



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

**OFFICE OF THE CONTRACTOR-GENERAL**  
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VERY URGENT AND IMMEDIATE

January 15, 2007

Mr. Desmond Thomas  
General Manager  
Petroleum Company of Jamaica Limited (PETCOM)  
695 Spanish Town Road  
P.O. Box 331, Hagley Park P.O.  
Kingston 11

Dear Mr. Thomas:

Re: Report of Investigation Conducted into the Procurement of Goods, Works and Services by the Petroleum Company of Jamaica (PETCOM)

We are in receipt of your faxed letter of January 12, 2007. The same was received in our Offices this morning.

We note the various positions which you have adopted in relation to the captioned Report. You have seen our two (2) letters of January 9, 2006 to Mitchell Hanson, the Attorneys at Law who are acting on behalf of Ms. Barbara Clarke, the Chairperson of PETCOM. Copies of these letters were sent to you and to other Public Officers, inclusive of the Hon. Phillip Paulwell, the Minister of Industry, Technology, Energy and Commerce (MITEC) and Dr. Jean A. Dixon, the Permanent Secretary of MITEC. The OCG reiterates its positions which are outlined therein.

The OCG unreservedly maintains that the Conclusions in its captioned Report of Investigation are supported by its Findings and that its Findings can be adequately and credibly substantiated by the evidence which it has garnered from its investigation and particularly from the unequivocal written representations which were made to it by MITEC, yourself and the other PETCOM representatives which are referenced in the Report.

We are obliged to note that there are several statements which you have made in your letter which are factually inconsistent with the OCG's Report and which cannot be credibly substantiated. It is our considered and respectful view that some of these statements are indicative of significant confusion on your part. They also demonstrate a lack of a proper understanding by you of the Government's Procurement Procedures Handbook (GPPH).

We would particularly like to bring to your attention the following numbered statements which appear in your letter:

Statement #1:

*"The services of Elegant Traders Limited were retained (in) 1998 after a tender process".*

The MITEC has represented to the OCG, in writing and by way of letter dated October 13, 2006, that Elegant Traders Limited was awarded several and separate contracts by PETCOM during the period which was investigated by the OCG, viz. January 2003 to August 2006. Absolutely no evidence was presented by you, PETCOM or MITEC, during the OCG's investigations, which purported in any way to link these contracts to any contract which was subsisting in 1998 or to prove that any of the contracts were put to competitive tendering. Please therefore fully substantiate your statement, as above, by providing the OCG with all requisite evidentiary documentation to prove that which you now assert.



(2)

Statement #2

*“For the OCG to sum the various payments made to a contractor throughout the year and regard the aggregate amount as a contractual sum originally contemplated and made in breach of the Guidelines cannot be a just and reasonable application of the Guidelines ...Despite the Contractor General’s unjustifiably damning Report, PETCOM reiterates that it has not entered into a single contract over Four Million Dollars (\$4,000,000)”.*

The OCG has aggregated no contract values. The Findings of the OCG, particularly as they relate to the award of contracts and contract values, can be fully substantiated by the written representations which have been made to the OCG by PETCOM and the MITEC. The assertions in your letter are, therefore, at odds with the written representations which were previously made by PETCOM and the MITEC. You cannot have it both ways!

As regards Statements #1 and #2, please be clear therefore that if you are now asserting that PETCOM and/or MITEC have made misrepresentations of fact to the OCG, then the OCG must now consider whether an investigation should be undertaken to determine whether PETCOM and/or MITEC, or persons acting on behalf of these Public Bodies, have committed a criminal offence under the provisions of Section 29 (a) of the Contractor General Act.

You may wish to note that Section 29 (a) provides that *“Every person who wilfully makes any false statement to mislead or misleads or attempts to mislead a Contractor General, ... in the execution of his functions under this Act, shall be guilty of an offence”.*

Statement #3:

*“Contrary to the Report, PETCOM has a functioning and assertive Procurement Committee which meets regularly to review matters sent out for tender”.*

As you are very much aware, PETCOM was unable to substantiate this assertion during the OCG’s investigation. In point of fact, on page 6 of the OCG’s Investigation Report, it is clearly stated that the veracity of your assertion *“could not be verified as there was no record of the Committee’s deliberations, or any evidence of Procurement Committee meetings being held”.*

In the premises, we would now require you to fully substantiate your statement by providing the OCG with all relevant documentation, inclusive of **all** PETCOM Procurement Committee Meeting minutes as they pertain to **every procurement** which was undertaken by PETCOM during the referenced period of January 1, 2003 and August 31, 2006. The documentation which must be provided by you must be in full compliance with the specific and expressed requirements of Section 1.5.2.3. of the GPPH.

Finally, we have also noted that throughout your letter, there are several unequivocal assertions which have been made by you as regards your interpretation of the GPPH. In these assertions, you have aggressively challenged the OCG’s interpretation of the GPPH. You have also stated that PETCOM’s *“Procurement Committee continues to observe the guidelines as prescribed in respect of the Procurement Process”.*

We are somewhat confused by all of this, particularly in light of the fact that by letter, dated the 12<sup>th</sup> instant, you have written to the OCG as follows:

*“During a recent investigation of our procurement policies and procedures by the Contractor General’s Office, we were made aware that some of our procurement procedures were not in keeping with the Government’s policy on public sector procurement”.*

*“In an effort to ensure full compliance with the Government’s policy on public sector procurement, PETCOM would like to be better informed about all aspects of the Policy. Also, we wish to take advantage of any training or workshop being conducted by the OCG in respect of the Guidelines”.*



(3)

*“Our officers are available for exposure to the relevant training. It s our wish to conduct our business safely, efficiently and effectively, within the guidelines of the applicable Government policy and, as such, would like to be exposed to the training sessions without delay”.*

*“We are anxiously awaiting your prompt and positive feedback”.*

In light of the obviously conflicting positions which you have expressed, we would be grateful if you would let us now know if PETCOM is still interested in securing, “without delay”, “exposure to the relevant training”, which the OCG can provide.

The OCG, notwithstanding, and consistent with the Recommendations which it has made in its Report of Investigation, forcefully maintains that PETCOM does in fact require this training and the OCG will, in the public’s interest, insist that its Recommendations are fulfilled.

With reference to the last two (2) paragraphs of your letter, we would also like to advise you that the National Contracts Commission (NCC) must not be confused with the Commission of the Contractor General. The NCC and the OCG are two (2) separate and distinct Commissions having separate and distinct statutory roles and functions.

The GPPH rules, which you have evidently found fault with, are promulgated not by the OCG, but by the NCC and the very Cabinet to which the Ministry of Industry, Technology, Energy and Commerce and the Public Bodies which fall under its portfolio, are subject.

The documentary evidence to substantiate that which you have asserted, must be provided to the OCG no later than noon on Wednesday, January 17, 2007.

Please be advised that the OCG stands fully by its Report and the Findings and Conclusions which are outlined therein, By copy of this letter to the President of the Senate and the Speaker of the House, we so respectfully advise.

Very respectfully,

Greg Christie (Signed)

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Greg Christie  
Contractor General

Copy: Senator The Honourable Syringa Marshall-Burnett, CD, President of the Senate  
The Honourable Michael Peart, M.P., Speaker of the House of Representatives  
The Hon. Phillip Paulwell, Minister of Industry, Technology, Energy and Commerce, MITEC  
Dr. Jean A. Dixon, PHD., MBA, Permanent Secretary, MITEC  
Dr. John Cooke, Chairman, PCJ Group  
Dr. Ruth Potopsingh, Group Managing Director, PCJ