

OFFICE OF THE CONTRACTOR-GENERAL

Report of Investigation

Conducted into the Sandals Whitehouse Hotel Project

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OFFICE OF THE CONTRACTOR-GENERAL

Report of Investigation

Conducted into the Sandals Whitehouse Hotel Project

EXECUTIVE SUMMARY

Acting under the discretionary powers which are reserved to the Contractor General by Section 15 of the Contractor General Act, the Office of the Contractor-General (OC-G) formally initiated an investigation into the Sandals Whitehouse Hotel project because of certain allegations of impropriety and corruption which were made about the project in Parliament and in the media.

The primary aim of the investigation was to ascertain whether there was compliance with any applicable Government procurement and contract award procedures, whether there were any instances of irregularity or impropriety in the award of contracts, whether the said contracts were awarded impartially and on merit, and to determine what were the circumstances behind the alleged overruns in cost and in time in the implementation of the subject contracts.

The investigation was instigated, at the instance of the Contractor General, in the interest of securing public scrutiny and transparency of the matters which are under consideration. The investigation was commenced, in earnest, in January 2006 and was concluded in mid-June 2006.

In 1989, the Urban Development Corporation (UDC) was mandated to prepare the South West Coast Development Plan. Thus, lands owned by the UDC were zoned for hotel development.

As part of the development strategy of the South West Coast, the UDC, in 1990, sold 287 acres of its Ackendown property to Gorstew Ltd. (a company owned and operated by The Hon. Gordon “Butch” Stewart, the Principal of the Sandals/Beaches Resort chain), for the purpose of constructing a 200 to 300 room hotel.

A specific term of the agreement for the sale of the land to Gorstew Ltd. was that construction of the hotel should commence in June 1991 and be completed by November 1992. However, it was not until October 1998 that construction commenced.

Implementation was halted because Gorstew Ltd. was unable to obtain funding, due to the projected initial low rates of return for this pioneer development project. Given the perceived importance of the project, the Government of Jamaica decided to facilitate its successful completion.

Consequently, Ackendown Newtown Development Company Limited (NEWTOWN), a joint venture between UDC, the National Investment Bank of Jamaica (NIBJ) and Gorstew Ltd., was incorporated to develop and complete the project. The NEWTOWN Heads of Agreement was formulated to include, *inter alia*, the assignment of specific responsibilities to the entities named in the agreement.

In 2000, Ashtrom Building Systems (ASHTROM) was selected as the main contractor for the project, using the negotiation process. ASHTROM was reportedly selected because of its proven experience in hotel construction, its financial capability to undertake a project of this magnitude and its professional ability to carry out design/construction functions.

The contractor commenced working with the designers in early 2000. In December 2001, the UDC was designated the project managers through a Project Management Agreement between NEWTOWN and UDC. Prior to this, the UDC had been designated as the project's manager in the NEWTOWN Heads of Agreement which was executed in July 2001.

The project commenced in November 2001, with a scheduled 24-month completion period. Due to changes in the Scope of Works and other associated issues, the project was not completed as originally scheduled. Construction of the facility, which was changed from a Beaches Resort facility to a Sandals Resort facility, took approximately 38 months to complete. The project was completed on a phased basis and the final handing over took place in February 2005.

The main contractor, ASHTROM, was responsible for the employment of all subcontractors, either via negotiation or by a competitive process. Indications are that there were no “nominated” sub-contractors (i.e. works subcontractors who were named or nominated by UDC, it being a Public Body or Government Agency).

The main contractor, ASHTROM, was, however, required to submit the name of each proposed subcontractor and the proposed contract sum to the Project Manager, UDC and the Quantity Surveyor, for their perusal and approval, prior to the award of the sub-contract. ASHTROM has maintained that this was done. However, we are not in a position to confirm this.

In March 2000, the UDC, with the consent and approval of NEWTOWN, entered into discussions with NEVALCO Consultants Ltd. (NEVALCO) for them to coordinate and oversee the day-to-day administration, management and control of the project. In June 2002, NEVALCO was formally contracted by NEWTOWN.

Documents so far reviewed suggest that, contrary to the Government’s procurement procedures, none of the consultants which were hired on the project were selected or engaged impartially or through a competitive process. The consultants were first conditionally engaged by UDC, acting on behalf of NEWTOWN. It appears that prior to their formal engagement by NEWTOWN, these consultants were all hand picked, and their contract terms negotiated.

Our analyses have indicated that 24 consultants, inclusive of the UDC, ASHTROM, NEVALCO and Gorstew Ltd., were engaged on the project. The UDC, a Public Body, which generally operates as the Government’s primary project development executing agency, was appointed as project manager under the NEWTOWN Heads of Agreement and, thus, in respect of this contract, would be excluded from the ambit of the Government’s procurement procedures.

It is also arguable that ASHTROM, who was first selected in 2000 as the project's main contractor, was so selected prior to the gestation of the NCC and hence its selection would not have been subjected to the National Contracts Commission (NCC)/Government Procurement Procedures Handbook (GPPH) regime. UDC's contract was for J\$62.95 million and ASHTROM's was for the sum of US\$40.46 million.

Of the 19 material consultancy contracts which were reviewed for compliance with the NCC/GPPH regime, we have determined that 12 were denominated in Jamaican currency and totaled J\$116.24 million in aggregate value. The other 7 were denominated in United States currency and totaled US\$2.29 million in aggregate value.

Of the 12 \$JA currency contracts, 5 contracts totaling J\$102.10 million in value should have been put to public tender via advertisements in the daily newspapers and should have been subjected to the scrutiny and the endorsement of the NCC prior to award. Of these 5 contracts, 3 totaling J\$79.9 million in aggregate value should have also received the sanction of the Cabinet, prior to award. We have found no evidence that any of these requirements were complied with.

Of the 7 \$US currency contracts, 4 totaling US\$2.20 million in value should have received the prior endorsement of the NCC and the prior approval of the Cabinet. Additionally, all 4 contracts should have also been put to public tender via advertisements in the daily newspapers. Again, we found no evidence that any of these requirements were complied with.

In addition to the foregoing, we have determined that among the referenced contracts were contracts which were awarded to (a) Jentech Consultants Limited in the amount of J\$18.8 million (b) Gorstew Ltd. in the amount of US\$421,068 and (c), Appliance Traders Ltd. in an unknown amount.

We have highlighted the Jentech contract in view of the fact that Jentech is a civil and structural engineering entity in which Dr. The Hon. Vin Lawrence is a longstanding shareholder and director. Dr. Lawrence was at all material times the Executive Chairman of the UDC, the entity which conditionally engaged Jentech as a consultant on the project, whilst purportedly acting on NEWTOWN's behalf.

We have also highlighted the Gorstew Ltd. and the Appliance Traders consultancy contracts. The Hon. Gordon "Butch" Stewart is the presumed principal of Gorstew Ltd. and Appliance Traders. Gorstew Ltd., at the time of the award of these contracts, was a participant in NEWTOWN, the entity on whose behalf UDC acted in its conditional engagement of Gorstew Ltd. and Appliance Traders as consultant contractors for the project.

The referenced circumstances have undoubtedly raised compelling evidence of a conflict of interest, an absence of transparency, a lack of competition and the absence of an arms length approach in the award of the subject consultancy contracts.

They would clearly suggest that the subject contracts were not awarded competitively, impartially and on merit. In the premises, no assurances can be given that the award of these contracts were made in circumstances which were devoid of impropriety and irregularity.

Finally, it should be noted that the Urban Development Corporation (UDC) has always been the host of one of the NCC's seven Sector-Committees. The UDC/NCC Sector Committee has been chaired, from its inception, by Dr. The Hon. Vin Lawrence. It is therefore reasonable to presume that Dr. Lawrence, in his capacity as Executive Chairman of the UDC, had, at all material times, full knowledge of the applicable Government procurement procedures.

A full listing of the particulars of the consultants who were engaged on the project is presented in **Table 1**.

Our analyses indicate that some 50 plus sub-contractors, as distinct from consultants, were hired by ASHTROM on the project. Because ASHTROM was the project's main contractor and was not a Public Body, the question as to whether any of these contracts were awarded in compliance with the Government's procurement policy and guidelines does not arise.

We have presented in **Table 2**, a list of the names of the subcontracting entities, their addresses, their principal shareholders, the date of their registration with the Registrar of Companies, a description of their activities, the contract amounts which were paid to them and, finally, an indication of the entities' NCC registration status at the material time.

We have found that, in a number of instances, persons who were either directors, principals, officers and/or shareholders of the consulting entities which were engaged on the project, were also similarly placed among the project's subcontracting entities.

Included in this listing are Dr. Wayne Reid, who was at all material times connected to Jentech Consultants Limited (a consultant) and D.T. Brown Construction Limited (a sub-contractor) and the Hon. Gordon "Butch" Stewart, who was at all material times connected to Gorstew Ltd. (the technical services consultant) and Appliance Traders Limited (a consultant and a subcontractor).

The documentation that was available to us did not readily facilitate the tracking of the series of events and/or decisions which led to the change in the project's concept from a Beaches Resort facility to a Sandals Resort facility or to the change in the project's budget, during its implementation and execution.

The technique which was utilized to determine the original development budget does not guarantee accurate estimates and is used primarily as an indicator of the likely cost in the early design stages of a project.

When this estimate is used for contract purposes, it is usually expected that there will be an extensive re-measurement of the completed works before the contractor is paid and the final contract sum is computed. The only item of work that could be measured and quantified with any detail was the shell of the complex and, in fact, the contract documents indicate that this is the only item that was so addressed.

This contract began with a stated development budget of US\$60 million, of which approx. US\$37.5 million was expressed to be budgeted for construction costs. As at May 29, 2002, the total development budget was revised to US\$70.49 million with US\$48.51 earmarked for “estimated builders contract” or construction costs.

However, the Quantity Surveyor’s preliminary final accounts have indicated a revised construction cost of over US\$86.2 million. This figure, together with other developmental costs, is projected to inflate the project’s final development cost to over US\$110 million.

The project was scheduled for completion within 24 months but we have determined that the works were, instead, completed within 36-38 months.

The suggestion that the increased costs of the project and its time overrun were due substantially to the change from a Beaches to a Sandals concept resort, has proven to be plausible. Roughly US\$22 million of the project’s US\$39 million variance in construction costs was attributable to a substantial change in the Scope of Works, with the remaining US\$17 million amount arising mainly by virtue of the overrun in time.

The Quantity Surveyor’s draft summary final accounts has forecast a final construction completion cost of US\$86.2 million. This cost variance represents an 83% or US\$39 million increase over the Quantity Surveyor’s estimate of the original contract construction cost of US\$47.2 million. (Please note that there is a discrepancy between the Quantity Surveyor’s estimate of the original contract construction cost of US\$47.2 million and the stated original budgeted contract construction cost of US\$37.5 million).

The US\$39 million variance in construction related costs is comprised of essentially (2) main elements, Measured Works and Additions.

The Measured Works component of the variance shows that Measured Works was increased from US\$35.9 million to US\$58 million or by US\$22.03 million or 61%. Scope of Works items, which are addressed under this component, include the hotel's Room Blocks, its Central Facilities and its External Works.

The Additions component of the variance, on the other hand, is comprised of certain additional expenses which we have determined to be expenses which could have been substantially avoided had the project not experienced such a protracted overrun in time. These amounted to \$16.9 million.

Separate and apart from the significant changes which we have determined occurred in the Scope of Works of the project, our extensive analyses coupled with site visits to Sandals Whitehouse and Beaches Negril, have also elucidated significant differences in the two resorts, primarily in the quality of finishes used and, to a lesser extent, the standard of workmanship.

Bearing in mind these differences, the percentage increase for certain items of work was calculated. The indications are that the roof construction, partitioning walls, floor, ceiling finishes, windows, doors and rainwater disposals, are all areas of work which showed increases.

The NEWTOWN Heads of Agreement states that "Gorstew shall bear the cost of any overrun which is due to instructions given by Gorstew for a change in the design or design brief after the design or design brief has been agreed and signed off on by the parties prior to the commencement of the project".

Based upon the numerous documents which we have perused, it is our considered view that the changes in the Scope of the Works, quality of workmanship, types of finishes and the types and qualities of materials which were utilized, were substantially the dictates of Gorstew since they are to be attributed primarily to the change in the project's initial Beaches concept to a Sandals concept.

What is unclear, however, is to what extent, if any, the overruns in cost and in time and the parties decisions and agreements regarding the change in the Scope of Works, have impacted, varied or adjusted their original contractual arrangements, inclusive of their liabilities for the subject cost overruns.

Having established that the cost overruns which are associated with this project were largely due to changes in the Scope of Works, it must be noted that the terms of the contract which govern the administration of the project require that these changes be issued to the contractor through the "Architect's Instructions". The contract recognizes the Architect as being Mr. Christopher Shaw of the Urban Development Corporation.

This means, therefore, that the UDC, through the architect's instructions, must have first certified all payments which were made for varied or additional works, before these could be certified for payment by the Quantity Surveyor.

It is also expected that before the architect confirms these changes, they would have been discussed and agreed by the NEWTOWN joint venture partners and, if possible, conveyed to the project manager. Good practice would have also dictated that the Quantity Surveyor would have provided the cost implications of the proposed changes before they were agreed and issued.

Against the background of all of the foregoing and the documents which we have perused, it is inconceivable, if not ludicrous, to accept that a project of such magnitude and nature could have undergone a significant change in its original Scope of Works and incur an additional cost of over US\$40 million, without the prior knowledge of the parties to the NEWTOWN agreement or, at a minimum, without the prior knowledge and approval of the UDC, Gorstew Ltd. and NEVALCO.

The Contractor General is empowered by Section 20 (1) of the Contractor General Act to make such recommendations as he considers necessary in respect of any matter which the Office of the Contractor General has investigated.

Both the contractor and the Quantity Surveyor have indicated that they have in their possession, volumes of files which are solely dedicated to the Architect's instructions. Because of the time constraints of the investigation, and the fact that the final accounts were not agreed at the time of writing, our investigations as they relate to costing must therefore be viewed as preliminary in nature and would require further attention after the final accounts are agreed.

Further, and as we have previously stated, we are unclear as to the extent to which the overruns in cost and time should be borne by Gorstew Ltd., the UDC, the NIBJ and/or by any of the other parties to the project's agreements.

We have also identified a number of inconsistencies in the documents which we have reviewed, particularly in respect of certain cost numbers. (For example, the original contract sum as was stated in the contract documents is US\$37.5 million whereas in his final account calculations, the Quantity Surveyor has presented a figure of US\$47.2 million).

We would therefore respectfully recommend that the UDC, in its capacity as the Project Manager, and with the assistance of the Quantity Surveyor, be mandated to produce a comprehensive report detailing, *inter alia*, the rationale and justifications for the changes and cost overruns which were occasioned to the project, the specific authorizations which accompanied them and the persons to whom those authorizations were attributable.

We would also respectfully recommend that the report, upon its completion, should be evaluated by the Auditor General, who we would further recommend should be requested by Parliament to carry out a financial audit of the project with the aim of determining, *inter alia*, the total monies which were spent on its development and how these sums are broken down.

The Auditor General should then be required to submit his findings to Parliament. The findings should include a determination as to the equities and liabilities of each of the entities that are parties to the NEWTOWN Heads of Agreement.

Finally, we would respectfully recommend that the Legislature acts decisively and with urgency to ensure that Public Bodies and Public Officials who, with flagrant and glaring impunity, ignore the Government's procurement procedures, are made to be held punitively accountable for their mis-deeds and breach of the public's trust.

INTRODUCTION

The investigation relates, *inter alia*, to the circumstances which surround the massive overruns in cost and in time which occurred during the development of the 360-room Sandals Whitehouse Hotel, which is located in Westmoreland. The investigation was commenced, in earnest, in January 2006 and was concluded in mid-June 2006.

The original development budget for the project was estimated at a cost of US\$60 million and was based upon a Beaches Negril Resort concept. US\$37.5 million of the total amount was originally budgeted for construction costs.

However, the preliminary final accounts have indicated a revised project construction cost of US\$86.2 million. This figure, when added to other developmental costs, is projected to inflate the total project development costs to over US\$110 million.

The project commenced in November 2001, and was estimated to be completed within a 24-month period. However, due to changes in the scope of works and other associated issues, the project was not completed as originally scheduled. Construction of the facility, which changed from a Beaches Resort to a Sandals Resort facility, took approximately 38 months to complete, with handing over taking place in February 2005.

Overall, the Office of the Contractor-General (OC-G) believes that value for money was largely obtained given the works which are completed on the ground. The process of agreeing upon payments for unchanged items was fairly straightforward. The contractor indicated the labour and material unit cost for each item of work included in the contract.

Payment was made by measuring the work done, and by applying these unit costs, plus overhead and profit. Varied items were somewhat different, because each item requires negotiation before agreeing on the unit prices to be adopted. Applying actual market prices, plus established or agreed labour rates, produced these unit prices.

TERMS OF REFERENCE

General Objectives

The Office of the Contractor-General (OC-G) formally initiated an investigation into the Sandals Whitehouse Hotel project because of certain allegations of impropriety and corruption which were made in relation thereto in Parliament and in the media.

The primary aim of the investigation was to ascertain whether there was compliance with any applicable Government procurement and contract award procedures, whether there were any instances of irregularity or impropriety in the award of contracts, whether the said contracts were awarded impartially and on merit, and to determine what were the circumstances behind the alleged overruns in cost and in time in the implementation of the subject contracts.

The investigation was instigated, at the instance of the Contractor General, in the interest of securing public scrutiny and transparency of the matters which are under consideration. The investigation was commenced, in earnest, in January 2006 and was concluded in mid-June 2006.

Specific Objectives

1. Identify the procurement process which was employed by NEWTOWN (UDC, NIBJ, and GORSTEW) in the procurement of goods, works and services in the development of the subject hotel and its related facilities;
2. Determine whether there were any breaches of the Government's procurement procedures or conflicts of interest in the awarding of contracts by the developers or by the companies and individual(s) that were responsible for the execution of any aspect of the project;
3. Review, compare and document design changes and the resulting increase in cost, if any;
4. Review, compare and document changes of specifications and any increase in cost that might have resulted from these changes;
5. Compare final project cost (cost/sq.m) with the current market prices for similar works, with the aim of establishing whether there was value for money on the ground;

6. Determine the extent to which each party to the NEWTOWN Heads of Agreement impacted changes to the facility's design and specifications.

BACKGROUND

A Cabinet submission which was made by the then Prime Minister, the Most Honourable Percival James Patterson, indicated that this project would be a catalyst in igniting tourism development on the South West Coast of Jamaica. In 1989, the UDC was mandated to prepare the South West Coast Development Plan.

As part of the development strategy of the South West Coast, the UDC, in 1990, sold 287 acres of its Ackendown property to Gorstew Ltd. for the purpose of constructing a 200-300 room hotel.

A specific term of the agreement for the sale of the land to Gorstew Ltd. was that construction of the hotel should commence in June 1991 and would be completed by November 1992. The agreement also stipulated that, if this construction did not take place as arranged, the UDC could rescind the sale agreement and refund to the purchaser the amount paid for the land, less 10% which would be forfeited.

Despite the foregoing, Gorstew Ltd. only commenced construction in October 1998 based upon the UDC's Southwest Coast Development Plan, but stopped because the company was unable to obtain funding due to the projected initial low rates of return for this pioneer development project.

Given the perceived importance of the project, the Government of Jamaica decided to facilitate its successful completion. NEWTOWN, a joint venture between UDC, NIBJ and Gorstew Ltd., was therefore formulated to complete the project.

NEWTOWN took over the project from Gorstew Ltd. after infrastructure construction works stalled. They also inherited approved Project Building Plans and a team of consultants (i.e. the Design Architect, Interior Decorators, Quantity Surveyors, etc.), who had worked on various Sandals projects in different countries.

In 2000, ASHTROM was selected as the main contractor, because of its proven experience in hotel construction, financial capability to undertake a project of this magnitude and the professional ability to carry out design/construction functions. The contractor commenced working with the designers in early 2000 and resumed the site works in November 2001, after the joint venture arrangements and project budget were settled.

The UDC was designated project managers, as was stipulated in the terms and conditions of the Project Management Agreement. This agreement was signed in December 2001, between NEWTOWN and UDC. Prior to this, the UDC had been designated as the project's manager in the NEWTOWN Heads of Agreement which was executed in July 2001.

In March 2000, the UDC, with the consent and approval of NEWTOWN, had entered into discussions with NEVALCO Consultants Ltd. (NEVALCO) to coordinate and oversee the day-to-day administration, management and control of the project. The scope of the work to be undertaken by NEVALCO included, but was not limited to, the coordination of:

- Architectural designs;
- Specialist designs;
- Specifications;
- Bid documents from the consultants.

In June 2002, NEWTOWN contracted NEVALCO. However, once the agreement was signed, NEVALCO was barred from exercising any of the particular duties and functions of the designated consultants¹ and was, instead, required to manage and coordinate their activities in the manner and timelines that were stipulated in the contract.

¹ See Prime Minister's report dated May 16, 2005..

METHODOLOGY

The following methodology was used by the OC-G to gather information:

1. The files of the UDC were inspected, pertinent project/contract documents were copied and the information gathered was further analyzed in order that the development process and the series of events that led to the final output could be fully understood;
2. The contracts of all of the major consultants and contractors were reviewed to determine the procurement process which was utilized in the engagement of these entities;
3. A review and analysis of the original budget vs. the final cost was undertaken;
4. A review of certain documents were carried out in order to determine the factors which may have contributed to the time extension;
5. Site visits were made to Sandals Whitehouse and the Beaches Hotel facilities to gain a comprehensive appreciation of the work which was done and to develop a picture of the design concepts of both facilities for comparative analyses;
6. To facilitate clarification and verification of certain issues, some of the major players who were involved in the implementation and execution of the project were interviewed.

FINDINGS - GENERAL AND PROCUREMENT RELATED

This section of the report focuses upon the specific objectives which are stated in the Terms of Reference, with the intention of identifying the facts and other issues upon which our conclusions are based. However, this does not preclude us from making other observations.

The Agreement Review

This formal joint-venture document, expressly designated as the NEWTOWN Heads of Agreement, was signed on 2nd July, 2001, by three (3) companies, namely Gorstew Limited, UDC, the NIBJ. The proposal agreement was for a joint hotel development to be called Beaches Whitehouse.

The project was expected to cost US\$60 million and, in the event of an overrun, the signatories to the agreement would bear the cost as was prescribed in the agreement. The UDC, as the agreement stipulated, would incorporate a company, NEWTOWN, and the principal shareholders were expressed to be the said entities named previously and/or their nominees.

The agreement provided for NEWTOWN, with the approval of the entities, to oversee all aspects of the project. Their responsibilities, as the client, included the appointment of the UDC as project manager.

It was agreed that the UDC would, therefore, have responsibilities for the project with regards to compliance, standards and other requirements. Furthermore, all issues relating to the design and its facilities were to be approved by the entities before the start of, and during the construction of the project.

The agreement also stipulated that Gorstew Ltd. would bear the cost for the transfer of the land to NEWTOWN and, upon completion of the Hotel, Gorstew Ltd. or its nominees would open the resort under a proposed lease which was attached to the Agreement.

Important Issues

The following extracts were taken from some of the correspondence that the OC-G has inspected and analyzed. These extracts were chosen for highlight because of the relevance of their constituent statements and the impact that they have had upon the final outcome of the project as well as upon the conclusions which we have drawn.

1. *"The total cost of this project as agreed by all parties is US\$60m. We do not propose to agree any designs that will exceed this sum especially having regard to the method of payment of the shareholders' contributions already agreed in the Heads of Agreement, based on which Gorstew will not make its full contribution to construction until completion of the project and the shortfall will have to be covered by the other shareholders in the interim."*

Excerpt from letter, dated November 23, 2001, from Dr. Vin Lawrence (on behalf of UDC) to Gorstew Limited (Attention: Mr. Patrick Lynch).

2. *"The question of the project budget has been under discussion at the Board Meeting of the Ackendown Newtown Development Co. Ltd., at which the owners and lessee are well represented. The budget of US\$60M previously agreed has not to date changed. There have been discussions as to the standard and size of the property in respect of cost implementations. If and when a new budget is agreed by the investors, the details will be circulated, until then the agreed budget is well documented remains in effect...*

...The project construction schedule is agreed in principle for twenty-four months (24) again by the Board of the development company. The details of the contractor's schedule is now under review and were circulated to the Urban Development Corporation, and the Chairman of the development company for review."

Excerpt from letter, dated March 5, 2003, from Mr. Alston Stewart (on behalf of Nevalco Consultants Limited) to Implementations Ltd. (Attention: Mr. Jeremy Brown).

3. *“We write to advise that any subletting or subcontracting of the Works by the Contractor is to be approved in writing by the Architect named in the construction Contract. We do not consider it to be part of your contractual responsibilities as Project Manager’s representative to either instruct in, or approve of, sub-contracts by the Contractor unless requested to do so by and on behalf of the Architect.”*

Excerpt from letter, dated April 16, 2002, from Dr. Vin Lawrence (on behalf of UDC) to Nevalco Consultants Limited (Attention: Mr. Alston Stewart).

4. *“Reference is made to our letter to you dated April 16, 2002. We also refer to discussions Lawrence/Stewart and confirm that in our opinion, it is not appropriate for the principal of Nevalco Consultants Limited to be involved in any company which is a sub-contractor to the main contractor on the site. We consider this to be conflicting with your overall responsibilities to manage the day to day operations of the project as Project Manager’s representative, and to execute this duty on behalf of the Corporation in a manner that manifests clarity and impartiality.”*

Excerpt from letter, dated May 3, 2002, from Dr. Vin Lawrence (on behalf of UDC) to Nevalco Consultants Limited (Attention: Mr. Alston Stewart).

It should be noted that although the foregoing suggests that the UDC had cause to be concerned about certain perceived, threatened or prospective “conflicting” activities of either Mr. Alston Stewart, the principal of Nevalco Consultants Limited, or Nevalco itself, or both parties, we have been provided with no further information to make a confirmed determination in this matter.

5. *“In response to your e-mail dated May 27, 2002, advising that the captioned property will now be operated as “Sandals”. I have discussed the matter with Dr. Vincent Lawrence, Chairman of the development company, who has indicated that he is not aware of any such agreement...Additionally, what is the implication in respect of design features construction and FF&E finishes etc? Please note my instructions are to maintain the original brief and development of the budget.”*

Excerpt from Memorandum, dated May 27, 2002, from Mr. Alston Stewart (on behalf of Nevalco Consultants Limited) to Mr. Jeremy Brown of Implementations Ltd.

6. *“I refer to your memo dated May 27 to Jeremy Brown, a copy of which was sent to me. I also refer to Jeremy Brown’s response to you dated June 7, and to our subsequent discussions regarding the implications on construction works and program of the change from Beaches to Sandals Whitehouse...*

Gorstew had initially advised the landlord that the property would be operated as Beaches, but had retained the right to review this decision in light of marketing conditions and trends whilst construction works were in progress. September 11, 2001 has undoubtedly had a major impact on the travel market and our decision to operate the hotel as a Sandals resort is based on the stronger recognition of this name and product in certain important segments of the marketplace, particularly at this time. Our Chairman with the UDC’s Chairman previously addressed these concerns...

Implementation Limited has advised you that our decision to operate the hotel as Sandals will have no impact on either the construction or FF&E budgets. The minimal design changes required, which affect the guestrooms only, have been finalized and documented. Implementation Limited has requested you to issue the appropriate instructions to the contractor so as not to delay the works.”

Excerpt from letter, dated June 18, 2002, from Patrick Lynch, Gorstew Ltd. to Alston Stewart, Nevalco Consultants Limited.

7. ***In the NEWTOWN Board Minutes of 12th September, 2002, the following was stated:***

“The Change of the name of the hotel from Beaches to Sandals was agreed, subject to there being no additional cost to the project as a result of this change. It was explained that the difference between Sandals and Beaches had to do with the fact that no children under sixteen were allowed at Sandals and no connecting doors were required in a Sandals property which could result in some savings on construction. It was also felt that Sandals was a stronger product to sell and market than Beaches....”

“...It was agreed that the financial projections will have to be revisited as there may be a difference in the income to be generated from a Sandals as opposed to a Beaches product.”

Despite the foregoing pronouncements, the project’s Scope of Works was subsequently and substantially changed and the initial project budget significantly increased. We have seen no documents, however, which would adequately explain the chronological developments behind these events and what was clearly a deliberate change in the parties, stated positions. Notwithstanding, and as we have indicated later in this report, we do not believe that any of these outcomes could have occurred without the prior knowledge and approval of Gorstew Ltd., the UDC and NEVALCO.

The Procurement Process Adopted

The selection of NEVALCO, ASHTROM, Sant Associates and Subcontractors.

It was reported that NEVALCO² was selected to coordinate and oversee the day-to-day administration, management and control of the project, because of its experience, *inter alia*, in providing project management services for tourism development. Among its previous accomplishments in tourism development islandwide, were:

- Hedonism III;
- Breezes Montego Bay;
- Crowne Plaza Hotel;
- The completion of the Grand Lido Hotel in Negril.

When the hotel was originally conceptualized in the early 1990s, it was decided at the time that the tunnel system was the most appropriate methodology to use in the construction of the room blocks. In 1999, the then partners, now known as NEWTOWN, agreed to adopt and proceed with this design-build concept. Hence, in March 2000, the partners further agreed that ASHTROM should be approached to undertake the project.

Consequent upon the developer's assessment and analysis of the pool of contractors which were available locally, ASHTROM was reported as having the required expertise in the design-build development methodology and the use of tunnel form systems as was designated for the construction.

The only other contractor with a capacity which was similar to that of ASHTROM was Caribbean Construction Company Limited (CCCL). At the time that contractors were being considered for the project, CCCL had reportedly declined considering work on the development as they were in the process of reducing their workload in Jamaica³.

² NEVALCO would receive a fixed project management fee of JA \$42.30 million commencing after June 2002.

³ Notes from the Prime Minister's report to Parliament.

It was further disclosed that ASHTROM would work along with the Architect, Graham Sant of Sant Associates, who was selected by Gorstew Ltd. Sant Associates has had working relationships with the Sandals group for a long period.

They have provided, and still continue to provide, architectural services for Sandals Resorts International. Sant had completed conceptual designs to conform to the tunnel system and the use of pre-stressed beam sections for the central facilities area of this development.

According to a letter from the UDC, dated October 06, 2005 (sic), and addressed to the Office of the Contractor-General, we were advised that, *“At August 2001, the project team and main contractor had already been selected for over a year. Negotiations, preparations and commencement of work were already well advanced on this project...NEWTOWN did not undertake the identification or selection of subcontractors. The main contractor ASHTROM, which had that responsibility after consultation with the UDC, engaged them.”*

The Engagement of Consultants

In our perusal of a number of files at the UDC, and our subsequent review of other pertinent documents, we saw no indication that the selection and engagement of the project’s consultants were carried out on an impartial and competitive basis.

Rather, it appears that all of the consultants were hand-picked and that their basic terms of engagement were negotiated and agreed by and with the UDC, acting on behalf of NEWTOWN, prior to their formal engagement by NEWTOWN.

Our review of the documentation which was shown to us revealed typical UDC letters of conditional engagement which read as follows:

“October 24, 2001

*Jentech Consultants Limited
14A Hope Road
Kingston 10
Attention: Dr. Wayne Reid
Dear Sirs:*

*Re: Proposed Contract for the Provision of Civil & Structural Engineering Services – Beaches
Whitehouse Project*

Reference is made to your several discussions with our Mr. Christopher Shaw and Mr. Alston Stewart of Nevalco Consultants Limited regarding your provision of Civil and Structural Engineering Services in respect of the abovementioned project.

The UDC, as Shareholder in Akendown Newtown Development Company Limited (“the Company”) with responsibility for the management of the Project including the terms of employment of Consultants, hereby advises of its intention to recommend to the Company your appointment as the Consultant Civil and Structural Engineer on the Project at a fixed fee of Eighteen Million Four Hundred Thousand Dollars (\$18,400,000.00) plus reimbursables and subject to a formal contract embodying the other terms and conditions of your engagement. The proposed contract will be entered into with the Company.

We are aware that you have commenced provision of some of the services herein and, upon your indicating your acceptance of this proposal, we will pay to you an immediate advance of 10% of the fees. It is proposed that a further 40% of the fees will be paid on completion of contract documents and construction drawings which is projected to be on or about four months from the date of execution of your contract. The remaining 50% of your fees will be payable in regular installments throughout the construction period in accordance with certification of works.

If the above is acceptable to you, please indicate by signing and returning the attached copy of this letter at the very earliest.

Yours faithfully,

Urban Development Corporation

*Vincent M. Lawrence (Signed)
Executive Chairman”*

Although the UDC claimed that its intention was to “recommend” the consultants to NEWTOWN for formal “appointment”, we have seen no evidence to suggest that NEWTOWN did anything more beyond formally appointing the consultants as per the UDC’s recommendations and consistent with the basic terms of engagement that the UDC had already reached with the Consultant under the various UDC “proposals”.

At a minimum, such circumstances would constitute a clear and open violation of the Government's procurement policy and procedures and/or the contract award standards which have been established by the Contractor General Act (1983) which require all Government contracts to be awarded impartially, competitively, transparently and/or on merit.

The National Contracts Commission (NCC) was established in 1999 and commenced operations in July of 2000. The Government Procurement Procedures Handbook (GPPH), which governs the modern day process which is to be complied with by all Public Bodies in the procurement of goods, works and services, was published in July 2001. Both NEWTOWN and the UDC are Public Bodies.

Quite apart from the principles which compel impartiality and merit in the award of Government contracts, under the GPPH, all contracts which are valued at J\$4 million and above must be put to public tender via advertisements in the local newspapers. Additionally, all recommendations for the award of such contracts must be scrutinized, evaluated and endorsed by the NCC before they can be approved and the contracts awarded. If a contract is J\$15 million or above in value, the recommendation for its award must also be sanctioned by the Cabinet before the contract can be awarded by the Public Body in question.

Table 1 indicates that 24 consultants, inclusive of the UDC, ASHTROM, NEVALCO and Gorstew Ltd., were engaged on the project. The UDC, which generally operates as the Government's primary project development executing agency, was appointed as project manager under the NEWTOWN Heads of Agreement and, thus, in respect of this contract, would be excluded from the ambit of the Government's procurement procedures.

It is also arguable that ASHTROM, who was first selected in 2000 as the project's main contractor, was so selected prior to the gestation of the NCC and hence its selection would not have been subjected to the NCC/GPPH regime. UDC's contract was for J\$62.95 million and ASHTROM's was for the sum of US\$40.46 million.

There were two contracts, one which was awarded to ART Inc. and another to Charsal Marketing for the sourcing and supply of Furniture, Fixtures and Equipment (FF&E), in respect of which we have found no records. Also, we are not certain as to the details of the engagement of Appliance Traders Ltd. as a consultant on the project.

Of the remaining 19 contracts which were reviewed for compliance with the NCC/GPPH regime, we have determined that 12 were denominated in Jamaican currency and totaled J\$116.24 million in aggregate value while the other 7 were denominated in United States currency and totaled US\$2.29 million in aggregate value.

Of the 12 \$JA currency contracts, 5 contracts totaling J\$102.10 million in value should have been put to public tender via advertisements in the daily newspapers and should have been subjected to the scrutiny and the endorsement of the NCC prior to award. Of these 5 contracts, 3 totaling J\$79.9 million in aggregate value should have also received the sanction of the Cabinet, prior to award. We have found no evidence that any of these requirements were complied with.

Of the 7 \$US currency contracts, 4 totaling US\$2.20 million in value should have received the prior endorsement of the NCC and the prior approval of the Cabinet. Additionally, all 4 contracts should have also been put to public tender via advertisements in the daily newspapers. Again, we found no evidence that any of these requirements were complied with.

In addition to the foregoing, we have determined that among the referenced consultancy contracts were contracts which were awarded to (a) Jentech Consultants Limited in the amount of J\$18.8 million (b) Gorstew Ltd. in the amount of US\$421,068 and (c), Appliance Traders Ltd. in an unknown amount.

We have highlighted the Jentech contract in view of the fact that Jentech is a civil and structural engineering entity in which Dr. The Hon. Vin Lawrence is a longstanding shareholder and director. Dr. Lawrence was at all material times the Executive Chairman of the UDC, the entity which engaged Jentech as a consultant on the project.

We have also highlighted the Gorstew Ltd. and the Appliance Traders contracts. The Hon. Gordon “Butch” Stewart is the presumed principal of Gorstew Ltd. and Appliance Traders. Gorstew Ltd., at the time of the award of these contracts, was a participant in NEWTOWN, the entity on whose behalf UDC acted in its engagement of Gorstew Ltd. and Appliance Traders as consultant contractors for the project.

Finally, it should be noted that the Urban Development Corporation (UDC) has always been the host of one of the NCC’s seven Sector-Committees. The UDC/NCC Sector Committee has been chaired, from its inception, by Dr. The Hon. Vin Lawrence. It is therefore reasonable to presume that Dr. Lawrence, in his capacity as Executive Chairman of the UDC, had, at all material times, full knowledge of the applicable Government procurement procedures.

Table 1 presents the list of the consultants which were engaged to provide a variety of services in the formulation, management and execution of the project.

Table 1 – LIST OF CONSULTANTS ENGAGED ON PROJECT

Consultant's /Contractor's Name	Shareholders	Scope of Works	Contract Start Date	Original Contract Sum		Amount Paid For Certificates	Reason for Additional Costs	Comments
				J\$	US\$			
Smith Warner International	Phillip Warner, David A. Smith.	Coastal Engineering Services	06.06.2002	1,150,000.00	N/A	J\$1,396,925.60	Variation Order was issued.	J\$; Impartial & Competitive Award Required.
Sant Associates	No record was found.	Architectural Services	06.06.2002	N/A	885,000.00	US\$ 904,549.83	No reason was given.	US\$; Impartial & Competitive Award, Public Tender, NCC Approval and Cabinet Approval Required.
Witkin Design Group	No record was found.	Landscape - Architectural	15.05.2002	N/A	55,000.00	US\$ 56,999.99	No reason was given.	US\$; Impartial & Competitive Award Required.
Capital Options	Ms. Dayle C. Dopson-Holmes, Oliver Holmes.	Consulting Services - Financial	30.04.2001	940,000.00	N/A	J\$1,034,000.00	An additional request was made via Purchase Order, which was approved by the GM. Work done was outside of the contractual arrangement.	J\$; Impartial & Competitive Award Required.
Urban Development Corporation		Project Management	13.12.2001	62,950,625.00	N/A			N/A
Ashtrom Building Systems		Construction	15.02.2002 (First selected in 2000)		40,463,456.51			US\$; Impartial & Competitive Award Required.
Nevalco Consultants	Stanley Martin (Snr), Alston Stewart, Beverly J.E. Stewart, Opal Sewel Brown.	Project Management (On Site)	01.06.2002	42,300,000.00	N/A			J\$; Impartial & Competitive Award, Public Tender, NCC Approval and Cabinet Approval Required.

Table 1 – LIST OF CONSULTANTS ENGAGED ON PROJECT

Consultant's /Contractor's Name	Shareholders	Scope of Works	Contract Start Date	Original Contract Sum		Amount Paid For Certificates	Reason for Additional Costs	Comments
				J\$	US\$			
Gorstew Limited	No record was found.	Technical Services	01.11.2001	N/A	439,374.96	US\$ 421,068.00	N/A	US\$; Impartial & Competitive Award, Public Tender, NCC Approval and Cabinet Approval Required.
Environmental Solutions Limited	Ian Gage, Barry Wade, George Campbell, Eleanor Jones, Peter Reeson.	Environmental Services	17.06.2002	2,332,430.00	N/A			J\$; Impartial & Competitive Award Required.
Hospitality Purveyors Inc. (HPI)	No record was found.	Interior Design Services	15.07.2002	N/A	400,000.00	US\$ 399,999.60	N/A	US\$; Impartial & Competitive Award, Public Tender, NCC Approval and Cabinet Approval Required.
McDonald Group International	No record was found.	Waste Water Treatment	14.11.2002	N/A	7,300.00	US\$ 7,247.00	N/A	US\$; Impartial & Competitive Award Required.
Aquadynamics Design Group Inc.	No record was found.	Pool Design	06.01.2003	N/A	34,500.00	US\$ 34,958.00		US\$; Competitive Award Required.
Maurice J. Stoppi	Maurice J. Stoppi	Arbitrators	01.05.2002	705,000.00	N/A	J\$ 430,000.00	N/A	J\$; Impartial & Competitive Award Required.
Edwin Hunter		Engineer - Resident	01.06.2003	3,780,000.00	N/A	J\$ 2,993,636.37	N/A	J\$; Impartial & Competitive Award Required.
Rivi Gardner & Associates	Mr. Rivington Gardner, Ms. Sharon Battick	Architect	25.11.2003	8,100,000.00	N/A	J\$ 12,450,000.00	A Variation Order was issued for the additional work that was done.	J\$; Impartial & Competitive Award, Public Tender and NCC Approval Required.

Table 1 – LIST OF CONSULTANTS ENGAGED ON PROJECT

Consultant's /Contractor's Name	Shareholders	Scope of Works	Contract Start Date	Original Contract Sum		Amount Paid For Certificates	Reason for Additional Costs	Comments
				J\$	US\$			
Jentech Consultants Limited	Mr. Noel Dacosta, Mr. Melville R. Frederick, Mr. Gordon E. Hutchinson, Mr. Vincent M. Lawrence, Mr. Wayne Reid Mr. Robert H. Shaw, Mr. Noel H. Brown	Civil and Structural Engineering Services	01.05.2002	18,800,000.00	N/A	J\$18,400,000.00	N/A	J\$: Impartial & Competitive Award, Public Tender, NCC Approval and Cabinet Approval Required.
Goldson, Barrett Johnson	No record was found.	Quantity Surveying Services	14.02.2002	18,800,000.00	N/A	J\$ 21,799,999.18	The contract was extended via Letter dated 4 th June, 2004, for an additional amount of J\$3.0 million.	J\$: Impartial & Competitive Award, Public Tender, NCC Approval and Cabinet Approval Required.
Hardie & Kossally Limited	Hardie & Kossally Limited, Mr. Lenville W. Hardie, Mr. Donovan W. Kossally,	Mechanical and Electrical Engineering	15.05.2002	14,100,000.00	N/A	J\$ 3,142,500.00	N/A	J\$: Impartial & Competitive Award, Public Tender and NCC Approval Required.
Alfred Sharpe	No record was found.	Architect - Resident	01.07.2003	2,040,000.00	N/A	J\$ 3,910,000.00		J\$: Impartial & Competitive Award Required.
ART Inc.	No record was found.							No Information Available.
Charsal Marketing	No record was found.	Consultant - FF&E Sourcing and Supplying	01.07.2003					No Information Available.
Basil Nelson	Mrs. Sybil E. Nelson , Mr. Basil Nelson.	Consulting Engineers - Quantity Surveying	01.12.2003	3,200,000.00				J\$: Impartial & Competitive Award Required.

Table 1 – LIST OF CONSULTANTS ENGAGED ON PROJECT

Consultant's /Contractor's Name	Shareholders	Scope of Works	Contract Start Date	Original Contract Sum		Amount Paid For Certificates	Reason for Additional Costs	Comments
				J\$	US\$			
Projex Building Materials	No record was found.	Manufacture and installation of FF&E items	14.11.2004	N/A	478,735.00			US\$; Impartial & Competitive Award, Public Tender, NCC Approval and Cabinet Approval Required.
Appliance Traders Ltd.	G.A. Stewart, Christopher Zacca, Edward Khoury, Roger Butler, Patrick Lynch, Laurence McDonald, Jeffrey Payne.	Food & Beverage Backhouse. No other information provided.						No Information Available.

The Hiring of Subcontractors

Table 2 represents a list of the subcontractors that were hired by Ashtrom Building Systems on the project, with the approval of UDC.

Our analyses indicate that over 50 sub-contractors, as distinct from consultants, were hired by ASHTROM on the project. Because ASHTROM was the main contractor and was not a Public Body, the question as to whether any of these contracts were awarded in compliance with the Government's procurement procedures does not arise.

The Table, which was compiled using information which was provided by the UDC, the National Contracts Commission (NCC) and the Registrar of Companies (ROC) of Jamaica, comprises each entity's name, its address, its principal shareholders, the date of its registration with the ROC, a description of its activities, the contract amount which was paid to it and, finally, an indication of the entity's NCC registration status at the material time.

We believe that it is vitally important that this information is published and presented in this report in the interest of securing public scrutiny and transparency of the sub-contracting arrangements and transactions which attended this major national project.

By conducting an analysis of some of the information which is presented in this table, the OC-G was able to determine the following:

1. Whether any of the directors, principals, officers and/or shareholders of the sub-contractors were also similarly placed among any of the consultants.
2. Whether any of the entities were employed in the capacity of both subcontractor and consultant;
3. Whether the subcontractors were "nominated" and what their status with the NCC was at the time of the implementation of the project;

4. The time of the entities registration with the ROC, as to whether or not it was prior to, during or after the construction phase.

Subcontractors are defined as contractors which were employed by the main contractor, ASHTROM. On the other hand, “nominated” subcontractors are contractors which were named or selected by the Government Agency, UDC, the project manager for the project.

According to the Government Procurement Procedures Handbook (GPPH), subcontractors, as defined in this case, would not be required to be registered with the NCC. However, “nominated” subcontractors, as defined above, would be required to be registered with the NCC, assuming of course that the GPPH procedures are applicable in any given case. Consequently, a clear distinction was and must be made between the subcontractors and the “nominated” subcontractors, if any, who were hired on the project.

We found no evidence which would suggest that any “nominated” subcontractors were hired on this project.

After a careful analysis of both **Table 1** and **Table 2**, we have concluded that there were persons who were directors, principals, officers and/or shareholders of a sub-contractor who were also similarly placed among the list of consultants which were engaged on the project.

Included in this listing are Dr. Wayne Reid, who was at all material times connected to Jentech Consultants Limited (a consultant) and D.T. Brown Construction Limited (a sub-contractor) and The Hon. Gordon “Butch” Stewart, who was at all material times connected to Gorstew Limited (the technical services consultant) and Appliance Traders Limited (a consultant and a subcontractor).

Table 2 – LIST OF SUB-CONTRACTORS HIRED BY MAIN CONTRACTOR - ASHTROM

COMPANY	COMPANY ADDRESS	PRINCIPAL SHARE HOLDER	DATE OF INCORPTN.	DESCRIPTION OF CONTRACT ACTIVITIES	APX.FINAL BILL (US\$)	COMMENTS
ACS Business Process Solutions JA. Ltd.	2cTremain Road, Kingston 6.	Jim W. Cate, Donald J. Kenney, Thomas A. Wimssett, Andrew J. Holtzhauser, David E. Fountain, Steven T. Pedersen, Jeffrey A. Rich, Robert E. Showalter, William L. Deckelman Jr.	28.11.2001	BMS Systems	\$369,000.00	Not registered with NCC.
All Interior Ltd.	8 Rockhampton Drive, Kingston 8.	Donald Francis Phillips, Andrew Wayne Phillips.	29.05.1998	Suspended ceiling	\$589,667.00	Not registered with NCC.
Anderson's Courts	4075Casillio Parkway, Clarence, New York 14031, USA.	No records were found.		Squash Courts	\$116,917.00	Not registered with NCC.
Appliance Traders Ltd.	35 Halfway Tree Road, Kingston 5.	G.A. Stewart, Christopher Zacca, Edward Khoury, Roger Butler, Patrick Lynch, Laurence McDonald, Jeffrey Payne.		Central Air Conditioning	\$2,033,333.00	Registered with NCC.

Table 2 – LIST OF SUB-CONTRACTORS HIRED BY MAIN CONTRACTOR - ASHTROM

COMPANY	COMPANY ADDRESS	PRINCIPAL SHARE HOLDER	DATE OF INCORPTN.	DESCRIPTION OF CONTRACT ACTIVITIES	APX.FINAL BILL (US\$)	COMMENTS
Ashtrom Building	Central Village St. Catherine.	Aaron Gutwirth, Haim Rubin, Lipa Meshorer, Haim Gueron.	07.01.1970	Carpet cleaning services	Final account is to be agreed currently at US\$86 M.	Registered with NCC.
Caribbean Elevators Co.Ltd.	108 Duke Street, Kingston.	Mr. Dwayne O. Beckford, Mr. Kirk A. Beckford, Mr. Arnold A. Beckford, Mr. Patrick Beckford, Ms. Norma G. Beckford.		Elevator systems	\$862,933.00	Registered with NCC.
Charles Hussey	28 1/2 Retirement Crescent Road, Kingston 5.	No records were found.		Tempered clear glass	\$11,333.00	Not registered with NCC.
Clare's Cleaning Services	12Northside Drive, Northside Plaza, Kingston 6.	No records were found.		Cleaning	\$125,000.00	Not registered with NCC.
Cool Connections ltd	12 Central Road, Kencot, Kingston 10.	No records were found.		Communication and sound	\$213,500.00	Not registered with NCC.
Culligan Water Conditioning	29 Molynes Road, Unit 11, Kingston 10.	No records were found.		Water Softeners/Mixing Tanks	\$70,150.00	Not registered with NCC.
DT Brown Construction Ltd.	10 1/2 Rousseau Road, Kingston 5.	Delroy Brown, Wayne Reid, Patricia Brown.	08.12.1977	Dredging and Jetty	\$1,068,150.00	Registered with NCC

Table 2 – LIST OF SUB-CONTRACTORS HIRED BY MAIN CONTRACTOR - ASHTROM

COMPANY	COMPANY ADDRESS	PRINCIPAL SHARE HOLDER	DATE OF INCORPTN.	DESCRIPTION OF CONTRACT ACTIVITIES	APX.FINAL BILL (US\$)	COMMENTS
Exotic Woods	13 West Kings House Road, Kingston 5.	Owen Karl Chambers, Barbara Antoinette Chambers, Ceri-Ann Elizabeth Grant.	17.04.1997	Moulding works	\$421,917.00	Not registered with NCC.
Gayles Fabrication	Lionel Town, Clarendon.	Karlene Gayle, Dyrene Y. Gayle, Godfrey Gayle.	08.08.2003	Plumbing works	\$213,500.00	Not registered with NCC.
GENCO	5 Oxford Park Avenue, Kingston 5.	Samuel Crichton, Milton Baker, Errol Christian, Jane Crichton, Patrick Goodison.	08.08.2003	GE System (Electrical Boards)	\$952,450.00	Not registered with NCC.
GENDEC	7 Patosee Avenue, Kingston 20.	No records were found.	N/A	Tiling works	\$45,750.00	Registered with NCC.
Guardian Fencing	15B Braemar Avenue, Kingston 10.	No records were found.	N/A	Fencing works	\$80,833.00	Registered with NCC.
Hilmac Engineering	27 Norman Lane, Kingston 13.	Dunstan Hylton.	N/A	Duct and grill work	\$330,417.00	Not registered with NCC.
Island Wholesalers	12109-185th Street, Jupiter, Florida 33478, USA.	No records found.	N/A	Hardware	\$594,750.00	Not registered with NCC.
Isratech Ltd.	Lot # 20 Kendal, Shooters Hill, P.O. Box 37, Mandeville.	Shalom Hodara, Nessa Hodara.	16.03.1992	Filter Amiad System	\$28,467.00	Not registered with NCC.
JHA	15 Retirement Crescent, Kingston 5	No records were found.		Handrails	\$864,167.00	Not registered with NCC.

Table 2 – LIST OF SUB-CONTRACTORS HIRED BY MAIN CONTRACTOR - ASHTROM

COMPANY	COMPANY ADDRESS	PRINCIPAL SHARE HOLDER	DATE OF INCORPTN.	DESCRIPTION OF CONTRACT ACTIVITIES	APX.FINAL BILL (US\$)	COMMENTS
KS Chemical Distribution Ltd.	West Gate Shopping Centre, Shop 17, Westgate, Montego Bay.	Elon Beckford, Errol Stewart.	24.05.1999	Pools maintenance	\$41,667.00	Registered with NCC.
KSA Engineering Consultants	161 Constant Spring Road, Kingston 8.	Kenrick Steven Ashley, Sylvia Pankhurst Ashley, Tanya Lawson, Betty Ashley.	19.03.1980	Electrical works	\$3,253,333.00	Registered with NCC.
Marlof	No records were found.	No records were found.	N/A	Sewage treatment	\$451,400.00	Not registered with NCC.
Mechanical Services Ltd	Shop #125 Princeville Commercial Centre, 97a Constant Spring Road, Kingston 10.	Stanley Mullings, Paul Hayes, Russell Bell, Nevill Glanville, Sara Glanville, Alvinn Blake.	30.12.1975	Plumbing works	\$1,008,533.00	Not registered with NCC.
Mersky & Williams	No records were found.	No records were found.	N/A	Roofing	\$594,750.00	Not registered with NCC.
Minott Services Ltd	77 Claude Clarke Avenue, Montego Bay.	Chester Minott.	24.7.1968	Garbage collection	\$213,500.00	Registered with NCC.
Nesbitt International Corp.	44 Barberton Road, Florida Gardens, FI 33467-3808, USA.	No records were found.	N/A	Acoustic partitions	\$86,417.00	Not registered with NCC.
Nevalco Consultants	19 Norwood Avenue Kingston 5.	Stanley Martin (Snr), Alston Stewart, Beverly J.E. Stewart, Opal Sewel Brown.	08.03.1983	Project Managers	No records were found.	Not registered with NCC.
Notmar Trading Co. Ltd.	19 Kew Road, Kingston 10.	Valrie Hinds, Jordan Brown, Norton Hinds, Maurice Brown.	30.10.1991	Fire Sprinkler and Somat system	\$1,169,167.00	Registered with NCC

Table 2 – LIST OF SUB-CONTRACTORS HIRED BY MAIN CONTRACTOR - ASHTROM

COMPANY	COMPANY ADDRESS	PRINCIPAL SHARE HOLDER	DATE OF INCORPTN.	DESCRIPTION OF CONTRACT ACTIVITIES	APX.FINAL BILL (US\$)	COMMENTS
Ormax Enterprise Ltd.	5 Bird Sucker Mews, Kingston 8.	Alyson Orgin, David Orgill, Rosalind Maxell.	19.01.1999	DX Air Conditioning	\$44,317.00	Not registered with NCC.
P. Taylor Electrical & Spa Contract	P.O. Box 7, Green Pond, Hanover.	No records were found.	N/A	Pools and Equipment	\$1,058,183.00	Not registered with NCC.
Powertrac	217 Spanish Town Road, Kingston 13.	Barclay Ewart, David de Morasse.	No records were found.	Supply of generators	\$615,483.00	Not registered with NCC.
Punchile Compination Ltd.	134 Main Street, Ocho Rios.	Keith L. Morris, Angela Thame.	17.8.1989	Coral Rendering	\$873,250.00	Not registered with NCC.
Real Woods Ltd.	Martha Brae, Trelawny.	Ms. Stacy Beckford, Mr. Arthur Wright.	No records were found.	Doors and windows	\$1,372,500.00	Not registered with NCC.
Rob Branson Inc.	4724 NW Boca Raton Blvd. Boca Raton.	No records were found.	N/A	Coral Stone Supplier	\$1,092,917.00	Not registered with NCC.
SAEG	No records were found.	No records were found.	N/A	Cooling Towers and A/C equipment	\$629,500.00	Not registered with NCC.
SEAL Sprayed Solutions	1 Belmont Road, Kingston 5.	Mr. Robert G. C. Silvera, Mr. Vaughn P. Morris, Mr. William G. L. Tavares-Finson,	12.11.2002	Waterproofing - Roof	\$291,667.00	Registered with NCC.
Securitron System	62 Hope Road, Kingston 6.	Mr. Lenin S. Thompson, Ms. Peta-Gay Thompson.	03.03.1999	CCTV Sub Contractor	\$133,333.00	Not registered with NCC.

Table 2 – LIST OF SUB-CONTRACTORS HIRED BY MAIN CONTRACTOR - ASHTROM

COMPANY	COMPANY ADDRESS	PRINCIPAL SHARE HOLDER	DATE OF INCORPTN.	DESCRIPTION OF CONTRACT ACTIVITIES	APX.FINAL BILL (US\$)	COMMENTS
Shell Company Ltd.	Rockfort, Kingston 2	Ms. Pearl M Chang, Mr. William C Wilson, Mr. Oscar P.M.V. Batenburg, Mr. Rolf van N Lemke, Mr. Mario J Anderson, Mr. Richard Dawkins, Mr. Patrick A King, Mr. Mario Vulinovich.	09.10.1975	L.P.G.	\$64,050.00	Registered with NCC.
Stroke of Brilliance	ClayGrounds, Bamboo P.O. St. Ann.	No records were found.		Painting	\$455,000.00	Not registered with NCC.
Superior Turf Management	2 Acadia Circle, Kingston 8.	Michael St. Aubyn Bradford, Ms. Geraldine Bradford.	25.11.2003	Landscaping and irrigation	\$2,208,383.00	Registered with NCC.
Syd Construction Ltd.	Lot 1318 Ironshore Ind. Estate, White Sands Beach P.O. Montego Bay.	No records were found.	N/A	Roofing	\$986,167.00	Not registered with NCC.
Systems Ltd.	No records were found.	No records were found	N/A	No records were found	No records were found	Not registered with NCC.
Tank Weld	27 Seaward Drive, Kingston 11.	Mr. Jerome Gayle, Mr. Valentine Johnson.	05.05.1981	Crane operations	\$137,250.00	Registered with NCC.
Technology Plus Co Ltd.	8 Balmoral Avenue, Kingston 10.	Mr. Melvin Chung, Ms. Annett E. Francis, Mr. John Gordon-Thompson, Ms. Sandra M. Chung, Mr. Joseph D. Francis.	14.01.2002	Electronic gate	S\$53,750.00	Registered with NCC.
The Place for Tiles	7957 N.W. 54 Street, Miami, Florida 33166, USA.	No records were found.	N/A	Counter tops	\$381,250.00	Not registered with NCC.

Table 2 – LIST OF SUB-CONTRACTORS HIRED BY MAIN CONTRACTOR - ASHTROM

COMPANY	COMPANY ADDRESS	PRINCIPAL SHARE HOLDER	DATE OF INCORPTN.	DESCRIPTION OF CONTRACT ACTIVITIES	APX.FINAL BILL (US\$)	COMMENTS
Touchwood International	Martha Braw, Trelawny.	David Holland, Fenella Kennedy	20.09.2004	Moulding	\$188,083.00	Not registered with NCC.
Tropicair Ltd.	227 1/2 Marcus Garvey Drive, Kingston 11.	Mr. Raj Chandaria, Mr. Errol L.G. Powell, Mr. Paul R. Hanworth, Dr. Bhagvan K. Prasad, Mr. Kuntesh R. Chandaria, Mr. Pancha P Sankaran, Mr. Colin Steele,	No records were found.	Aluminum gutters	\$29,167.00	Registered with NCC.
Tropical Metal Products	149 Constant Spring Road, Kingston 8.	No records were found.	05.22.1975	Metal sheet roofing	\$150,467.00	Registered with NCC.
Tyndale Biscoe Photography Ltd.	3 Kings Drive, Kingston 6.	Marjorie Tyndale-Biscoe, Lascelle Samm, Janet Susan Bloomfield.	07.10.1975	Aerial Photographer	\$21,583.00	Not registered with NCC.
W.M. Distributors	68a Hagley Park Rd. Kingston 10	Mr. Winston Smith.	No records were found.	Suspended ceilings	\$297,500.00	Not registered with NCC.
Weldtron Ltd.	41 Dunrobin Avenue, Kingston 10.	No records were found.	N/A	L.P.G. Welding Fabrication	\$45,000.00	Not registered with NCC.
Windows Ltd.	18 1/2 Lyndhurst Road, Kingston 5.	No records were found.	28.05.1975	Interior windows	\$66,083.00	Not registered with NCC.
YORK	No records were found.	No records were found.	N/A	Chillers	\$477,883.00	Not registered with NCC.

Table 2 – LIST OF SUB-CONTRACTORS HIRED BY MAIN CONTRACTOR - ASHTROM

COMPANY	COMPANY ADDRESS	PRINCIPAL SHARE HOLDER	DATE OF INCORPTN.	DESCRIPTION OF CONTRACT ACTIVITIES	APX.FINAL BILL (US\$)	COMMENTS
Zimcor Inc.	250 Bowes Road, Concord, Ontario L4K1JA,, CANADA.	No records were found.	N/A	Dome, skylights, aluminium windows and doors	\$2,033,333.00	Not registered with NCC.
Contractor	No records were found.	No records were found.	N/A	Cut stones	\$14,583.00	Not registered with NCC.
TOTAL					\$29,517,100.00	

FINDINGS – COSTS OVERRUN

Although other documents were perused, this analysis is primarily based upon summaries which were taken from the Final Statement of Accounts for the construction of a 360-room hotel at Whitehouse, Westmoreland. This document, essentially, provided a tabular comparison of the original budget and the additions and omissions that led to the final contract sum.

The following documents were reviewed:

1. Summaries from the Final Statement of Accounts for the construction of a 360-room hotel at Whitehouse, Westmoreland;
2. Certificate # 38, the last recorded payment made to the contractor;
3. Original contract documents.

Estimate of Contract Sum

It is reasonable to have expected some amount of inflation on the project because of the claim that the works had started long before the completion of the final drawings. Additionally, the bills of quantities were prepared using “approximate quantities”, instead of detailed bills which were prepared from detailed working drawings.

The “approximate quantities” is a preliminary bills of quantities which is used where the scope of the work is difficult to measure, or where the drawings are not sufficiently developed to allow detailed take-off of quantities.

The technique used does not guarantee accurate estimates and is used primarily to indicate the likely cost in the early design stages of a project. When this estimate is used for contract purposes, it is usually expected that there will be extensive re-measurements of completed works before the contractor is paid.

In our assessment, the only item of work that could be measured and quantified, with any detail, was the shell of the complex and, in fact, the contract documents indicate that this is the only item that was so addressed.

Additionally, even a cursory look at the contract document revealed that most of the items were provided for by the use of provisional sums. These are included in the contract for works, of which the full extent and character cannot be determined precisely at the time the bills of quantities is prepared. These items are always expected to be adjusted, as each item of work is completed and actual measurements done.

Increased Costs – Changes in the Scope of Works and Additions

It must be pointed out that all parties to the contract have not yet agreed on the final accounts. This means that some figures which are quoted in this report are subject to change, depending upon the outcome of final account negotiations.

The suggestion that the increased costs of the project was due substantially to the change from a Beaches to a Sandals resort concept seemed quite plausible. As **Table 5** will show, roughly US\$22 million of the project's US\$39 million cost variance was attributable to a substantial change in the Scope of Works, with the remaining US\$17 million amount arising mainly by virtue of the overrun in time.

This contract began with a budgeted contract construction sum of US\$37.5 million and an overall initial development budget of US\$60 million. As at May 29, 2002, the total development budget was revised to US\$70.49 million with US\$48.51 earmarked for “estimated builders contract” or construction costs.

The project was scheduled for completion within 24 months, but information thus far collected indicates that the works were completed within 36-38 months.

Despite the foregoing, the Quantity Surveyor's draft summary final accounts, as presented in **Table 5**, has forecast a final construction completion cost of US\$86.2 million. This figure, together with other unstated developmental costs, is projected to inflate the project's final development cost to over US\$110 million.

This cost variance in construction costs represents an 83% or US\$39 million increase over the Quantity Surveyor's estimate of the original contract construction sum of US\$47.2 million. (Please note that there is a discrepancy between the Quantity Surveyor's estimate of the original contract construction cost of US\$47.2 million and the stated original budgeted contract construction cost of US\$37.5 million).

Table 5 breaks out the cost variance into two (2) main cost elements, Measured Works and Additions.

The Measured Works component of the variance shows that Measured Works was increased from US\$35.9 million to US\$58 million or by US\$22.03 million or 61%. Scope of Works items which are addressed under this component include the hotel's Room Blocks, its Central Facilities and its External Works.

The Additions component of the variance, on the other hand, is comprised of certain additional expenses which we have determined to be expenses which could have been avoided had the project not experienced the protracted overrun in time. These amounted to \$16.9 million. Some of the Additions elements are detailed in **Table 5** as follows:

1. ***Adjustment for Clause 30 (US\$5.3 million):***

Rates agreed in the contract bill were for the prime cost of material and labour only, with no addition for contractor's overhead and profit. Clause 30, which deals with Certificates and payment, was adjusted in the "conditions of particular application" to facilitate the payment of contractor's profits.

2. ***Cost Fluctuations (US\$1.6 million):***

Fluctuations could not be avoided in this contract because of the relative lengthy scheduled implementation time.

Nevertheless, it is reasonable to conclude that this item would have been much less had the works been completed within the scheduled time of 24 months, as opposed to the actual completion time frame of 36-38 months.

3. ***Extension of time (US\$2.6 million):***

The contract makes provision for the contractor to be awarded extension of time. The provision under the contract also allows for the payment of “loss and expenses associated with any extension not caused by the general contractor or his agents”.

4. ***Additional Supervision (US\$1.8 million):***

This is partly due to the extension of time granted. Whenever the contract period is extended, additional supervision is one item that is payable to the contractor if he is not at fault.

5. ***Furniture, Fixtures and Equipment (FF&E) (US\$4 million + US\$693,000):***

This was not included in the contractor’s original scope of works. ASHTROM was asked to undertake additional work when the FF&E consultant’s services were discontinued when he failed to perform.

6. ***Interest (US\$725,000):***

The contract provides for the payment of ten percent (10%) interest on any overdue amounts which are payable to the contractor. Under this contract, the period from submission of the contractor’s valuation until the receipt of payment must not exceed 28 days.

As indicated above, all of these items, combined, inflated the contract by US\$16.9 million or a very high 35% of the QS's estimate of the original contract sum of \$47.2 million. The professional fees which are indicated is for the FF&E consultant which was provided by Ashtrom. This was not a part of the original contract, and was incurred when ASHTROM was asked by the client to provide that service through their consultants who were already engaged on a project at the Sangster International Airport in Montego Bay.

Correct Contract Sum:

The original contract construction sum as indicated by Ashtrom's representatives and confirmed by the contract documents presented, was US\$60.0 million.

Table 3 – Original Project Budget

	\$US
Room Blocks -	18,882,466
Central Facilities -	11,475,160
External Work	7,084,414
Equipment	9,508,480
Special Systems (IT)	786,960
Technical Expense	6,500,000
Legal, Finance, Administration	2,687,636
Wage Increase	1,480,767
Developer's Contingency	<u>1,594,080</u>
	59,999,963

Of the US\$60.0 million original project budget, approx. US\$37.5 million was ear-marked for construction costs.

In his final account calculations, however and as was previously noted, the Quantity Surveyor has presented an original construction figure of US\$47.2 million. When asked about this discrepancy (or inconsistency), the Quantity Surveyor explained that the tender (or contract construction) sum that was quoted in the contract document was the sum which was arrived at from the approximated bills of quantities.

It was explained that the US\$47.2 million which was quoted in his final account summary resulted, in part, from the ability to measure some items and the inclusion of staff accommodation as works to be done by the general contractor.

It is understood that the original plan was to convert trailers into staff accommodations (outside of ASHTROM'S scope of works) but, due to the change from the Beaches to the more upscale Sandals concept, the contractor was instructed to build staff accommodations to match the Sandals environs. This item should have been treated separately and not included as part of the contract sum (See **Table 5**).

In a statement which was dated May 16, 2005 and which was presented by former Prime Minister, the Most Honourable P.J. Patterson, to Parliament, it was reported that the final projected project cost, based upon the Independent Surveyor's report, was estimated to be approximately US\$106.79M. The amount was stated to be composed of the elements which are listed in the following table (**Table 4**).

Table 4 - Final Projected Project Cost

(Based Upon Prime Minister's Statement, Dated May 16, 2005)

Description of Cost Elements	Actual US\$M
Land and Infrastructure	3.70
Construction Cost	73.53
Furniture Fixture & Equipment	16.51
Professional Fees	5.55
Legal, Finance & Administration	5.50
Contingency/ Un-adjudicated Claim	2.00
Total projected project cost	106.79

It was also reported that a claim of US\$5.3M had been submitted by the contractor and was still to be adjudicated by the Quantity Surveyor. That amount, if accepted, would have placed the total projected project cost, at the time, to over US\$110 million or approx. US\$112 million

It should be noted that the final accounts, which showed a construction cost of US\$86.2M (**Table 5**), and which was presented by the Quantity Surveyor, was not yet approved by the parties concerned at the time of the conclusion of this investigation.

Table 5

FINAL ACCOUNTS SUMMARY						
Item	Original Budget	Final Cost	Variance	Overrun	% of Initial Contract Sum of \$37.5M	Remarks
	US\$	US\$	US\$	%		
Measured Works						
Room Blocks	15,174,339.11	18,825,253.98	3,650,914.87	24%	10%	
Central Facilities	12,525,284.03	23,904,886.62	11,379,602.59	91%	30%	
External Works	6,817,612.25	15,276,941.97	8,459,329.72	124%	23%	
Contingencies	1,455,745.00		(1,455,755.00)		0%	
Total Measured Works	35,972,980.39	58,007,082.57	22,034,102.18	61%	59%	
Additions:						
(1) Adjustments for clause 30		5,300,847.52				
(2) Fluctuations		1,670,778.00				
(3) Extension of time		2,626,722.00				
(4) Additional supervision		1,800,000.00				
(5) FF&E items executed by GC		3,955,414.00				Not part of the original contract.
(6) Professional fees paid through the contractor (FF&E)		693,000.00				
(7) Drawing Reproduction		113,000.00				
(8) Interest for late payment		725,661.65				
Sub-total			16,885,423.17		45%	
			38,919,525.35		103%	
Add Contract Sum			47,245,934.00			
Final Contract Sum			86,165,459.35		130%	

Effect of Concept Changes – Finishes and Standard of Workmanship

The project was impacted substantially by the change from a Beaches to a Sandals concept. Visits to Sandals Whitehouse and Beaches Negril were undertaken to gain an appreciation of the two facilities. The difference in the two resorts was borne out by the fact that the Beaches facility was more family orientated while it was obvious that the quality of finishes used and, to a lesser extent, the standard of workmanship, was higher for the Sandals property.

Using the above information as our frame of reference, we calculated the percentage increase for the items of work which are indicated in **Table 6**. It should be noted, however, that this does not include the other major cost items to which the US\$39 million variance in **Table 5** is attributable.

Table 6

Impact of Concept Changes on Finishes – Cost Overruns on Selected Items

Work Item	Total Overrun US\$	Percentage over Original Estimate	Percentage Over Construction Contract Sum of \$37.5 Million
1. Roof Construction	1.06 M	52%	2.8%
2. Partitioning	0.56 M	174%	1.5%
3. Wall Finishes	0.84 M	38%	2.2%
4. Floor Finishes	0.85 M	36%	2.3%
5. Windows and Doors	0.52 M	23%	1.4%
6. Substructure	0.18 M	16%	0.5%
7. Ceiling Finish	0.21 M	27%	0.6%
8. Rain Water Disposal (Copper Pipes)	0.11 M	107%	0.2%
Total	4.33 M		11.60%

Liability for Costs Overruns

Clause 7 to the NEWTOWN Heads of Agreement provides that “any cost overrun in the project cost will be borne by the parties as follows:

- (i) Gorstew shall bear the cost of any overrun which is due to instructions given by Gorstew for a change in the design or design brief after the design and design brief have been agreed and signed off on by the parties prior to commencement of the project.
- (ii) UDC shall bear the cost of overruns which are due to inefficient implementation of the project or poor contractual arrangements.
- (iii) Overruns which are due to events outside of the control of the parties such as changes in exchange rate of Government policy shall be borne by UDC and NIBJ.
- (iv) PROVIDED HOWEVER that if on completion of the project, the project cost does not exceed ... US\$60 million, the parties will not be required to bear the costs of the matters set out at 7 (i-iii) above.
- (v) Any question arising as to whether any instructions, matter or thing has given rise to a cost overrun shall be determined by the Project Quantity Surveyor and if the parties do not agree with the Project Quantity Surveyor the matter shall be referred to and finally resolved by the Project Adjudicator.”

Additionally, Clause 15 of the Heads of Agreement provides that “all issues relating to the design and design brief of the hotel, must be approved by the UDC and Gorstew prior to commencement of the project and during the construction all approvals must be given by UDC and Gorstew within twenty (20) days of request”.

FINDINGS – THE EXTENT TO WHICH THE PARTIES IMPACTED CHANGES TO THE DESIGN AND SPECIFICATIONS

In the NEWTOWN Board Minutes of 12th September, 2002, the following was stated:

“Hotel Name

The Change of the name of the hotel from Beaches to Sandals was agreed, subject to there being no additional cost to the project as a result of this change. It was explained that the difference between Sandals and Beaches had to do with the fact that no children under sixteen were allowed at Sandals and no connecting doors were required in a Sandals property which could result in some savings on construction. It was also felt that Sandals was a stronger product to sell and market than Beaches....

...It was agreed that the financial projections will have to be revisited as there may be a difference in the income to be generated from a Sandals as opposed to a Beaches product.”

Following these agreements, the following events occurred:

- Gorstew Ltd. was paid US \$421,068, for technical services rendered on the development.
- Gorstew Ltd. is presumably substantially owned by The Hon. Gordon “Butch” Stewart. Advisement was given by Appliance Traders Limited (ATL) and Sandals Resort International (SRI), both of which are presumably substantially owned by the Hon. Gordon “Butch” Stewart.
- The architects, Sant Associates, who are based overseas, were employed to carry out architectural services for the client, NEWTOWN. Gorstew Ltd. is a member of

NEWTOWN and Sant Associates has been engaged on numerous occasions to carry out architectural services for Sandals Resort International (SRI).

With this background, it can be said that Sant Associates would be guided by SRI/Gorstew Ltd. in preparing specifications that were deemed suitable for the operation of a resort to be leased by Sandals at the end of construction.

- A letter from Gorstew Ltd., dated 18th June, 2002, states that the change from a Beaches resort facility to a Sandals resort facility would have had little impact on the budget. However, our perusal of the project files uncovered no proof to support this claim.
- Personnel and representatives from the development and management teams of the project were flown to the Beaches resort in the Turks and Caicos Island to gain firsthand and comprehensive knowledge of the quality which was expected on the project. This, in our view, is partly indicative of who would be the decision-maker, and who was to substantially influence the products, etc. which were to be used on the project.
- The board of NEWTOWN, on the advisement from Gorstew Ltd., changed the brand of the facility from “Beaches” to “Sandals”.

With the above points made, it is fair to say that Gorstew Ltd. and its associates would have had significant influence upon the design of the hotel. The pictures on file, which were taken at Sandals Whitehouse, clearly exhibit the level of craftsmanship of the facility. They are indicative, *inter alia*, of the additional costs which would have been incurred and which would have significantly impacted the initial budget of this project.

The Beaches Whitehouse Concept

It was reported that in October 1998, Gorstew Ltd. broke ground and commenced external infrastructure works for Beaches Whitehouse Hotel. The hotel was intended to mirror Beaches Negril, with 273 rooms and would include facilities such as:

- Main dining area, specialty restaurants, pool, swim-up bar, Jacuzzi, piano bar, disco, beauty salon, fitness centre, games room, four tennis courts and staff facilities.

However, work was aborted shortly after ground breaking, due to certain financial constraints which were experienced by the developers. During the last quarter of 1999, the UDC considered exercising the option of rescinding the sale agreement, but the desire to develop growth in the South West Coastal region led to discussions between the Corporation and Gorstew Ltd. An agreement was eventually reached under which Gorstew would collaborate with UDC to develop the hotel.

Further discussions were held shortly thereafter to form a joint-venture company, NEWTOWN. The principal partners would be the UDC, NIBJ and Gorstew Ltd. NEWTOWN would have responsibility to see to the planning, financing, construction and equipping of a 400-room hotel on 40 acres of the property.

NEWTOWN was formally constituted in July 2001. It was incorporated under the Companies Act of Jamaica as a limited liability company to enable it to be the corporate vehicle to undertake the hotel development.

After finalising all discussions regarding the project, a technical services agreement was signed by Gorstew Ltd., UDC and NIBJ on 2nd July, 2001.

This document allowed the owner, NEWTOWN, and the lessee of the property, Gorstew Ltd., to define the responsibilities of the parties to this agreement. In addition, both NEWTOWN and Gorstew Ltd. would deal with the planning, designing, construction, furnishing and equipping of the hotel, based upon agreed standards and in accordance with the time schedules and design documents which were to be approved by Gorstew Ltd. before the start of construction.

Change in Concept from Beaches Whitehouse to Sandals Whitehouse

After the 2001 terrorist attacks on the United States of America (USA), the airline industries, globally, were adversely affected. These attacks generally halted consumer spending for most travel destinations.

Indications within the tourism sector were that there was dynamic improvement in certain locations/destinations which were considered to be less vulnerable to terrorist attacks, to service varied visitor needs. Thus, this was one justification for effecting changes in the original concept.

The Beaches concept would cater to a family type orientation. On the other hand, a Sandals concept would draw couples only. In light of this, the change from a Beaches to Sandals brand appeared to be warranted, particularly having regard to the fact that the Sandals Group drew most of its clients from North America and Europe, the hub of the terrorist attacks.

The presumed psychology behind this assumption was that families would be more reluctant to risk traveling. Couples, on the other hand, would be more willing to do so and hence it would be a more viable proposition to cater for them.

In addition, the developers of the project may have found it necessary to upgrade their product in order to offer a more attractive package to tourists, because of the new developments which were coming on stream along the North and West coasts of the island, and the possible existence of as yet undisclosed negotiations for further developments island-wide.

With the new Sandals concept on the table, the facilities would be further upgraded by the developers to include the following:

1. A dive pool and special water sports facilities with their own jetty;
2. Three (3) zero-entry pools with the central pool being one of the largest in the island (each pool would carry its own support Jacuzzi and swim-up bar);
3. An over-sized Jacuzzi and sun deck;
4. A stand alone spa complex and spa Jacuzzi;
5. Separate facilities for a gym and aerobics room;
6. Two (2) squash courts;
7. A fully enclosed entertainment complex with its own bar, a purpose built stage with state of the art sound and light installations and an extensive backstage change room facility, which was to be promoted as a European style theatre;
8. Ballroom, wedding room and conference room with state of the art audiovisual facilities;
9. Four specialty restaurants;
10. Extensive staff accommodations on the property;
11. Extensive external infrastructure to support the hotel's isolated location with built-in redundancy for all services;
12. The most modern and conveniently laid out "Back of House Facility";
13. A reconstructed beach area for a single hotel.

To ensure the integrity of the Sandals Trademark, all of the above facilities and interior design work were undertaken by NEWTOWN and members of the Gorstew Ltd./Sandals group.

Review, Comparison and Documentation of Design Changes

The Chief Quantity Surveyor, Mr. Brian Goldson, reported/indicated that he was instructed to, and had prepared, estimates and contract documents for the hotel complex based upon the Beaches Negril facility and using an approximate quantities method to arrive at preliminary estimates. This was confirmed by Mr. Rami Sobotski, the Vice President of ASHTROM International and his team, during an interview.

Additionally, the following were also revealed:

- The Client, NEWTOWN, approached ASHTROM to negotiate the contract;
- The original contract construction sum was US \$37.5 million;
- When ASHTROM began construction, only the architectural drawings for the room blocks were ready;
- No complete drawings were available for the first 18 months of construction;
- The price per shell for the shells was agreed on as a lump sum;
- The contractor agreed on a fixed sum for preliminaries and overheads. All remaining works were made provisional;
- A detailed Bill of Quantities was produced by the Quantity Surveyor, and ASHTROM agreed on unit prices for material and labour;
- Furnishings, Fixtures and Equipment (FF&E) were the only scope of works not assigned to ASHTROM. Notwithstanding, certain aspects of this item of works were actually executed by ASHTROM.
- Coral Stone works, which amounted to US\$1.30 million, was not a part of the original budget;
- Copper gutters were used throughout the property, despite the availability of far less costly products;
- The marble tiles were secured by International Tender;

- The client faced a serious setback with the original M&E consultant who reportedly failed to deliver the required designs. ASHTROM was asked to recommend a replacement. The company recommended and eventually engaged their M&E consultant, who was at the time active on the Donald Sangster International Airport project;
- In light of the change in the M&E consultant, the client asked ASHTROM to pay the M&E consultant an expense for which ASHTROM would be reimbursed;;
- ASHTROM was not reimbursed until after the project ended;
- Final drawings and specifications held up the progress of the work. Almost 300 rooms were cast before the specs for finishing was received. Three (3) years passed before a decision was taken on what type of decks were to be built. The Restaurant area was never designed, and drawings were not handed over to ASHTROM until 18 months after construction began;
- Staff accommodations were not in the original budget. Trailer converters were to be installed as housing for staff, but ASHTROM was asked to build concrete structures, which they claimed to have done at the same cost of providing the converted trailers.

CONCLUSIONS

Our conclusions are based upon the information which we have gathered through interviews, our perusal of files, the inspection of pertinent contract documents and our own visual surveys and inspection of the hotel and its related facilities.

Arising from this and particularly from our assessment, investigation and appraisal of the information and documentation which was furnished to us by the UDC, ASHTROM and the Consulting Quantity Surveyor, we have reached the following conclusions:

1. The NEWTOWN Heads of Agreement appears to be a straightforward instrument. It appears to have been drafted with specific responsibilities duly assigned to the entities which are named in the agreement, and with other appropriate provisions for certain terms which are not relevant to this review.
2. We are not satisfied with the documentation which was made available to us by the UDC and which should have facilitated, but did not facilitate, an understanding of the chronological sequence of operations and events in the implementation and execution of the project, particularly as they related to the significant changes which took place in the budget and Scope of the Works of the project and what had to be the deliberate decisions of the parties which attended those changes. This has led us to believe that there was a deliberate attempt to conceal information regarding certain relevant decisions as well as the basis upon which those decisions were made.
3. In our perusal of a number of files at the UDC, and our subsequent review of certain other pertinent documents, we saw no indication that the selection and engagement of any of the project's consultants were carried out on an impartial and competitive basis.

Rather, it appears that all of the consultants were hand-picked and that their basic terms of engagement were negotiated and agreed by and with the UDC, acting on behalf of NEWTOWN, prior to their formal engagement by NEWTOWN.

At a minimum, such circumstances would constitute a clear and open violation of the Government's procurement policy and procedures and/or the contract award standards which have been established by the Contractor General Act (1983) which require all Government contracts to be awarded impartially, competitively, transparently and/or on merit.

4. Our analyses have indicated that 24 consultants, inclusive of the UDC, ASHTROM, NEVALCO and Gorstew Ltd., were engaged on the project. The UDC, a Public Body, which generally operates as the Government's primary project development executing agency, was appointed as project manager under the NEWTOWN Heads of Agreement and, thus, would be excluded from the ambit of the procedures.

It is also arguable that ASHTROM, who was first selected in 2000 as the project's main contractor, was so selected prior to the gestation of the NCC and hence its selection would not have been subjected to the NCC/GPPH regime. UDC's contract was for J\$62.95 million and ASHTROM's was for the sum of US\$40.46 million.

5. Of the 19 material consultancy contracts which were reviewed for compliance with the NCC/GPPH regime, we have determined that 12 were denominated in Jamaican currency and totaled J\$116.24 million in aggregate value while the other 7 were denominated in United States currency and totaled US\$2.29 million in aggregate value.

Of the 12 \$JA currency contracts, 5 contracts totaling J\$102.10 million in value should have been put to public tender via advertisements in the daily newspapers and should have been subjected to the scrutiny and the endorsement of the NCC prior to award. Of these 5 contracts, 3 totaling J\$79.9 million in aggregate value should have also received the sanction of the Cabinet, prior to award. We have found no evidence to suggest that any of these requirements were complied with.

Of the 7 \$US currency contracts, 4 totaling US\$2.20 million in value should have received the prior endorsement of the NCC and the prior approval of the Cabinet. Additionally, all 4 contracts should have also been put to public tender via advertisements in the daily newspapers. Again, we found no evidence which would lead us to conclude that any of these requirements were complied with.

6. In addition to the foregoing, we have determined that among the referenced contracts were contracts which were awarded to (a) Jentech Consultants Limited in the amount of J\$18.8 million (b) Gorstew Ltd. in the amount of US\$421,068 and (c), Appliance Traders Ltd. in an unknown amount.

We have highlighted the Jentech contract in view of the fact that Jentech is a civil and structural engineering consultancy entity in which Dr. The Hon. Vin Lawrence is a longstanding shareholder and director. Dr. Lawrence was at all material times the Executive Chairman of the UDC, the entity which preliminarily engaged Jentech as a consultant on the project, while purportedly acting on behalf of NEWTOWN.

We have also highlighted the Gorstew and the Appliance Traders contracts. The Hon. Gordon “Butch” Stewart is the presumed principal of Gorstew Ltd. and Appliance Traders. Gorstew Ltd., at the time of the award of these contracts, was a participant in NEWTOWN, the entity on whose behalf UDC acted in its preliminary engagement of Gorstew Ltd. and Appliance Traders as consultant contractors for the project.

7. The referenced circumstances have undoubtedly raised compelling evidence of a conflict of interest, an absence of transparency, a lack of competition and the absence of an arms length approach in the award of the subject consultancy contracts.

They would clearly suggest that the subject contracts were not awarded competitively, impartially and on merit. In the premises, no assurances can be given that the award of these contracts were made in circumstances which were devoid of impropriety and irregularity.

8. Finally, it should be noted that the Urban Development Corporation (UDC) has always been the host of one of the NCC's seven Sector-Committees. The UDC/NCC Sector Committee has been chaired, from its inception, by Dr. The Hon. Vin Lawrence. It is therefore reasonable to presume that Dr. Lawrence, in his capacity as Executive Chairman of the UDC, had, at all material times, full knowledge of the applicable Government procurement procedures.

A full listing of the particulars of the consultants who were engaged on the project is presented in **Table 1**.

9. Our analyses indicate that some 50 plus sub-contractors, as distinct from consultants, were hired by ASHTROM on the project. Because ASHTROM was the project's main contractor and was not a Public Body, the question as to whether any of these contracts were awarded in compliance with the Government's procurement policy and guidelines does not arise.

We have presented in **Table 2**, a list of the names of the subcontracting entities, their addresses, their principal shareholders, the date of their registration with the Registrar of Companies, a description of their activities, the contract amounts which were paid to them and, finally, an indication of the entities' NCC registration status at the material time.

10. We have found that, in a number of instances, persons who were either directors, principals, officers and/or shareholders of the consulting entities which were engaged on the project, were also similarly placed among the project's subcontracting entities.

Included in this listing are Dr. Wayne Reid, who was at all material times connected to Jentech Consultants Limited (a consultant) and D.T. Brown Construction Limited (a subcontractor) and the Hon. Gordon “Butch” Stewart, who was at all material times connected to Gorstew Ltd. (the technical services consultant) and Appliance Traders Limited (a consultant and a subcontractor).

11. The main contractor, ASHTROM Building Systems, was responsible for employing subcontractors, and the prices for the services or goods to be procured by that contractor should have fallen within the basic price list which was set out in the main construction contract.

Where the contractor procured services or goods outside of the basic price list, the policy was that three quotations should be sought. The quotations were required to be submitted to the Project Manager and the Quantity Surveyor for their perusal and recommendation. However, we are not in a position to say what actually transpired.

12. The original estimated project development budget of US\$60 million was preliminary in nature and was based upon an “approximate quantities method”, using the Beaches Negril concept as the module. This concept was later changed to a Sandals Resort concept, which substantially contributed to the increase in the project’s development cost from US\$60 million to over US\$110 million. It is critical to note that the “approximate quantity” method was used, and that the final cost is determined by the measurement of the actual quantities.
13. The reported US\$110 million final project development cost is generally consistent with the projected project development cost which was reported to Parliament by former Prime Minister, the Most Honourable P.J. Patterson, in a statement which was dated May 16, 2005.

14. The suggestion that the increased costs of the project was due substantially to the change from a Beaches to a Sandals concept has proven to be plausible. Roughly US\$22 million of the project's US\$39 million construction cost variance was attributable to a substantial change in the Scope of Works, with the remaining US\$17 million amount arising mainly by virtue of the overrun in time.
15. This contract began with a stated development budget of US\$60 million, of which approx. US\$37.5 million was expressed to be budgeted for construction costs. As at May 29, 2002, the total development budget was revised to US\$70.49 million with US\$48.51 earmarked for "estimated builders contract" or construction costs.
16. The project was scheduled for completion within 24 months but we have determined that the works were, instead, completed within 36-38 months.
17. Despite the foregoing, the Quantity Surveyor's draft summary final accounts has forecast a final construction completion cost of US\$86.2 million. This figure, together with other developmental costs, is projected to inflate the project's final development cost to over US\$110 million.

This cost variance in construction costs represents an 83% or US\$39 million increase over the Quantity Surveyor's original contract construction cost estimate of US\$47.2 million. (Please note that there is a discrepancy between the Quantity Surveyor's estimate of the original contract construction cost of US\$47.2 million and the stated original budgeted contract construction cost of US\$37.5 million). The US\$39 million cost variance is comprised of essentially (2) main elements, Measured Works and Additions.

The Measured Works component of the variance shows that Measured Works was increased from US\$35.9 million to US\$58 million or by US\$22.03 million or 61%. Scope of Works items, which are addressed under this component, include the hotel's Room Blocks, its Central Facilities and its External Works.

The Additions component of the variance, on the other hand, is comprised of certain additional expenses which we have determined to be expenses which could have been substantially avoided had the project not experienced the protracted overrun in time. These amounted to \$16.9 million.

18. It is reasonable to have expected some amount of inflation in the project costs since the works started long before the completion of final drawings. In addition, the bills of quantities were prepared using approximate quantities as opposed to detailed bills which were produced from detailed working drawings.

The “approximate quantities” is a preliminary bills of quantities which is used where the scope of the work is difficult to measure, or where the drawings are not sufficiently developed to allow detailed take-off of quantities.

The technique used does not guarantee accurate estimates and is used primarily as an indicator of the likely cost in the early design stages of a project. When this estimate is used for contract purposes, it is usually expected that there will be an extensive re-measurement of completed works before the contractor is paid and the final contract sum computed.

In our assessment, the only item of work that could be measured and quantified with any detail was the shell of the complex and, in fact, the contract documents indicate that this is the only item that was so addressed.

Additionally, even a cursory look at the contract document revealed that most of the items were provided for by the use of provisional sums. These are included in the contract for works, of which the full extent and character cannot be determined precisely at the time the bills of quantities is prepared. These items are always expected to be adjusted as each item of work is completed and actual measurements are done.

19. A visit to both Sandals Whitehouse and Beaches Negril showed that the difference between the two concepts was to be found primarily in a difference in the quality of finishes and the standard of workmanship. This is, of course, separate and apart from the differences in the project which we have determined were attributable to the changes in the Scope of Works.

Bearing in mind these differences, the percentage increase for certain items of work was calculated. The indications are that the roof construction, partitioning walls, floor, ceiling finishes, windows, doors and rainwater disposals, are all areas of work which showed increases.

20. The Heads of Agreement states that “Gorstew shall bear the cost of any overrun which is due to instructions given by Gorstew for a change in the design or design brief after the design or design brief has been agreed and signed off on by the parties prior to the commencement of the project”.

Based upon the numerous documents which we have perused, it is our considered view that the changes in the Scope of Works, quality of workmanship, types of finishes and the types and qualities of materials which were utilized, were substantially the dictates of Gorstew Ltd. since they are to be attributed primarily to the change in the project’s initial Beaches concept to a Sandals concept.

What is unclear, however, is to what extent, if any, the overruns in cost and in time and the parties’ decisions and agreements regarding the change in the Scope of Works, have impacted, varied or adjusted their original contractual arrangements, inclusive of their liabilities for the subject cost overruns.

21. The architects, Sant Associates, who are based overseas, was employed to carry out architectural services for the client, NEWTOWN. Gorstew Ltd. is a partner and equity participant of NEWTOWN and Sant Associates has been engaged on numerous occasions to carry out architectural services for Sandals Resort International (SRI).

Against this background, it is our view that Sant Associates was guided by SRI/Gorstew Ltd. in preparing specifications that were deemed suitable for the operation of a resort to be leased by Sandals.

22. Having established that the cost overruns which are associated with this project were largely due to changes in the Scope of Works, it must be noted that the terms of the contract which govern the administration of the project required that these changes be issued to the contractor through the “Architect’s Instructions”. The contract recognizes the Architect as being Mr. Christopher Shaw of the Urban Development Corporation.

This means, therefore, that the UDC, through the architect’s instructions, must have first certified all payments which were made for varied or additional works, before these could be certified for payment by the Quantity Surveyor.

It is also expected that before the architect confirmed these changes, they would have been discussed and agreed by the NEWTOWN joint venture partners and, if possible, conveyed to the project manager. Good practice would have also dictated that the Quantity Surveyor would have provided the cost implications of the proposed changes before they were agreed and issued.

23. Having regard to all of the foregoing, it is therefore difficult to accept that variations in this project to the tune of approx. US\$40 million, inclusive of substantial variations in the Scope of Works, could have been made without the prior knowledge of the parties to the NEWTOWN agreement (viz. Gorstew Ltd., UDC and NIBJ) or, at a minimum, without the prior knowledge and approval of the UDC, Gorstew Ltd. and NEVALCO, or that these actions only became evident upon the completion of the project. We would view the suggestion, if it were to be made, to be inconceivable, if not unequivocally ludicrous.

RECOMMENDATIONS

The Contractor General is empowered by Section 20 (1) of the Contractor General Act to make such recommendations as he considers necessary in respect of any matter which the Office of the Contractor General has investigated.

Both the contractor and the Quantity Surveyor have indicated that they have in their possession, volumes of files which are solely dedicated to the Architect's instructions. Because of the time constraints of the investigation, and the fact that the final accounts were not agreed at the time of writing, our investigations as they relate to costing must therefore be viewed as preliminary in nature and would require further attention after the final accounts are agreed.

Further, and as we have previously stated, we are unclear as to the extent to which the overruns in cost and time should be borne by Gorstew Ltd., the UDC, the NIBJ and/or by any of the other parties to the project's agreements.

We have also identified a number of inconsistencies in the documents which we have reviewed, particularly in respect of certain cost numbers. (For example, the original contract sum as was stated in the contract documents is US\$37.5 million whereas in his final account calculations, the Quantity Surveyor has presented a figure of US\$47.2 million).

We would therefore respectfully recommend that the UDC, in its capacity as the Project Manager, with the assistance of the Quantity Surveyor, be mandated to produce a comprehensive report detailing, *inter alia*, the rationale and justifications for the changes and cost overruns which were occasioned to the project, the specific authorizations which accompanied them and the persons to whom those authorizations were attributable.

We would respectfully recommend that the report, upon its completion, should be evaluated by the Auditor General who, we would further recommend, should be requested by Parliament to carry out a financial audit of the project with the aim of determining, *inter alia*, the total monies which were spent on its development and how these sums are broken down.

The Auditor General should then be required to submit his findings to Parliament. The findings should include a final determination as to the equities and liabilities of each of the entities that are parties to the NEWTOWN Heads of Agreement.

Finally, we would like to reiterate those of our recommendations which were made by letter, dated May 10, 2006, to the Attorney General and Minister of Justice, following after our conclusion of another recent investigation.

In that communication to the Attorney General and Minister of Justice, which was copied to the Prime Minister, the Leader of the Opposition, the President of the Senate and the Speaker of the House of Representatives, we had recommended thus:

“The existing Government Procurement Procedures should ... be comprehensively reviewed with the objective of upgrading them to the level of Regulations. If it is felt that additional Regulations should be evolved, then that should also be done. The Regulations must carry with them the force of the law and they must provide for stringent penalties and punitive sanctions to be imposed in the event of their breach.”

Accordingly, we would respectfully recommend that the Legislature acts decisively and with urgency to ensure that Public Bodies and Public Officials who, with flagrant and glaring impunity, ignore the Government’s procurement procedures, are made to be held punitively accountable for their mis-deeds and breach of the public’s trust.

We respectfully so advise and recommend.