possible*”.

The referenced letter also indicated explicitly, *inter alia*, that the Project “*...cannot be implemented on a commercial basis*”. However, and has been previously represented, by the Government, in response to direct questions that have been posed to them, the CHEC Proposal is neither the subject of a bilateral agreement between the Jamaican and Chinese Governments, nor is the Proposal the subject of a concession or grant of any kind, moving from CHEC to the Government.

Given the compendium of facts, as unearthed by the OCG, there is, of course, the very critical and disturbing question regarding why the GOJ has classified, to the Parliament and to the public, CHEC’s proposal as being a viable commercial transaction and one for which the company would recoup its investment, on the present terms of its Proposal, when the very evidence which is in the possession of the NROCC and the GOJ would unequivocally suggest otherwise.

Further, the GOJ is unable to provide the OCG with any reason whatsoever, which has driven it to accept the proposal from CHEC, a seeming benefactor, despite the fact that same has not been branded as a gift from the Chinese Government, a concession of any sort, or the deliverables of a Bilateral Agreement between the GOJ and the Chinese Government.

The Following Unanswered Questions, Therefore, Arise:

1. Why is a commercially non-viable proposal being labeled and marketed by the GOJ to the People and Taxpayers of Jamaica as a strict commercial transaction, when the GOJ knows full well that it does not meet the criteria of a commercially viable proposal?
2. What benefit(s), whether current or future, does CHEC intend to enure from the GOJ, or from the Taxpayers and/or People of Jamaica, by undertaking what is a commercially non-viable transaction?
3. Why is the GOJ unable or unwilling to disclose the full particulars of the non-viability of the transaction and to describe it for what it is – an apparent gift to the People of Jamaica?
4. How, when, and by what means will the Jamaican taxpayer pay back CHEC for its investment, since the present proposed 50 year concession at the projected toll rates are significantly incapable of doing so?



5. Why are both the Government and certain members of the Opposition in a rush to have this suspicious and obviously highly irregular “investment” agreement consummated?
6. What were the bases upon which the NCC, in offering its no-objection to the Project, having being fully informed that the Project was not a commercially viable one, referred the matter to the Ministry of Finance and Planning to, among other things, discuss “...*the merits of the proposal*”?

Further, amongst the glaring and riveting disclosures which were recently made to the OCG, by the NROCC, in April 2012, was the fact that CHEC advised the GOJ that it would not participate should the referenced project be put to competitive tender.

From the OCG’s vantage point, the representations which were made to it regarding CHEC’s unwillingness to participate in a competitive tender process, when coupled with the knowledge that the ‘tender’ which was put forward by CHEC is not commercially viable, nor is it projected to be viable over the life of the proposed 50 year concession, is clear and incontrovertible evidence as to the reasons why the referenced ‘unsolicited proposal’ would have been unable to withstand the rigors of an open-market competitive bidding process, which would, as a consequence, open up the CHEC proposal to a scorching degree of scrutiny and questioning from its peers in the international market place.

Concerns Regarding CHEC Sub-Contracts

It is also of significant importance that the OCG highlights the fact that once the development and construction of the North-South Link of Highway 2000 is packaged and contractually consummated as a strict commercial transaction, to be undertaken by CHEC, then same would remove the construction component of the transaction from the scrutiny of the OCG and would leave the selection of subcontractors which are to be utilized on the project to the sole discretion of CHEC, despite the fact that the GOJ would be granting a 50 year Concession to CHEC, in exchange for the construction of the roadway.

If the facts regarding the true financial viability of the proposed project should be properly interrogated and taken into consideration, then based upon the CEO of NROCC’s own admission, at an Internal Rate of Return of approximately 5%, using the projections of the GOJ’s own advisors and consultants, Steer Davies Gleaves, the investment could only attract an amount of US\$100 million.

Therefore, it stands to reason that the additional US\$500 million for the construction of the North/South Link of Highway 2000 toll road, and the US\$120 million for the reimbursement of the Mount Rosser leg of Highway 2000, bears stark resemblance of the features of a gift to the People of Jamaica, as the revenue projections cannot in any way support a recovery of the overwhelming majority of the proposed entire investment.

It is, therefore, in the foregoing regard that the OCG, as one of its recommendations to the Government of Jamaica, had requested that all sub-contracts emanating from the Concession Agreement, which is being proposed for the North/South Link of Highway 2000, be subjected to the highest level of competition and scrutiny, and that the OCG be given the authority to monitor same.

Given the foregoing, it is the view of the OCG that the GOJ and the Parliament of Jamaica should give the OCG, *inter alia*, the authority, to have full and unfettered monitoring oversight of all sub-contract awards emanating from the concession. The foregoing is of great exigency, and forms part of previous



recommendations which have been advanced, by the OCG, to the Parliament and successive Administrations, which have seemingly fallen on deaf ears.

If given this authority, the OCG, acting solely for and on behalf of the People of Jamaica, will ensure, *inter alia*, that all sub-contract awards are subjected to the highest level of probity, and that said sub-contracts are not directed to politically aligned contractors, and that the resources of the state are not re-directed for unintended use and subjected to various levels of profit margins, which will, in effect, erode the true value of the benefit which should be legitimately given to the People of Jamaica.

The OCG would also ensure that there is equity in the award of said contracts and that all qualified and competent NCC registered contractors are afforded the opportunity to participate and benefit from this major and significant economic investment.

The Proposed Development of a Container Transshipment Hub in Kingston

The Memorandum of Understanding (MOU) between the Port Authority of Jamaica (PAJ) and CMA CGM, was brought to the OCG's attention by way of a RJR online news article, entitled "*MOU between Port Authority and shipping company to create close to 1,000 jobs*", dated August 05, 2011. By way of letter, that was dated August 10, 2011, the OCG requested preliminary information from the Port Authority of Jamaica regarding, *inter alia*, the MOU.

The PAJ was requested to provide an account of the genesis of the current arrangement with CMA CGM, as reported in the article, and it advised, *inter alia*, that; "*CMA CGM submitted an unsolicited offer to the Port Authority to enter into a long-term arrangement that will involve CMA CGM committing to invest capital in the Port of Kingston in order to secure and preserve TEU capacity ahead of the completion of the Panama Canal expansion.*"

The OCG, following upon a review of the documents which were submitted by the PAJ, noted that the referenced transaction and negotiations will conclude with the consummation of a long term lease of a section of the Terminal, between 25 and 35 years, and involves the transfer of risk associated with the operation of the enterprise/activity/asset from the public to the private sector.

The OCG, therefore, documented and voiced its position that transactions of said nature should have been subjected to the dictates of Ministry Paper #34, Government of Jamaica, Privatization Policy, which requires that divestment of state assets, by way of sale, **lease**, joint venture or sale of minority shareholdings, **must be subjected to a competitive process, inclusive of the advertisement of the asset being privatized.**

Ministry Paper #34 makes no provision for the consideration of an Unsolicited Proposal, save and except to assert explicitly that "*Premature application 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.*"

Notwithstanding the OCG's documented concerns, the OCG was informed by the PAJ that the Cabinet approval to proceed was obtained by way of letter dated August 23, 2011, in direct contravention of the Government's own documented Asset Procedures.



Consequently, with the Government proceeding with the said transaction, in violation of its own Privatization Policy, whilst suggesting to the public that the OCG is a stumbling block in the path of its economic development projects, is not only reprehensible but is highly suspicious and must be publicly questioned.

It is also important to note, that given Jamaica's strategic geo-economic advantage, i.e., its position between the Panama Canal and its proximity to other markets, that it should have carefully developed a Request For Proposal (RFP) which could have been tested in the competitive market place, whereby varying proposals could have been assessed and analysed to make a determination as to which Proposal would have been in the best interest of Jamaica.

It is the OCG's considered opinion that if the GOJ had taken that route, it would have been far advanced, by now, in securing a preferred bidder, which, at the end of the process, may have very well been CMA CGM. However, such an efficacy can no longer be tested, as there was no comparative Proposal for analysis which could have been undertaken to make such a determination.

OCG's Closing Remarks

It is of grave and significant concern to the OCG that it is being accused of impeding economic development and delaying the much needed investment that is required for Jamaica, by its faithful, dispassionate and diligent discharge of its mandate, as prescribed by the duly promulgated laws of Jamaica, for and on behalf of the Parliament and People of Jamaica (and not for and on behalf the Cabinet), to ensure probity in the GOJ Procurement, Contract Award and Asset Divestment Processes.

To the contrary, the evidence which has been carefully and painstakingly uncovered by the OCG in this matter suggests that the previous and current Administrations have proceeded with the three (3) multimillion dollars Projects, wholly unimpeded by the OCG, save and except for the North/South Link Highway 2000 Project, in respect of which the OCG had made a strong recommendation for negotiations to cease and/or that the opportunity be put to international competitive tender.

Further, the evidence would also suggest that the current Administration has deliberately circumvented the OCG, without firstly resolving the issues which were documented by it and, instead, has used the NCC and the creation of an Independent Oversight Panel (IOP) as a means to legitimise its circumvention of the OCG, whilst creating a facade of public transparency and accountability.

The question, therefore, arises as to how can a duly constituted Anti-Corruption Commission of Parliament be characterised as being an obstruction or impediment to national development, by the mere discharge of its mandate which is prescribed by law?

The OCG demands that the GOJ, other Public Officials and practitioners urgently bring to the Public's attention any such evidence which can support the serious and damning allegations that the OCG is an impediment to economic growth, and that it is causing significant delays to the implementation of major Investment Projects, failing which the deliberate attempt to publicly undermine the authority and integrity of the OCG should cease, since no evidence exists to support these patently false and damaging positions and pronouncements.



In point of fact, in most, if not in all the cases, if the OCG's initial recommendations had been accepted by the GOJ, prior to the commencement of any formally launched Investigation, Projects would have been advanced and duly completed, in reasonable time, with the required diligence, transparency and accountability, for which they should be accorded, and would be in keeping with the highest standards of good governance and public contracting.

The foregoing statement is being publicly issued by the OCG pursuant to the powers that are reserved to a Contractor General by Section 24 (1) (b) of the Contractor General Act.

May 1, 2012

-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
E-mail: communications@ocg.gov.jm. Tel: 876-929-8560; Direct: 876-926-0034; Mobile: 876-564-1806