



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

MEDIA RELEASE

OCG Refers the Cabinet of Jamaica for Criminal Prosecution for its Collective Failure to Comply with Several Lawful Requisitions of a Contractor General

Kingston; January 2, 2013 – The Office of the Contractor General (OCG) has today formally referred the Cabinet of Jamaica to the Director of Public Prosecutions (DPP), for criminal prosecution, for its failure to comply with **several** lawful Statutory Requisitions relating to, amongst other things, at least four (4) major projects which are pertinent to the OCG's monitoring and investigative mandates.

The OCG, in its attempt to discharge its monitoring and investigative functions under the law, pursuant to the Contractor General Act, has, within **the last eight (8) months**, written several letters to the Office of the Cabinet, requesting information relating to at least four (4) major projects which were and/or are being pursued by the Government of Jamaica (GOJ). The OCG has also, at its discretion, provided numerous extensions of time to the Office of the Cabinet, in a bid to facilitate the Cabinet's compliance with its Requisitions. The final deadline for compliance expired on December 21, 2012.

On the premise that some of the projects for which information is being sought by the OCG are inextricably linked to the national socio-economic development agenda, the OCG is exceedingly concerned, as should all well thinking Jamaicans, about the level of transparency which is being brought to bear upon the administering of these projects by the GOJ.

Consequently, and given the gravity of the matter, particularly the Cabinet's seeming disregard for the Rule of Law and, in effect, its failure to comply with the lawful Requisitions of the OCG, the Office has been left with no further alternative but to invoke the enforcement/sanctioning provision which is available to it, by Law, under Section 29 of the Contractor General Act.

The OCG considers the Cabinet's non-compliance to be tantamount to an obstruction to its Office, as it seeks to faithfully discharge its mandates and obligation to the People of Jamaica by ensuring that Government contracts, inclusive of licences and permits, and the divestment of State assets, are awarded/granted impartially, on merit and in circumstances which do not involve impropriety or irregularity.

The issue is of even more dire consequence since certain Public Bodies have relied upon the pending Court action which has been filed in the Supreme Court, against the OCG, by Dr. the Hon. Omar Davies, Minister of Transport, Works and Housing, as the basis upon which to validate non-compliance.

The OCG is of the considered view that until and unless a Court of competent jurisdiction overrules the decision that was handed down in the Supreme Court case of **Lawrence v. Ministry of Construction (Works) and the A.G. (1991) 28 J.L.R. 265**, or otherwise restrains the OCG from proceeding with its Requisitions, a failure by the Cabinet of



Jamaica, or by any other person or authority, to comply with the said OCG Requisitions amounts to a flagrant violation of the Rule of Law and constitutes a criminal offence under Section 29 of the Contractor General Act.

The OCG's concerns were further heightened by the recent position which was advanced by the Ministry of Foreign Affairs and Foreign Trade, in which the Ministry, under cover of letter dated December 20, 2012, objected to the OCG's lawful Requisition and, in effect, failed to comply, citing advice from the Learned Attorney General of Jamaica.

The referenced Ministry informed the OCG, *inter alia*, that “*Regarding the jurisdiction of the Office of the Contractor General to monitor the pre-contractual stage of government contracts, I am requested to inform the OCG that it has been advised by the Attorney General’s Cambers [sic] to await the outcome of the Judicial Review proceedings in the Supreme Court...*”

It is instructive to note that the information which was requested of the Ministry of Foreign Affairs and Foreign Trade, by the OCG, related specifically to ascertaining the systems and mechanisms that the Ministry intended to put in place to ensure that all contracts which emanate from a \$423 million Economic Agreement, which was signed between the GOJ and China, are awarded impartially, on merit, and in circumstances which do not involve impropriety.

The OCG remains perturbed by these unprecedented and unfortunate sequence of events which undoubtedly seek to challenge the OCG's authority as a Commission of the Parliament of Jamaica and begs to question the rationale which could legitimately account for the failure and/or refusal of the Cabinet to comply with the lawful requirements of a Contractor General - an institution which was established by the Parliament of Jamaica to act as a layer of checks and balance to, amongst other things, provide greater levels of accountability, transparency and probity in the Government contracting process.

The OCG's considered decision was taken with due care following upon its attempts to secure compliance from the Cabinet of Jamaica and the intervention of the Prime Minister, and subsequent to consideration of the legal recourse available to it.

The OCG's referral has been made pursuant to Section 29 of the Contractor General Act which expressly provides, *inter alia*, that “**any person who, without lawful justification or excuse, obstructs, hinders or resists a Contractor General in the execution of his functions, or who fails to comply with a lawful requirement of a Contractor General, commits a criminal offence under this Act**”.

This OCG Media Release is being issued pursuant to the discretionary powers that are reserved to a Contractor General by Section 24 (1) (b) of the Contractor General Act.

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Contact: The Communications Department, Office of the Contractor General of Jamaica
C/o Sashein Wright, Special Projects Assistant to the Contractor General, Communications Officer & Special Investigator.
E-mail: communications@ocg.gov.jm. Tel: 876-929-6466; Mobile: 876-297-1378