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MEDIA RELEASE

OCG now in Possession of Legal Opinion from Queen’s Counsel Confirming Validity of OCG’s Positions on Independent Oversight Panel (IOP)

Kingston; June 21, 2012 –The Office of the Contractor General (OCG) is now in possession of a formal written Independent Legal Opinion, from eminent Queen’s Counsel, Jacqueline Samuels-Brown, which supports the legal validity of the OCG’s contentions regarding the Government’s Independent Oversight Panel (IOP).

The IOP was established in April by the Minister of Transport, Works and Housing, Dr. the Hon. Omar Davies, to oversee the contract negotiation and award processes which are to be associated with three (3) US multi-million dollar mega projects – the North-South Link of Highway 2000, the Fort Augusta Container Terminal, and the Gordon Cay Container Trans-Shipments Hub.

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

However, Minister Davies, to whom the IOP reports, has stridently questioned the authority of the OCG to require “reports” from the IOP. The Minister also told the media that the IOP had written to him to express its unwillingness to “report” to the OCG and to comply with its Statutory Requisitions.

In a comprehensive sixteen (16) page written Legal Opinion, dated June 20, 2012, which has addressed the question of “*the legality of the establishment of the IOP and of the OCG’s Requisitions in relation to same*”, Mrs. Samuels-Brown has now formally advised the OCG, among other things, as follows:

- (1) The role, responsibility and authority of the Contractor-General, having been established by Statute, can only be altered, diminished or derogated from by Statute. Any attempt, whether directly or indirectly, to do so by executive action would therefore be illegal. It is submitted that there can be no doubt that such a panel, as appointed by the Minister, cannot replace the Statutory authority of the special Parliamentary Commission of the Contractor-General.
- (2) The IOP, having been established for the purposes reviewed herein, is clearly concerned with the “pre award stages” of Government contracts as contemplated in the Lawrence case.



- (3) The Minister, by the appointment of the IOP, cannot exclude the Contractor General from enquiries into the circumstances of the award of any Government contract.
- (4) Requisitions and/or requirements to give information may be directed to the members of the IOP in their capacities as members of a Public Body or, alternatively, as ordinary persons pursuant to Sections 4, 15 and 18 of the CGA.
- (5) More particularly, the Contractor General is entitled to make Requisitions of the members of the IOP and of relevant persons in relation to the IOP's appointment.
- (6) Requisitions and/or requirements to give information may be directed to the Cabinet, the Ministry of Transport, Works and Housing, and other Public Bodies and officers, pursuant to Sections 4, 15 and 18 of the CGA.
- (7) The failure to comply with any Requisition or request for information pursuant to the CGA, or any obstruction, hindrance or resistance of the Contractor General in the lawful exercise of his powers pursuant to the statute, amounts to a criminal offence under Section 29 of the CGA.

In commenting upon the Opinion, Contractor General, Greg Christie, has stated that he is now duty bound to discharge his mandate under the Contractor General Act to '*ensure*', on behalf of the Parliament, People and Taxpayers of Jamaica, that the three (3) Government contracts '*are awarded impartially and on merit and in circumstances that do not involve impropriety and irregularity*'.

"It is a responsibility that I have taken a solemn oath to dispassionately discharge and, consequently, it is one that, in light of the expert and considered advice of Queen's Counsel, I cannot now, in all due conscience, abdicate. Barring a Court Order to the contrary, the members of the IOP and the Honourable Minister will, therefore, have to comply with the lawful Requisitions of the OCG", said the Contractor General.

The Contractor General also stated that there are a number of extenuating circumstances which warrant that there must be full transparency and public disclosure of the activities of the Government, and the IOP, with respect to the three (3) projects which are under consideration. Among them, he noted, were the following:

- (1) The fact that the entity with which the Government of Jamaica is currently engaged, in sole-source and non-competitive tender based negotiations, regarding two (2) of the three (3) named projects, is the Chinese company, China Harbour Engineering Company (CHEC).
- (2) The fact that China Communications Construction Company (CCCC), the parent company of CHEC, has been debarred by the World Bank, under the Bank's 'Fraud and Corruption Sanctioning Policy'. By virtue of the terms of debarment, CCCC and its subsidiaries, inclusive



of CHEC, have been declared ineligible to be awarded any World Bank financed contracts that are related to “roads and bridges”, through to “January 12, 2017”.

- (3) The fact that the expressed terms of the debarment 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.
- (4) The fact that Chinese news reports have asserted that, in November 2011, the former Chairman of China’s Hebei Port Group, Huang Jianhua, was sentenced to death for taking bribes from CHEC and its parent company, CCCC, among other entities.
- (5) The fact that, according to other news reports, Arafat ‘Koko’ Rahman, a son of the former Prime Minister of Bangladesh, Khaleda Zia, was last year sentenced, in absentia, to six (6) years in prison, for taking bribes from CHEC and the Bangladesh subsidiary of Germany’s industrial giant, Siemens AG.
- (6) The fact that there have also been widely published media reports of controversies and/or concerns surrounding CHEC and its interests in a proposed port construction project in the Cayman Islands, as well as in a proposed airport construction project in Guyana.

Given the obvious need for full transparency to be secured, in Jamaica, in the negotiation and award processes that are associated with major multi-million dollar Government contracts, the OCG remains concerned and puzzled as to why would either Minister Davies, or the members of the IOP, not want to cooperate with the OCG in providing it with the information which it requires.

The OCG recalls that during the past four (4) years, two (2) major Ministerial Committees – the Air Jamaica Privatization Committee, which was chaired by the Hon. Dennis Lalor, OJ, and the LNG Steering Committee, which was chaired by Mr. Chris Zacca – both gentlemen being distinguished, highly accomplished and eminent Jamaican businessmen – were issued with similar Statutory OCG Requisitions, requiring them to provide the OCG with routine reports of their deliberations.

“I can unreservedly state that, in both instances, the OCG received the full and unfettered cooperation of not only Mr. Lalor, who, it is my understanding, served on a voluntary basis, and Mr. Zacca, but the OCG also received the cooperation of the then Prime Minister, his Cabinet, and the relevant portfolio Ministers. I, therefore, see no reason why the members of the present IOP, or Dr. Davies, should believe that they are entitled to be treated any differently by the OCG”, said the Contractor General.

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