

OFFICE OF THE CONTRACTOR-GENERAL
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Any reply or subsequent reference to this communication should be addressed to the Contractor-General and the following reference quoted:-

No. : 18-2-150

TELEPHONE No. : 876-929-8560/6466

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September 14, 2006

Urban Development Corporation (UDC)
12 Ocean Boulevard
Kingston Mall
Kingston

Attention: Mrs. Marjorie Campbell, President & Chief Executive Officer

Dear Sirs:

Re: Contractor General's Report – Sandals Whitehouse Hotel Project

Thank you for your letter of the 13th instant, a faxed copy of which was received in our Offices last night and a hard copy at 7.59 AM this morning.

In our letter to you of the 6th instant, we had asked that you substantiate the statement which was made by you to the public and tax-payers of Jamaica to the effect that the Project's consultants "*were rehired prior to the publishing of the Guidelines for public sector procurement in October 2000*".

We had asked that you do this by providing us with "documentary evidence" to substantiate your assertion.

You have not done so.

Instead, your letter has gone to lengths to make a case that "*the main consultants were selected prior to ... May 2001*", as opposed to being "*rehired ... prior to October 2000*".

In the premises, it is abundantly clear that you have once again changed your story. You have failed to produce any evidence whatsoever to substantiate your statement, made to the public of Jamaica, that the Project's 24 consultants were "*rehired ... prior to October 2000*".

The Office of the Contractor General (OCG) considers this to be a very serious matter.

There are some additional observations which, in the circumstances, we would feel compelled to make.

- (1) You have referred to a statement in the OCG's Report of June 2006 to the effect that "... 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". With this, you have stated that Ashtrom's contract was not formally entered into until February 15, 2002 and that you are therefore of the opinion that the same reasoning should also apply to the Consultants.



We disagree with your conclusion for the following considered reasons:

By now, you should be aware that the Ministry of Finance & Planning's Interim NCC Guidelines for Public Sector Procurement, were issued on October 24, 2000. The Government's Procurement Procedures Handbook (GPPH), dated May 30, 2001, was issued in July 2001. Both addressed the procurement of works, goods and services contracts.

In the case of the Ashtrom contract, it was always the OCG's understanding that Ashtrom was selected as the Project's main contractor in March 2000 and that an agreement was settled, at that time, between the parties, for Ashtrom to undertake the project. In this regard, we have relied substantially upon a statement which was found in the Report which was made to Parliament, on May 16, 2005, by the former Prime Minister of Jamaica, the Most Hon. P. J. Patterson. On page 14 of the Report, the following statement is made:

"The construction contract was formally signed between Ashtrom Building Systems and NEWTOWN on February 15, 2002. This served to consummate the Agreement that was reached in March 2000". (My emphasis).

In the case of the Project's Consultants, on the other hand, it is clear that no agreement had been reached between the Consultants and the UDC, even as at October 24, 2001 when the UDC despatched to the named Consultants what could only be described, at best, as conditional offers or "recommendations" of consultancy engagements. These are the UDC letters, copies of which are currently within the possession of the OCG, together with other evidence, which would clearly suggest that the parties were still negotiating and had not yet concluded their respective agreements.

The fact that the UDC had not reached full agreement with the Consultants as at October 2001 is further substantiated by the Board Meeting Minutes of NEWTOWN of October 1, 2001. As you yourself have advised in your letter of the 13th instant, the Minutes provide that "... it was resolved that the UDC, as Project Manager, would negotiate and agree the Consultancy Contracts within a total amount not exceeding US\$6.5 million". (My emphasis).

Against this background, it is evident that the two, Ashtrom and the Consultants, cannot be treated in the same vein as you have suggested. This is but one reason why we are not surprised that you have been unable to substantiate your statement that the Consultants were "rehired" or contracted on the project prior to October 2000 or, for that matter, prior to October 24, 2001.

Consequently, we must again reiterate the positions which we had previously communicated to your former Chairman in our letter of July 18, 2006, as follows:

"At the time of the engagement of the referenced Consultants by the Urban Development Corporation (UDC) and/or NEWTOWN, the NCC/Government Procurement Procedures Handbook (GPPH) regime was fully in place. Further, at all material times, the UDC and NEWTOWN were Public Bodies. Consequently, any purported award of contracts to any of these consultants, either by the UDC and/or by NEWTOWN, would have been clearly subjected to and governed by the NCC/GPPH regime. These are indisputable facts".

- (2) We hold firmly to our assertion that you are constantly changing your story and that it appears that you have deliberately adopted a course of action which is intended to mislead the public into believing that no Government Procurement Procedures and Guidelines were breached by you. In support of our contention, we would wish to point you to the following:



- (a) In the UDC's letter to me of July 18, under the signature of Dr. Vincent Lawrence, the following statement was made:

"When the (NEWTOWN) Joint Venture partnership was formed, the decision was made to continue the services of the Consultants. ... It was on that basis that the development company (NEWTOWN) decided to enter formal contract arrangements with them".

In the UDC's centre spread statement to the Sunday Observer of July 23, 2006, a similar inference is made as follows:

"It was further agreed that the Consultants who had already been hired by Gorstew (on the Aborted Project) were to continue the work that they had started rather than going into the process of hiring new consultants." ... We have already pointed out that Jentech had been originally selected by Gorstew and not by either UDC or Ackendown and that UDC, acting on behalf of the company (NEWTOWN), as project manager, finalized these arrangements".

These statements would seem to suggest that there was no break between the engagement of the Consultants on the Aborted Project and their engagement on the new Project, and that the respective engagements were not separate and distinct in fact or in law.

Nothing, however, could be further from the truth.

In a statement which Gorstew Ltd. published on page 12 of the Observer newspaper, on August 14, it was clearly stated that *"Gorstew decided that it would terminate that venture (the Aborted Project) in January 1999 (and that) all consultancy contracts were terminated and all professional fees paid"*. It is also instructive to note that the OCG, by way of letter, dated July 27, 2006, from Gorstew's attorneys, has received confirmation of this assertion.

Put succinctly, it is therefore our understanding that the Consultants were first contracted on the Aborted Project by its developers, Whitehouse Hotel Development Limited (a company which was formed by Gorstew Ltd. and Royalty Resorts Ltd). These contracts were subsequently terminated in law and in fact. Thereafter, the subject Consultants were engaged on the new Sandals Whitehouse Hotel Project. The Consultants were engaged, under entirely new contracts, by a separate and distinct legal entity, namely the UDC, acting on behalf of NEWTOWN.

We therefore hold very firmly to the position that whatever relationships any of these Consultants may have had with the project, or with a private contractor, prior to their engagement by UDC/NEWTOWN, is wholly irrelevant to the issue which is now before us.

- (b) We can further substantiate our assertion that you have deliberately misled the Public. The OCG has discovered that there were a number of Consultants who were engaged by Gorstew on the Aborted Project who were not re-engaged by the UDC on the new Sandals Whitehouse Hotel Project. Among these Consultants are:

Design Collaborative	- The Architects on the Aborted Project
Winston Hepburn & Associates	- The Quantity Surveyor on the Aborted Project
Mortimer & Associates	- The Project Manager on the Aborted Project



The point which must be made here is that this information is fundamentally at odds with your statement which appeared in the Sunday Observer newspaper of July 23, 2006. In that Statement, you had suggested to the public that all of the Aborted Project's Consultants were "continued" into the new Project. You stated thus:

"It was further agreed that the Consultants who had already been hired by Gorstew were to continue the work that they had started rather than going into the process of hiring new consultants."

However, as Design Collaborative would tell you, as they have intimated to us, this is at best a misleading statement. In point of fact, in the written communication which we have received from Design Collaborative, through the attorneys for Gorstew Ltd., they have characterized your statement as a "misconception". We have also been contacted by Winston Hepburn & Associates on the matter. There is absolutely no doubt in the OCG's mind that your statement has created a disturbing degree of discord.

- (c) Your very letter of September 13, which is now under consideration, provides further and ample proof of your changing stories.

In your Statement to the Gleaner of September 6, you had asserted that the Consultants "were rehired prior to the publishing of the Guidelines for the public sector procurement in October 2000".

However, rather than substantiate that statement as you were requested to do by the OCG, you have decided, instead, to embark, *inter alia*, upon a discourse about "main consultants (who) were selected (not rehired) prior to ... May 2001". There is now no mention whatsoever, in your letter of the 13th instant, of Consultants being "rehired ... prior to October 2000".

- (d) Further, in your Statement to the Gleaner of September 6, you had also alluded to "the establishment of the relevant (NCC/UDC) Sector Committee in August 2001". You have, however, now conceded, in your letter of the 13th instant, that the NCC/UDC Sector Committee was launched, instead, one year earlier, on August 11, 2000.

As you have offered no explanation whatsoever for this about turn in your previously stated position, we must confess that we are curious as to *why* the UDC would have asserted, in the first place, that its own NCC Sector Committee was established one year after it was in fact established.

This is moreso having regard to the fact that the very launch date of August 11, 2000, which was set for the NCC/UDC Sector Committee, was one which our records show was formally proposed by Mrs. Marjorie Campbell, who now serves as your President and Chief Executive Officer.

- (e) In your letter to me of July 18, 2006, under the hand of your Dr. Vin Lawrence, you had stated that the NCC Guidelines, which came into effect in 2001, "made reference to Contractors only and not to the appointment of Consultants". It is the OCG's understanding that this letter was reportedly distributed to the media.

In my response to you of July 18, 2006, I advised you that your statement was inaccurate. I advised that the NCC/Government Procurement Guidelines Handbook (GPPH), dated May 30, 2001, in its original edition, made abundant and specific reference to procedures for the procurement of consulting services. I had offered to provide you with documentary proof of the OCG's position but you did not accept the OCG's offer.



Notwithstanding your statement of July 18, in the very first paragraph of your letter of September 13 you have now changed your position to assert that "*the Guidelines in relation to Consultants were published in May 2001*". Despite this shift in your story, you have to date made no attempt to notify the media that you had published an inaccurate and misleading statement in your letter to me of July 18.

- (f) Finally, in the first paragraph of your letter of September 13, you have asserted that "... *the interim Guidelines for procurement issued in 2000 stated that they were 'General Guidelines for Public Sector Agencies entering into **works** contracts'*". (Your emphasis).

This, again, I must respectfully advise, is another inaccurate but very material misstatement which has been made by you. If it is not corrected, you will succeed in substantially misleading the Public Accounts Committee of Parliament and, by extension, the public, as well as the other authorities to whom your letter has been copied.

The 3rd paragraph of the referenced Interim Guidelines, which were issued by the Ministry of Finance and Planning on October 24, 2000, clearly provide as follows:

*"Procuring entity recommendations for contract award for all contracts (**goods, services and works**) with an estimated value of J\$4,000,000 and above, shall be referred to the National Contracts Commission for review and approval"*. (My emphasis).

In light of all of the foregoing, we must respectfully advise that we cannot accept your denial of our assertion that you have sought to deliberately mislead the public. For the same reason, we have not been persuaded by your plea that your "*sole and sincere intention is to let the public know all the facts concerning (your) role in the Sandals Whitehouse Hotel Project*".

We have made no comment with respect to the attachments which have accompanied your letter of the 13th instant to us. It is our considered view that they do not merit any comment.

In the premises, we have concluded that your objective has been to substantially mislead the Parliament and people of Jamaica into believing that your procurement of Consultants on the Sandals Whitehouse Hotel Project was not carried out in violation of applicable Government Procurement Procedures and Guidelines.

Very respectfully yours,

Greg Christie (Signed)

Greg Christie
Contractor General

Copies: The Most Hon. Portia Simpson-Miller, O.N., M.P., Prime Minister
Senator The Honourable Syringa Marshall-Burnett, CD, President of the Senate
The Honourable Michael Peart, M.P., Speaker of the House of Representatives
Mr. Audley Shaw, M.P., Chairman - Public Accounts Committee of Parliament
Mr. Adrian Strachan, Auditor General
Mr. Desmond Hayle, Chairman of the Sandals Whitehouse Forensic Audit Team
Mrs. Patricia Sinclair-McCalla, Permanent Secretary, Office of the Prime Minister