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MEDIA RELEASE

Ruling Administration Resists OCG's Requisition Directed at Independent Oversight Panel to Secure Public Transparency in its Activities

Kingston; June 19, 2012 –The Office of the Contractor General (OCG) is disturbed by the latest turn of events in its efforts to scrutinize the Government's ongoing negotiations and involvement regarding three (3) major proposed US multi-million dollar investment projects – the North-South Link of Highway 2000 Project, the Gordon Cay Container Trans-Shipments Hub Project, and the Fort Augusta Container Terminal Project.

The OCG, acting under the expressed powers that are reserved to it by the Contractor General Act, had, on May 14, 2012, issued a Statutory Requisition to the recently established Government Independent Oversight Panel (IOP) requiring it, among other things, to routinely submit to the OCG, formal written reports outlining the material particulars of its deliberations and communications, as regards the three (3) Projects.

The OCG's Requisition was issued in an effort to secure, among other things, transparency of the IOP's interventions and deliberations, and to provide the requisite **Statutory oversight**, of the Projects, for and on behalf of the Taxpayers and People of Jamaica.

However, after the IOP had requested and received two (2) extensions in time from the OCG to respond to the OCG's Requisition, the Learned Attorney General, Mr. Patrick Atkinson, QC, has, now written to the OCG to challenge the validity of the law under which the OCG, under the stewardship of four (4) successive Contractors General, has been discharging its Statutory mandates for the past twenty-seven (27) years.

By way of letter, that was dated yesterday, June 18, 2012, the AG advised the OCG as follows:

*"On consideration of your letter of May 20, 2012 (sic), directed to the members of the IOP, we regret to inform you that we do not share your opinion as to the propriety of the requisition and the import of the judgment delivered in **Lawrence v. Ministry of Construction (Works) and the Attorney General (1991) 28 J.L.R. 265.**"*

"In light of this divergence of views, it is our opinion that the matter is best resolved by the Courts. In that regard, we hereby advise you of our intention to apply for leave to move the requisition to the Supreme Court for judicial review. We undertake to serve the documents relative to the application at the earliest".



The OCG regards the Administration's latest move as not only an abuse of the judicial process and an obvious delay tactic, since the laws regarding the OCG's actions are unequivocally clear and well settled in their import, meaning and judicial interpretation, but it also views the Government's conduct as a vivid indication that, irrespective of what the law states, the current Administration appears not prepared to conduct the country's public contracting affairs in accordance with international best practices in procurement, good governance, transparency and accountability.

The OCG, in issuing its Requisition to the IOP, had acted pursuant to the expressed provisions of the Contractor General Act and, in particular, Sections 18 (1) and 4 (3) of the Act which, for the avoidance of doubt, are now publicly reproduced hereunder.

Section 18 (1) of the Act provides that "... a Contractor General may, at any time, require any officer or member of a public body or any other person who, in his opinion, is able to give any assistance in relation to the investigation of any matter pursuant to this Act, to furnish such information and produce any document or thing in connection with such matter as may be in his possession or under the control of that officer, member or other person".

Section 4 (3) provides that "... the Contractor General shall have power to require any Public Body (which is defined by Section 2 as including an 'agency of government') to furnish in such manner and at such times as may be specified by the Contractor General, information with regard to the award of any contract and such other information in relation thereto as the Contractor General may consider desirable".

The OCG, in its Requisition to the IOP, had also relied upon the decision of the Supreme Court of Jamaica in the case of *Lawrence v. Ministry of Construction (Works) and the A.G. (1991) 28 J.L.R. 265*.

In that case, the Court, which was moved by way of originating summons, at the instance of the then Contractor General, ruled that the OCG is empowered, under the law, to secure information regarding the prospective award of Government contracts, prior to the award of such contracts.

Mr. Justice Courtney Orr, who delivered the Judgment of the Court, 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.... The ordinary meaning of the words of the statute in light of the context and grammar suggest no other interpretation".

In light of the foregoing, and particularly in light of the fact that the OCG is obliged by Section 4 (1) of the Contractor General Act, "*on behalf of Parliament, to monitor the award and the implementation of Government contracts with a view to **ensuring that such contracts are awarded impartially and on merit (and that) the circumstances in which each contract is awarded ... do not involve impropriety or irregularity ...***", the Learned Attorney General, in taking the highly questionable and perilous position that he has, would have consequently produced the ludicrous proposition that more than 90% of the OCG's daily work activities, for the past twenty-seven (27) years, was illegal and of no moment.



The highly suspicious and unprecedented actions of the Government, in seeking to place continued impediments in the path of the OCG's time-honoured contract monitoring mandates, notwithstanding the solemn commitment that was given by the Prime Minister, the Most Hon. Portia Simpson-Miller, on December 20, 2011, that if the Peoples National Party formed the next Government she would "*strengthen the OCG*", must also be viewed against the background of the recent public disclosures that have been made by the OCG regarding the World Bank's debarment of China Communications Construction Company (CCCC).

China Harbour Engineering Company (CHEC), which is a major subsidiary of CCCC, is the company which is currently engaged in controversial sole-source and non-competitive tender based negotiations with the Government of Jamaica on two of the three named investment projects.

By virtue of the terms of the World Bank's debarment of CCCC, CHEC has also been declared ineligible to be awarded any World Bank financed contracts that are related to "*roads and bridges*", from "*January 12, 2009 to January 12, 2017*", under the Bank's 'Fraud and Corruption Sanctioning Policy'.

The terms of the debarment of CCCC and, by extension, CHEC, would suggest that one of the primary issues which concerns the World Bank is the presumed deficiencies in the corporate governance policies and practices of CCCC, CHEC's parent company.

The suggestion is clearly borne out in the debarment terms which expressly provide that "*The period of ineligibility may be reduced by up to three years if, after five years from the date of ineligibility (i.e. January 12, 2014), the Sanctions Board determines that CCCC has put in place an effective corporate compliance program acceptable to the World Bank and has implemented this program in a manner satisfactory to the World Bank*".

The OCG is represented in this matter by eminent Queen's Counsel and former President of the Jamaica Bar Association, Mrs. Jacqueline Samuels-Brown, and will, in due course, publicly advise its intended course of actions, in response to this latest development on the part of the Government.

The OCG has been in consultation with Mrs. Samuels-Brown, regarding this matter, from as early April 25, 2012, the day after the portfolio Minister, Dr. Omar Davies, announced his establishment of the IOP.

The OCG, which is an Independent Anti-Corruption Commission of the Parliament of Jamaica, being the duly constituted Government contract monitoring and investigating authority under the law, and having the powers of a Judge of the Supreme Court of Jamaica, intends to continue in the diligent, dispassionate and lawful discharge of its statutory mandate to ensure probity, propriety, transparency, accountability and value for money in the country's Government contracting processes.

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