

OFFICE OF THE CONTRACTOR-GENERAL

Report of Investigation

Conducted into the Petroleum Company of Jamaica (PETCOM)

Re: Procurement of Goods, Works and Services

Ministry of Industry, Technology, Energy and Commerce

EXECUTIVE SUMMARY

An article was published in the Daily Observer on 2006 September 8, which alluded to a conflict of interest, wherein Chairperson of the Petroleum Company of Jamaica (PETCOM) Board, Ms. Barbara Clarke, was alleged to have an interest in Elegant Traders Ltd., a company which was said to have benefited from contracts awarded by PETCOM. Subsequent to the report in the Daily Observer, the Office of the Contractor General (OCG) conducted an investigation into the procurement of works, goods and services by PETCOM.

The investigation concluded that PETCOM did not adhere in all instances to the Government of Jamaica Procurement Guidelines as laid out in the Government Procurement Procedures Handbook (GPPH). The investigation also concluded that Ms. Clarke was, at all material times, the majority shareholder, Principal and Managing Director of Elegant Traders Ltd., and that a conflict of interest existed wherein Ms. Clarke, in her position as the Chairperson of PETCOM, had the capacity to influence and, from all appearances, may have influenced, the award of contracts to her business interest, Elegant Traders Ltd.

The investigation led to the identification of several shortcomings in PETCOM's procurement and contract awarding processes, namely:

- a. The omission of the requirement for works contractors and goods and services suppliers to submit, along with their quotes, a valid National Contracts Commission (NCC) registration certificate and Tax Compliance Certificate;
- b. The award of contracts to contractors not registered with the National Contracts Commission;
- c. Contracts over Four Million dollars (\$4,000,000.00) were not submitted to the NCC for approval.

The investigation revealed that PETCOM had breached several aspects of the GPPH, while demonstrating a seeming lack of knowledge of the procurement guidelines. It was specifically identified that PETCOM did not put several works, goods and services contracts valued over Two Hundred and Fifty Thousand dollars (\$250,000.00) to competitive tender. Where limited tender and sole source procurement methods were used, there was no evidence of approval given by a Procurement Committee, the Accounting Officer, or the NCC.

It was also found that several of the contractors used were not registered with the NCC at the time that they were awarded contracts.

Furthermore, the investigation revealed that the procurement records contained several inaccuracies and gaps, particularly in relation to contract award dates, procurement methods used and records of the invitations to tender.

In light of the obvious breaches of the procurement guidelines, the OCG is recommending that a functional Procurement Committee be established and operated in full compliance with the GPPH. It is also recommended that a Procurement Workshop be conducted at the earliest possible date, and that steps be taken by the PETCOM Board to ensure adherence to the procurement guidelines.

It is further recommended that steps be taken by the Ministry of Industry, Technology, Energy and Commerce (MITEC), and the PETCOM Board, to resolve the conflict of interest arising from Ms. Clarke's dual position as Chairman of the PETCOM Board and majority shareholder, Principal and Managing Director of Elegant Traders Ltd. Cabinet should also develop and implement a comprehensive and over-riding policy, to be applicable to all Public Body Boards, to govern, restrict or prohibit the award of Government contracts by a Public Body to members of its Board of Directors, or to any entity in which a Board member or a close family relative may have a pecuniary interest.

Additionally, the OCG reiterates its recommendation, carried in previous reports, that the Legislature acts decisively, and with urgency, to ensure that Public Bodies and Public Officials who willfully ignore or flout the Government's Procurement Procedures are made to be held punitively accountable.

INTRODUCTION

An article was published in the Daily Observer on 2006 September 8, which alluded to a conflict of interest, wherein Chairperson of the Petroleum Company of Jamaica (PETCOM) Board, Ms. Barbara Clarke, was alleged to have an interest in Elegant Traders Ltd., a company which was said to have benefited from contracts awarded by PETCOM. Subsequent to the report in the Daily Observer, the OCG initiated an investigation into the procurement practices of PETCOM.

The OCG's Director of Licenses and Permits requisitioned the details of all contracts valued at over Two Hundred and Fifty Thousand dollars (\$250,000.00) awarded by PETCOM during the period 2003 January 1 to 2006 August 31, as well as particulars of all training and promotional services contracts awarded during the period. This information was submitted to the OCG by way of letters from the Director General of the Ministry of Industry, Technology, Energy and Commerce (MITEC) dated 2006 October 13 and 24.

The information received showed that PETCOM undertook procurement of various items of goods, works and services during the period 2003 January 1 and 2006 August 31. These areas of procurement included:

- a. Training Services;
- b. Marketing and Promotions Services;
- c. Haulage Services;
- d. Maintenance Services;
- e. Construction Services;
- f. Engineering and Testing Services.

The OCG then commenced its investigation as per the terms of reference indicated below.

TERMS OF REFERENCE

The following objectives led the focus of the investigation:

- a. To determine if there is any merit to the allegations of conflict of interest arising from the PETCOM Chairperson's interests as the majority shareholder, Principal and Managing Director of Elegant Traders Ltd.;
- b. To determine whether PETCOM breached the Government of Jamaica's procurement guidelines while awarding contracts between 2003 January and 2006 August.

METHODOLOGY

The following techniques informed the findings and conclusions of the investigation:

- a. Retrieval and review of general procurement correspondence related to certain PETCOM contracts awarded between 2003 January 1 and 2006 August 31;
- b. Meetings and interviews with PETCOM representatives involved in the procurement process;
- c. Meetings and interviews with PETCOM Chairperson, Ms. Barbara Clarke and General Manager, Desmond Thomas;
- d. Retrieval and review of correspondences related to the activities of the PETCOM Board.

BACKGROUND

The Petroleum Company of Jamaica Limited (PETCOM) is a subsidiary of the Petroleum Corporation of Jamaica Limited (PCJ). It was established in 1973, and became the government's sole marketing company for petroleum products when it made its first sale of solvents in December 1984. By 1986, PETCOM had become seriously proactive as a marketing company.

By 1987, the agency had built its first service station in the fast growing Portmore community. By 2001, PETCOM had expanded its service station network to twenty-eight (28) outlets island-wide. It now has over thirty (30) service stations and thirteen (13) filling plants.

An article was published in the Daily Observer on 2006 September 8, which alluded to a conflict of interest, wherein Chairperson of the Petroleum Company of Jamaica (PETCOM) Board, Ms. Barbara Clarke, was alleged to have an interest in Elegant Traders Ltd., a company which was said to have benefited from contracts awarded by PETCOM. Subsequent to the report in the Daily Observer, the OCG initiated an investigation into the procurement practices of PETCOM.

The OCG's Director of Licenses and Permits contacted the Director General of MITEC by telephone and by letter on 2006 September 8 to requisition the details of all contracts valued at Two Hundred and Fifty Thousand dollars (\$250,000.00) and above, which were awarded by PETCOM during the period 2003 January 1 and 2006 August 31. The letter also requested information on any training and promotional services contracts, irrespective of their value. It also specified that the information should be submitted in a spreadsheet format with the following details:

1. Name of the Contractor;
2. Whether the company was registered with the NCC at the time of the contract award;
3. Date of the contract award;
4. Value of the contract;
5. Method of award (Selective Tender or Sole Source);
6. Whether the contract was endorsed by NCC;
7. Whether the contract was approved by Cabinet;
8. A Brief description of services.

Following therefrom, two letters from the Permanent Secretary of MITEC, dated 2006 October 13 and 24, containing the requisitioned information in the format requested, were received by the OCG.

FINDINGS

a. Conflict of Interest

Checks with the Office of the Registrar of Companies revealed that Ms. Clarke is the registered contact and majority shareholder for Elegant Traders Ltd., a local company incorporated since 1995 October 10. Ms. Clarke holds Nine Hundred (900) of the One Thousand (1000) shares in Elegant Traders Ltd., and was first added as a shareholder on 1995 January 9.

She was added as a company Director on 1996 January 3 and is noted on correspondences between Elegant Traders Ltd. and PETCOM as the former's Managing Director. Elegant Traders Ltd. has one other shareholder and Director, Mr. Victor McFarlane, who has held One Hundred (100) shares since 1995 January 9. Ms. Clarke was appointed Chairperson of the PETCOM Board in 2005 March. She declared her business interests at the Board's first meeting on 2005 May 11.

According to PETCOM's 'Analysis of Training Account' for the period January 2003 to February 2006, Elegant Traders Ltd. accumulated over Four Million, Four Hundred and Thirty Nine Thousand, Nine Hundred and Thirty Five dollars and Fifty cents (\$4,439,935.50) in contracts for customer service training of gas station staff.

The company was awarded eighteen (18) contracts over the three and a half (3 ½) year period. Twelve (12) of those contracts were awarded after Ms. Clarke had assumed the post of Chairperson of the PETCOM Board in 2005 March. The breakdown of contracts awarded to Elegant Traders Ltd. is as follows:

Ser.	Date of Award	Value of Contract (\$)	Description of Service
01.	2003.11.20	346,290.00	Customer Service Training
02.	2004.02.17	50,000.00	Staff training – Port Antonio
03.	2004.04.22	88,000.00	Staff training – Ironshore & Wait-a-Bit
04.	2004.07.29	371,000.00	Training of service station attendants
05.	2004.08.17	235,000.00	Training of service station attendants
06.	2004.12.23	49,000.00	Training of forecourt staff
07.	2005.04.20	122,925.00	Training of Newhope and Negril staff
08.	2005. 04.27	245,850.00	“Knock your socks off training”
09.	2005. 06.09	293,850.00	Training of forecourt staff
10.	2005.07.08	553,630.00	Training of attendants
11.	2005.07.29	189,980.00	Training of service station attendants
12.	2005.09.09	668,697.50	Training of PETCOM service station attendants
13.	2005.10.13	553,785.00	Training of service station and plant attendants
14.	2005.11.25	224,000.00	Training - Twickenham Park service station
15.	2005.12.15	112,000.00	Training of service station attendants
16.	2006.03.16	66,680.00	Training at Port Antonio service station
17.	2006.04.27	133,359.00	Meal - management seminar
18.	2006.05.31	135,889.00	Safety training at P/H/O
TOTAL		4,439,935.50	

On a separate document tendered by PETCOM, titled 'Contracts Issued', Elegant Traders Ltd. was listed as having received annual contracts for 2006 and 2005. The details of these contracts are as follows:

- a. Elegant Traders Ltd
Contract date: 2005
Value: \$2,196,352.00
Service: Training for Service Station and LPG Plant Attendants for 2005
- b. Elegant Traders Ltd
Contract date: 2006
Value: \$388,728.00
Service: Training for Service Station and LPG Plant Attendants for 2006

There is no indication of the procurement method used to solicit these services and the listed contract values do not agree with the annual totals contained in the 'Analysis of Training Account'. The 'Analysis of Training Account' shows that the total value of training services contracts awarded to Elegant Traders Ltd. in 2005 was Two Million, Nine Hundred and Sixty-Four Thousand, Seven Hundred and Seventeen dollars and Fifty cents (\$2,964,717.50). The total figure for training contracts awarded to Elegant Traders Ltd. up to 2006 August was Three Hundred and Thirty-Five Thousand, Nine Hundred and Twenty-Eight dollars (\$335,928.00).

Elegant Traders Ltd. also benefited from two promotional contracts awarded by PETCOM. The awards were as follows:

- a. Elegant Traders Ltd
Contract date: 2004 October 29
Value: \$673,207.00
Service: To Supply Promotional Material for 2004
- b. Elegant Traders Ltd
Contract date: 2005 March 10
Value: \$1,319,760.00
Service: To Supply Promotional Material for 2005

The PETCOM document did not state the method of procurement used for contracting these services. It did acknowledge that Elegant Traders Ltd. was not registered with the NCC.

b. Procurement of Goods, Services and Works

Mr. Desmond Thomas, General Manager of PETCOM, indicated that a Procurement Committee with an assigned Procurement Officer was in place. However, the veracity of this information could not be verified, as there was no record of the Committee's deliberations, or any evidence of Procurement Committee meetings being held.

PETCOM undertook procurement of various items of goods, works and services during the period 2003 January 1 and 2006 August 31. These areas of procurement included:

- a. Training Services;
- b. Marketing and Promotions Services;
- c. Haulage Services;
- d. Maintenance Services;
- e. Construction Services;
- f. Engineering and Testing Services.

A review of the documents submitted indicated that PETCOM had breached the Government's Procurement Guidelines. Perusal of the documents received from the agency revealed that, in most instances, bids and quotes were invited from a select set of companies. The method of award stated by PETCOM was 'Open Tender'. This is incorrect, as the Open Tender procurement method for works, goods and service contracts requires that the procuring opportunity be open to "*all interested local and foreign contractors...*" and, at a minimum, should be advertised in national newspapers.

There is no evidence that any of the contracts were nationally advertised. It was found that PETCOM had instead sent letters of invitation to specific contractors to bid. This procurement method is closer to the GPPH stipulations for Limited Tender, which refers to the requesting of proposals from a selected group of NCC registered contractors. It was found that the letters of invitation to the pre-selected companies did not request that the bidders submit proof of NCC registration and a valid Tax Compliance Certificate. It was further observed that PETCOM had awarded contracts to contractors who were not registered with the NCC.

The investigation also found that, contrary to the GPPH, several contracts over One Million dollars (\$1,000,000.00) were awarded by the sole source method without any record of approval from the NCC. There are also indications of unsigned contracts, and that contracts above the Four Million dollar (\$4,000,000.00) threshold were not forwarded to the NCC for approval, contrary to the requirements of the GPPH. Below is a detailed analysis of the contracts according to category.

a. Training Services

It was observed that there was no competitive tendering for contracts which were awarded for customer service training undertaken for the period 2003 January 1 to 2006 February. The PETCOM Board took the decision to issue letters of invitation for proposals for customer service training of service station and LPG filling plant employees in February 2006.

Three firms, including Elegant Traders Ltd., were invited to bid for the provision of customer service training; however, there is no evidence of the letters of invitation, as the copies could not be found. The bids from three companies: Elegant Traders Ltd., Management Institute of National Development (MIND) and The JobBank, were purportedly evaluated on, or about, 2006 April 12.

Elegant Traders Ltd. withdrew its bid by letter to the PETCOM Board dated 2006 June 28. Nuckekeowe Limited was subsequently invited to bid by letter of invitation dated 2006 November 14. In an interview with PETCOM's General Manager, it was established that Nuckekeowe was invited to bid because Elegant Traders Ltd. had withdrawn its bid. Mr. Thomas further stated that the contract had not been awarded to date.

It is not clear why Elegant Traders Ltd. withdrew its bid to provide training services; however, it was observed that there was a five (5) month gap between the withdrawal of the Elegant Traders Ltd. bid and the letter of invitation to Nuckekeowe. Additionally, there is no evidence that the other bidders were asked to extend their tender validity periods to cover the five (5) month delay.

b. Marketing and Promotions Services

Dunlop Corbin Communications Ltd. accumulated Sixteen Million, Seven Hundred and Twenty Seven Thousand, Seven Hundred and Five dollars and Twenty-Two cents (\$16,727,705.22) and Lindo FCB accumulated Eight Million and Forty-Three Thousand, Seven Hundred and Ninety-Six dollars and Forty-Three cents (\$8,043,796.43) in awards over the period 2003 January 1 and 2006 August 31. Details of the contracts are listed below.

- a. Dunlop Corbin Communications Ltd
Contract date: 2003
Value: \$5,108,709.18
Service: Marketing and Advertising

- b. Dunlop Corbin Communications Ltd
Contract date: 2004
Value: \$4,510,450.36
Service: Marketing and Advertising

- c. Dunlop Corbin Communications Ltd
Contract date: 2005
Value: \$8,823,361.70
Service: Marketing and Advertising

- d. Dunlop Corbin Communications Ltd
Contract date: 2006
Value: \$2,795,634.34
Service: Marketing and Advertising

- e. Lindo FCB
Contract date: 2005 April 25
Value: \$895,622.00
Service: Marketing and Advertising

- f. Lindo FCB
Contract date: 2005 December 29
Value: \$323,248.00
Service: To Supply the 2005 Calendars

- g. Lindo FCB
Contract date: 2006
Value: \$4,528,332.43
Service: Advertising

- h. Lindo FCB
Contract date: 2006
Value: \$492,081.00
Service: Promotional Items

- i. Lindo FCB
Contract date: 2006
Value: \$1,185,661.00
Service: Public Relations Services

Four (4) of these contracts were above the Four Million dollars (\$4,000,000.00) threshold, and should have been forwarded to the NCC for approval prior to award. This was not done. There is no evidence that the contracts were put to competitive tender; however, both Dunlop Corbin Ltd. and Lindo FCB were registered with the NCC at the time of the awards.

Radio Jamaica Ltd. was awarded two contracts for sponsorship of the "PETCOM Cookie Gas" flagship valued at One Million, Five Hundred Thousand dollars (\$1,500,000.00) and sponsorship of Sport Grill and Prime Time News for Nine Hundred and Twelve Thousand dollars (\$912,000.00) on 2006 February 9. Island Broadcasting Services Ltd. (Klas FM) was awarded a contract valued at Seven Hundred and Thirty-Five Thousand dollars (\$735,000.00) for advertising the Cookie Gas Line on 2006 February 24. United Co-operative Printers Ltd. was awarded a calendar printing contract valued at Four Hundred and Sixty-Five Thousand, Five Hundred and Thirty-Six dollars (\$465,536.00) on 2003 November 21.

Radio Jamaica Ltd., Island Broadcasting Services Ltd. (Klas FM), and United Co-operative Printers Ltd. were all selected by the sole source method. None of these companies were registered with the NCC at the time that they were awarded the contracts.

Elegant Traders Ltd. was also awarded promotional contracts. On 2004 October 29, the company was awarded a Six Hundred and Seventy-Three Thousand, Two Hundred and Seven dollars (\$673,207.00) contract to “supply promotional material for 2004”. On 2005 March 10, Elegant Traders Ltd. was awarded a One Million, Three Hundred and Nineteen Thousand, Seven Hundred and Sixty dollars (\$1,319,760.00) contract to “supply promotional materials for 2005”. The PETCOM documents did not state the method of procurement used for contracting these services; however, it did acknowledge that Elegant Traders Ltd. was not registered with the NCC.

c. Haulage Services

In 2003, PETCOM initiated fifteen (15) haulage contracts. In 2004, the number of haulage contractors increased to sixteen (16). In 2005, the number increased to eighteen (18) and remained the same for the period 2006 January to August. None of the haulage contractors was registered with the NCC.

Of the fifteen haulage contractors paid in 2003, two companies, FPA Limited and Von Strolley Haulage Ltd., were paid despite having ‘unsigned’ contracts. Four other contractors, Bulk Liquid Carriers, Christopher Dixon, Gilbert Cole and Neil Stewart, had no indication of the date their contract was signed, but continued to receive payments up to 2006. Six companies were awarded contracts valued over Four Million dollars (\$4,000,000.00) without NCC approval. One contractor, Solomon Blake, continued to receive payments on a contract originally awarded on 1992 April 01.

Contracts for FPA Limited and Von Strolley Ltd. remained ‘unsigned’ in 2004, 2005 and 2006. Cougar International Co. Ltd. was listed on the 2004 list of contracts issued as having been awarded a contract valued at Nine Million, Six Hundred and Fifty-Four Thousand, Eight Hundred and Ninety Three dollars and Thirty-Two cents (\$9,654,893.32) on 2003 April 1, but the contract was not mentioned in the 2003 listing.

Gasve Fuellers and Huen Trucking were added to the 2005 list of contracts issued. However, Huen Trucking was listed as having been awarded the contract as of 2004 November 1, but the contract was not mentioned in the 2004 listing. There is no indication of an award date for Gasve Fuellers, but payments to the contractor continued up to 2006.

d. Maintenance Services

D.T. Maintenance and Servicing Ltd. was awarded contracts for general and preventative maintenance to service station equipment. VC Holdings Ltd. was awarded contracts for the refurbishing of LPG cylinders. Over the period, 2003 January 1 and 2006 August, D.T. Maintenance and Servicing Ltd and VC Holdings Ltd. accumulated \$5,919,787.15 and \$17,295,213.87 in PETCOM contracts respectively. The awards are detailed below.

- a. D.T. Maintenance & Servicing Ltd.
Contract date: 2003
Value: \$3,211,839.74
Service: General and Preventative Servicing to Service Station Equipment
- b. D.T. Maintenance & Servicing Ltd.
Contract date: 2004
Value: \$3,180,984.27
Service: General and Preventative Servicing to Service Station Equipment
- c. D.T. Maintenance & Servicing Ltd.
Contract date: 2005
Value: \$5,329,595.86
Service: General and Preventative Servicing to Service Station Equipment
- d. D.T. Maintenance & Servicing Ltd.
Contract date: 2006
Value: \$5,572,794.00
Service: General and Preventative Servicing to Service Station Equipment
- e. VC Holdings Ltd.
Contract date: 2003
Value: \$1,257,451.76
Service: To refurbish LPG Cylinders
- f. VC Holdings Ltd.
Contract date: 2004
Value: \$2,070,741.02
Service: To refurbish LPG Cylinders
- g. VC Holdings Ltd.
Contract date: 2005
Value: \$1,592,487.70
Service: To refurbish LPG Cylinders
- h. VC Holdings Ltd.
Contract date: 2006
Value: \$999,106.67
Service: To refurbish LPG Cylinders

Neither D.T. Maintenance & Servicing Ltd. nor VC Holdings Ltd. was registered with the NCC, nor was there any evidence that these contracts were put to competitive tender over the period. The contracts awarded to D.T. Maintenance and Servicing Ltd in 2005 and 2006 were above the Four Million dollar (\$4,000,000.00) threshold and should have been forwarded to the NCC for approval prior to award. This was not done.

e. Construction Services

Five (5) contractors, who were deemed to be certified installers, were used on a rotating basis as is required by the canopy manufacturers and their warranty. As a result, limited tender methods prevailed in the soliciting of proposals to undertake repair works to the gas station canopies. This limited tendering method is also applied to the contractors that service and install the gas pumps and tanks. The procurement method listed in the spreadsheet of 'Contracts Issued' described the method as 'Open Tender', which is incorrect.

Deluxe Construction Co. Ltd was awarded five (5) construction contracts between 2005 September and 2006 August totaling Eight Million, Six Hundred and Ninety-One Thousand, Six Hundred and Eleven dollars and Ninety-Two cents (\$8,691,611.92), even though its NCC registration had expired from 2004 February 5.

Other contractors which were not registered with the NCC, but which were awarded construction contracts by PETCOM are:

- a. Bedward Electrical Sales and Services Ltd
Contract date: 2006 June 14
Value: \$259,000.00
Service: Electrical Repairs and Drainage Modification

- b. Clearway Construction and Maintenance
Contract date: 2006 February 23
Value: \$820,112.96
Service: Project Management for Construction Works (Ocho Rios)

- c. Clearway Construction and Maintenance
Contract date: 2006 June 29
Value: \$641,520.00
Service: Project Management for Construction Works (Braeton)

- d. Highway Electrical Co. Ltd.
Contract date: 2006 January 6
Value: \$510,522.05
Service: Install Standby Generator

- e. Faith Fabrication and Welding
Contract date: 2006 February 7
Value: \$1,366,800.00
Service: Fabricate Tanks

- f. Faith Fabrication and Welding
Contract date: 2004 February 18
Value: \$445,050.00
Service: Clean and Repair Tanks

- g. JABRA Marketing and Engineering Construction Ltd.
 Contract date: 2005 September 6
 Value: \$1,236,065.00
 Service: Pump Conversion

- h. Mobile Welding and Engineering
 Contract date: 2005 August 29
 Value: \$774,000.00
 Service: Fabricate Tanks

- i. Mobile Welding and Engineering
 Contract date: 2003 September 10
 Value: \$680,000.00
 Service: Fabricate Tanks

- j. R&D Refrigeration & Air Con.
 Contract date: 2006 April 6
 Value: \$2,070,559.30
 Service: Install Chill Room and Freezer (Ocho Rios)

- k. R&D Refrigeration & Air Con.
 Contract date: 2006 April 6
 Value: \$1,851,920.00
 Service: Supply Air Condition Units (Ocho Rios)

f. Engineering and Testing Services

PETCOM's records of contracts indicated that Mr. Ricardo Garrick, the agency's contracted Consulting Engineer, is registered with the NCC. However, checks by the OCG revealed that Mr. Garrick is not registered with the NCC, contrary to what was reported by PETCOM. It should be noted, however, that engineering consultants are not required to be registered with the NCC at this time. Mr. Garrick was awarded a contract of Two Million and Eighty-Three Thousand, and Sixteen dollars (\$2,083,016.00) on 2006 April 3 using the sole source procurement method. Contrary to the requirements of the GPPH, the method was not put to the NCC for approval prior to the award.

Similarly, PETCOM used the sole source method to contract Barnaby Engineering and Testing Services Ltd. on 2004 June 1. They were contracted to conduct pressure tests of tanks/pumps of gas stations and LPG filling stations for the sum of One Million, Seven Hundred and Seventy-Three Thousand, Nine Hundred and Ninety-Four dollars (\$1,773,994.00). This contract should have been submitted to the NCC for approval as it was over the One Million dollars (\$1,000,000.00) limit of what could be authorized by the procuring entity. In addition, Barnaby Engineering and Testing Services Ltd. was not registered with the NCC at the time it was awarded a contract.

CONCLUSIONS

The investigation revealed that that Ms. Clarke was the majority shareholder, Principal and Managing Director of Elegant Traders Ltd. at all material times. It was determined that there is merit to the allusion of a conflict of interest arising from Ms. Clarke's business interests and her official position as Chairperson of PETCOM. The NCC's conflict of interest statement notes that "[a] *conflict of interest arises where a public official has a private or personal interest sufficient to appear to influence, or appear to be capable of influencing, the objective exercise of his official duties.*"

At least Sixty-Six percent (66%) of the total number of training services contracts received by Elegant Traders Ltd. were awarded after Ms. Clarke assumed the position of Board Chair in 2005 March. There is no evidence that the contracts which were awarded to Elegant Traders Ltd., over the referenced period, were put to competitive tender.

In the circumstances, it is the OCG's view that Ms. Clarke's declaration of a business interest, in Elegant Traders Ltd., to the PETCOM Board, did little to absolve the potential for a conflict of interest from arising.

The investigation concludes that, from all appearances, Ms. Clarke's business interests as majority shareholder, Principal and Managing Director of Elegant Traders Ltd., conflicted with her position as the Chair of PETCOM and may have influenced the objective exercise of her official duties and responsibilities as Chairperson of the PETCOM Board in so far as PETCOM's award of contracts to Elegant Traders Ltd. was concerned

The investigation revealed that PETCOM breached several aspects of the GOJ Procurement Guidelines by:

- Conducting unapproved sole sourcing and limited tender procurements;
- Failing to request proof of NCC registration and tax compliance certification from bidders;
- Awarding contracts over the allowable threshold permitted for procuring entities without reference to the NCC; and
- Awarding contracts to entities that were not registered with the NCC.

These actions constitute a clear and flagrant breach of the GPPH.

It is also concluded that significant improvements are needed in PETCOM's management of the tender process, including the preparation of tender documents, and adherence to the GPPH. This need is most clearly demonstrated in the procuring entity's seeming lack of knowledge of the procurement guidelines and tender categories, the absence of NCC approval for contracts over Four Million dollars (\$4,000,000.00), and the absence of any adherence to the Guidelines for seeking sole source approval.

The investigation revealed that there were significant discrepancies in the records of awards for training services contracts to Elegant Traders Ltd. It was noted that the document which was entitled 'Contracts Issued' recorded annual contracts awarded to Elegant Traders Ltd for 2005 and 2006, but the 'Analysis of Accounts', which detailed the specific training contracts issued for the period 2003 January to August 2006, did not reflect similar figures. It is therefore concluded that the training services contracts detailed in the 'Contracts Issued' document were separate contracts that were not appropriately recorded in the 'Analysis of Accounts'.

It is further concluded that PETCOM's procurement record management system is in need of improvement. Section 2.10.1. of the GPPH states that "... *the procuring entity shall maintain a record of each contract action for a minimum period of ten (10) years...*". Section 1.5.2.3. of the GPPH lays out the responsibilities of the Procurement Committee, whose duties include "... *maintaining proper records of Committee meetings, including records of procurement...*" and "... *ensuring compliance with reporting obligations...*" This was not done, as the record of contracts submitted to the OCG did not provide a full account of the procurement action for each contract. Particulars, such as the date of award for some contracts, the method of procurement used, and copies of letters of invitation, could not be provided to the OCG.

RECOMMENDATIONS

The following recommendations are made in light of the findings and conclusions:

1. The Ministry of Industry, Technology, Energy and Commerce (MITEC) should take immediate action, or give directions, to remove Ms. Clarke from the situation of a conflict of interest which has been created in light of her dual role as Chairperson of the PETCOM Board and the majority shareholder, Principal and Managing Director of Elegant Traders Ltd.
2. The Cabinet should move to immediately develop and implement a comprehensive and over-riding policy, to be applicable to all Public Body Boards, to govern, restrict or prohibit, as the case may be, the award of Government contracts (or the divestment of publicly owned assets), by a Public Body, to members of its Board of Directors, or to any entity in which a Board member or a close family relative may have a pecuniary interest.
3. Contracts for training, marketing and promotion, and petroleum haulage must be put to selective tender and the services contracted for three (3) year periods. All contracts must be signed and a date of award firmly established before payments are disbursed. Furthermore, the PETCOM Board must take the appropriate steps to ensure transparency and propriety in the award of contracts and adherence to the GPPH. The agency must put all goods, services and works contracts to competitive tender, unless there is acceptable justification, within the ambit of the GPPH, which meets with the approval of the Accounting Officer and/or NCC.

4. PETCOM should also take immediate steps to ensure that all of its goods, services and works contractors are registered with the NCC. All future invitations to tender must request proof of valid NCC registration and a Tax Compliance Certificate.
5. The PETCOM Board should ensure that the necessary steps are taken to establish a functional Procurement Committee that operates in full compliance with the GPPH. The Procurement Committee must be trained in the management of the tender process, as well as in the requirements of the GOJ Procurement Guidelines. Part of this training should include procurement workshops and follow-up seminars.
6. Finally, the OCG feels compelled to strongly recommend, again, as it has in previous Reports to Parliament, that the Legislature should act decisively, and with expedition, to ensure that Public Bodies and Public Officials, who willfully ignore or flout the Government's Procurement Procedures, are made to be held punitively accountable for their misdeeds and breach of the public trust.