

OFFICE OF THE CONTRACTOR GENERAL

Time Line Notes - Government of Jamaica Procurement Procedures/National
Contracts Commission Regime Development.
Sandals Whitehouse Hotel Project - UDC/NEWTOWN - Procurement of
Consultancy Services and Award of Consultants' Contracts.

PROCUREMENT REGIME BENCHMARK #1

1. Nov. 18, 1963 - **Government Contracts Committee (GCC)**
Ministry of Finance Notification #182/02 (Circular #43) to Permanent Secretaries and Heads of Departments, regarding revised Cabinet procedure. Deals, *inter alia*, with the establishment of the Government Contracts Committee (GCC), the employment of Private Architects, the control of Government Contracts and the tender and award process to be utilized in connection with certain Government Contracts, inclusive of works projects over 10,000 pounds in value. Signed by G.A. Brown, Financial Secretary.

2. Sept. 27, 1985 - **Cabinet Directive Mandating Adherence to GCC Procedures**
Cabinet Decision #32/85 amending Cabinet Decision #31/85, dated September 16, 1985, requiring, in paragraph #8, "*all Public Enterprises and Statutory Bodies ... to follow the procedures laid down for the award of contracts by submitting tenders to the GCC for decision and, thereafter, through portfolio Ministers, to Cabinet for approval*". Expressed to apply to contract amounts in excess of the limits stipulated by Cabinet from time to time, "currently \$150,000, as set out in Cabinet Decision #43/84 dated 26th November, 1984".

PROCUREMENT REGIME BENCHMARK #2

3. 1986 - **Establishment of Commission of the Contractor General**
Independent Parliamentary Commission of the Contractor General established by the Contractor General Act of 1983.

Principal functions - to monitor the award and implementation of Government contracts with a view to ensuring (a) that such contracts are awarded impartially and on merit, (b) that the circumstances in which such contracts are awarded or terminated do not involve impropriety or irregularity, and (c) that the implementation of such contracts conforms to the terms thereof.

CG is also mandated to monitor the grant, issue, suspension or revocation of any prescribed licence or permit.

Additionally, the CG is empowered to conduct investigations into certain matters, such as the registration of contractors, tender procedures, contract awards and grants of licences.

The Act is expressed to apply to all "Public Bodies" and to all Government contracts, inclusive of contracts for the carrying out of works and for the supply of goods and services.

4. October 7, 1986 - **Ministry of Finance Circular Stating that Urban Development Corporation (UDC) is not Exempt from Government's Procurement Procedures**

On page 1 of the Contractor General's 1996 Report to Parliament, it is recorded that the Ministry of Finance issued a Circular, on October 7, 1986, which provided, *inter alia*, as follows:

"It has been brought to the attention of the Public Accounts Committee (PAC) that certain agencies (e.g. EDCo. and UDC) which administer contracts on behalf of some Ministries and Departments have not been complying with the approved procedures laid down by Cabinet". "...

"No Ministry, Department, Statutory Body or Government-owned company is exempt from the standing directive of the Cabinet and on no account should they depart from the aforementioned procedures. Accounting Officers should now ensure that the above procedures are brought to the attention of all relevant agencies".

5. July 3, 1987 - **UDC's Rejection of GCC's Procedures and Regime**

Letter from the then General Manager of the Urban Development Corporation (UDC), to the Contractor General, advised the UDC's rejection of the GCC regime. The letter provided, *inter alia*, as follows:

"Our view on this matter as it relates to organizations like ours, is that public bodies which have a sufficiency of duly qualified officers and which have their own Contracts Committee or some comparable body, should follow their own procedures in respect of the handling of tenders. It is our view that our arrangements have worked very effectively since the UDC was set up".

"On those occasions on which we have referred contracts to the Contracts Committee (GCC), we have found considerable delay in obtaining a decision due to the cumbersome nature of the process which involves (1) UDC - (2) Contracts Committee (3) Ministry of Finance - (4) Cabinet - (5) Ministry of Finance - (6) UDC".

"In some cases, by the time we arrive at Stage 4, the 90 day limit within which contractors hold their prices has elapsed, thus requiring that the contractor be willing to hold his price beyond that day, or that the whole tender process be repeated".

"It seems to me that your office could play a valuable role by ... monitoring the system used by (us) ... and checking from time to time to see that the systems are properly and efficiently implemented".

6. 1997

- **CG's Annual Report Records UDC's Continuing Failure to Comply with Government's Established GCC Procedures**

The Contractor General's 1996 Annual Report records that the UDC continues, 10 years after its GM's letter to the CG, to impress its claim that it is exempt from the contract award processes to which other Government agencies are subject.

On page 1 of the Report, the then Contractor General, Mr. Gordon Wells, had this to say:

"... There are even public sector agencies which claim to be exempt from some of the rules of public sector contracting. The UDC is one such entity which in late 1996 and early 1997 was in the process of awarding contracts of about \$2 Billion for improvements to the Kingston Public, St. Ann's Bay and Mandeville Hospitals".

"None of these contracts was submitted to the GCC or the Cabinet for approval although they were awarded to a single foreign contractor whose bid in two of the three cases was substantially below the consultant's estimate of the cost of the jobs"

"We have not been able to locate any document which exempts the UDC from adhering to the guidelines set out by the Ministry of Finance Circular #43 of the 18th November 1963".

"Indeed, this claim by the UDC was addressed in a Cabinet Decision of 16th September 1985". (See #2 above).

"When apparently the situation did not change significantly, the MOF issued a Circular on the 7th October 1986". (See #4 above).

"The (referenced) Decision and Circular have had little effect on the conduct of the UDC which continues to claim that it is exempt from the processes to which other agencies are subject".

7. 1999

- **Establishment - National Contracts Commission (NCC)**

NCC established via amendment to the Contractor General Act.

8. March 15, 1999

- **Cabinet Decision Mandating Contract Approval Limits**

Cabinet Decision #9/99 establishing present day contract award approval value limits.

(Up to \$4 million in value, award may be made by appropriate Ministry/Agency without reference to GCC; over \$4 million and up to \$15 million, award may be approved by appropriate Minister on the recommendation of the GCC; over \$15 million, awards must be approved by Cabinet).

9. May 17, 1999 - **Appointment of NCC Chairman**
Gordon Wells appointed by the Governor General as first Chairman of the NCC.
10. July 8, 1999 - **Appointment of NCC Members**
Beverly Lawrence, Anthony Gibson, Robert Martin, Calvin Gray, Donald Miller and Ivan Anderson, appointed by the Governor General as members of the NCC.
11. July 9, 1999 - **Appointment of NCC Members**
Ray McIntyre appointed by the Governor General as the eighth member of the NCC.
12. August 4, 1999 - **1st. NCC Administrative Meeting**
1st NCC administrative meeting.
13. October 7, 1999 - **Prime Minister Officially Launches NCC**
At the 6th Meeting of the NCC, the Chairman reported that the Prime Minister had officially launched the NCC on October 7.
14. March 2000 - **Agreement between Ashtrom & NEWTOWN Reached**
Astrom and NEWTOWN reportedly enter into agreement re construction contract award in respect of the construction of the Sandals Whitehouse Hotel Project. Contract formally signed on February 15, 2002. (Page 14, Report of Prime Minister to Parliament, dated May 16, 2005).
15. June 28, 2000 - **1st. NCC Contract Endorsement Meeting**
1st NCC contract endorsement meeting; (2 endorsements for HEART TRUST/NTA at \$7.45 million and \$7.19 million each).
16. August 2, 2000 - **Proposal for NCC/UDC Sector Committee Launch Date & Constituent Membership**
Letter from UDC General Manager, Marjorie Campbell, to NCC Chairman, Gordon Wells, proposing constituent membership of UDC/NCC Sector Committee and August 11, 2000 as the launch date of the Committee.
17. August 11, 2000 - **Official Launch of NCC/UDC Sector Committee**
NCC/UDC Sector Committee officially launched at the Jamaica Pegasus Hotel.
18. August 18, 2000 - **Confirmation of Members of NCC/UDC Sector Committee**
Letters from NCC Chairman, Gordon Wells, to nominated NCC/UDC Sector Committee members, confirming their appointment as NCC/UDC Sector Committee members.
- Members: Mr. Jackson Wilmot, Deputy Chairman, UDC; Mr. Martin Burke, Company Secretary, UDC; Dr. the Hon. Vin Lawrence, Executive Chairman, UDC, Mr. Rex James, Acting President, NIBJ; Mr. Carlton DePass, UDC Board Director; Mrs. Marjorie Campbell, General Manager, UDC.

19. Sept. 1, 2000 - **Dr. Vin Lawrence Accepts Chair, NCC/UDC Sector Committee**
Dr. Vin Lawrence writes to NCC Chairman confirming his acceptance of appointment as Chairman, NCC/UDC Sector Committee.

PROCUREMENT REGIME BENCHMARK #3

20. October 24, 2000 - **MOFP Cir. # 15 - Interim (NCC) Procurement Guidelines**
Issue of Ministry of Finance & Planning's (MOFP) Circular #15 Interim Guidelines for Public Sector Procurement.

Expressed to supercede MOFP Circular #14, dated May 9, 1996 and NCC Circular #1, dated September 1, 2000. Addressed to all Permanent Secretaries and Heads of Departments. Signed by Shirley Tyndall, Financial Secretary.

Provides, inter alia, that "Procuring entity recommendations for contract award for all contracts (goods, services and works) with an estimated value of \$4 million and above, shall be referred to the NCC for review and approval".

Provides that "procuring entities shall advertise the procurement opportunity in national newspapers ... (and that) contract recommendations shall be forwarded to the appropriate NCC Sector Committee for approval".

Further provides that contracts of J\$15 million and above in value must be approved by Cabinet and that "procuring entities shall advertise the procurement opportunity in national newspapers ... (and that) contract recommendations shall be forwarded to the appropriate NCC Sector Committee for approval".

Advised that 5 NCC Sector Committees, inclusive of the UDC Sector Committee, were in place and what were the portfolio public sector entities for each.

21. Jan. 15, 2001 - **1st NCC/UDC Sector Committee Meeting & Approval of UDC Sole Source Request**
Proof that UDC Accepted the NCC's Jurisdiction & Authority
Date of UDC Sector Committee Letter to NCC notifying the NCC of the Committee's consideration and acceptance of a "sole source" recommendation of the UDC for the award of a contract to West Indies Home Contractors (WIHCON), in the amount of \$330,701,955, at the Committee's meeting of January 15, 2001.

Signed by Dr. Vin Lawrence, NCC/UDC Sector Committee Chairman and UDC Executive Chairman.

Provides evidence of NCC/UDC Sector Committee in operation and the UDC's submission to, and recognition of, the jurisdiction and authority of the NCC and its Sector Committees over the Government contract award and procurement process.

22. Jan. 17, 2001 - **NCC's 1st Endorsement of UDC Sector Committee Recommendations**
NCC's endorsement of 1st contract award recommendations emanating from the UDC Sector Committee. (Two recommendations: \$32.1 million and \$5.9 million in favour of GM Associates).

23. Jan. 24, 2001 - **NCC's 1st Endorsement of UDC and NCC/UDC Sector Committee Sole Source Contract Award Recommendation**
NCC's endorsement of UDC Sector Committee "sole source" contract award submission in favour of WIHCON in the amount of \$330,701,955. Recommendation emanated from the UDC itself.

PROCUREMENT REGIME BENCHMARK #4

24. May 30, 2001 - **Publication of GPPH**
Date of NCC/Government Procurement Procedures Handbook (GPPH). Mandates compliance with comprehensive written procedures and guidelines for the award of Government contracts and the procurement of works, goods and services contracts. Handbook makes extensive reference, to, and purports to govern, *inter alia*, the procurement of consultancy services.

25. July 2001 - **Issue/Implementation of GPPH**
Date of issue/implementation of NCC/Government Procurement Procedures Handbook (GPPH).

26. July 2, 2001 - **NEWTOWN Heads of Agreement Signed**
Date of execution of NEWTOWN Heads of Agreement by Gorstew Ltd., UDC and National Investment Bank of Jamaica (NIBJ).

27. July 18, 2001 - **NEWTOWN Incorporated**
NEWTOWN is reportedly incorporated as a limited liability company under the Jamaica Companies Act.

28. October 1, 2001 - **NEWTOWN Board Meeting Minutes - Evidences the fact that Project Consultancy Contracts (presumably excluding Ashtröm's) not yet Negotiated, Agreed or Awarded**
Date of NEWTOWN Board Meeting Minutes. 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". The statement speaks for itself.

The Ashtrom contract, which was awarded at a value of US\$40,463,456.61, was evidently not within the contemplation of the parties, at this time, thus raising the inference that it had already been agreed to and/or awarded. (See item #14).

29. October 17, 2001 - **NCC's Endorsement of Another UDC Sector Committee Sole Source Recommendation Originating from the UDC**
NCC's endorsement of a UDC Sector Committee "sole source" contract award submission, originated from the UDC, in favour of Ashtrom, in the amount of \$14.35 million, for the construction of a school.

The NCC commented that it "felt that the submission did not fully indicate the process outlined for selecting Ashtrom as the sole source provider".
30. October 24, 2001 - **NCC had already Endorsed >200 Contracts**
As at this date, the NCC had already endorsed recommendations for the award of more than 200 contracts of a value of \$4 million or above.
31. October 24, 2001 - **NCC had already Endorsed 7 UDC Originated NCC/UDC Sector Committee Contract Recommendations**
As at this date, the NCC had already endorsed at least 7 contract award recommendations, of a value of \$4 million or above, which were submitted by the UDC through the UDC/NCC Sector.

These contract award recommendations included at least 2 "sole source" tender recommendations which emanated from the UDC itself and which were endorsed by the NCC/UDC Sector Committee.
32. October 24, 2001 - **UDC Makes Conditional Contract Offers to Consultants**
Date of UDC letters of offer of conditional engagement to certain Consultants who were to be contracted on the Sandals Whitehouse Hotel Project. (Includes Jentech Consultants Limited, Nevalco Consultants Limited, Environmental Solutions Limited, Hospitality Purveyors Inc. (HPI), Smith Warner International and Goldson Barrett Johnson).
33. Nov. 1, 2001 - **Sandals Whitehouse Hotel Project Officially Commences**
The Sandals Whitehouse Hotel Project is reportedly commenced.
34. Nov. 1 and After - **UDC's/NEWTOWN's Award of Contracts to the Consultants**
With the exception of Ashtrom, UDC, Capitol Options, ATL and Art Inc., in respect of which there are certain presumed exceptional or unknown circumstances, it appears that the UDC and/or NEWTOWN either entered into agreements with and/or awarded formal contracts to all of the Project's 24 Consultants on dates which came after October 31, 2001.

In answer to an OCG email, dated April 18, 2006, requesting that the UDC provide the OCG with “the date of engagement of each consultant”, the UDC, in the person of Mr. Richard Clarke, responded by email, dated May 24, 2006, providing “contract start dates” for all 24 Consultants as follows:

- 1 on April 30, 2001 Capital Options;
- 1 on Nov. 1, 2001 Gorstew Ltd.;
- 1 on Dec, 13, 2001 UDC (Designated to be Project Manager under July 2, 2001 NEWTOWN Heads of Agreement);
- 12 in 2002 Ashtrom, Smith Warner, Sant Associates, Witkin Design Group, Nevalco, Environmental Solutions, HPI, McDonald Group, Maurice Stoppi, Jentech, Goldson Barret Johnson, Hardie and Kossaly;
(NB. Agreement with Ashtrom reportedly first reached in March 2000).
- 6 in 2003 (Aqua Dynamics, Rivi Gardner, Edwin Hunter, Alfred Sharpe, Charsal Marketing, Basil Nelson).
- 1 in 2004 Projex Building Materials
- 2 (dates not provided) (ATL and Art Inc.).

35. July 12, 2006

- **Contractor General’s Investigation Report on Sandals Whitehouse Project submitted to Parliament**

The Contractor General’s Report of Investigation on the Sandals Whitehouse Hotel Project was submitted to Parliament, under cover of letter addressed to the Speaker of the House and the President of the Senate.

The Report examined, *inter alia*, the UDC’s project procurement activities and concluded that there was no evidence which would suggest that the UDC and/or NEWTOWN, in its/their award of the subject consultancy contracts, had complied with relevant Government contract award Procedures and Procurement Guidelines.

36. July 18, 2006

- **Letter from Chairman, UDC, to Contractor General Challenging CG’s Investigation Findings**

The UDC’s Letter asserted, *inter alia*, as follows:

- (a) that it is not the policy of the UDC to “*flaunt or breach the Government’s procurement guidelines and (that) these policies are faithfully adhered to by the Corporation and its staff in all our projects*”;
- (b) “*that the NCC ... did not issue its guidelines until 2001 and in doing so made reference to Contractors only and not to the appointment of Consultants*”;

- (c) that *“the Consultants who had commenced working with the Contractor prior to 2000 would not have fallen within those guidelines”*;
- (d) That *“the Consultants having already commenced the provision of the services, they were not appointed or handpicked by the UDC”*;

37. July 18, 2006

- **Contractor General responds to UDC’s Chairman**

By way of letter, a copy of which was issued to the media, the CG responded to the UDC’s Chairman asserting, *inter alia*, the following:

- (a) That at the time of *“the engagement of the ... Consultants by the UDC and/or NEWTOWN, the NCC/GPPH regime was fully in place. Further, at all material times, the UDC and/or NEWTOWN were Public Bodies. Consequently, any purported award of contracts to ... the consultants, either by the UDC and/or NEWTOWN, would have been clearly subjected to and governed by the NCC/GPPH Regime”*;
- (b) *“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”*;
- (c) *“That the GPPH was, from its very inception, expressed to govern contracts for the procurement of goods, works and services. Moreover, and contrary to what you have stated, the GPPH, in its original edition, makes abundant and specific reference to procedures for the procurement of consulting services”*;
- (d) *“Section 4 of the Contractor General Act (1983) requires the CG, inter alia, to monitor the award and implementation of Government contracts with a view to ensuring that “such contracts are awarded impartially and on merit and that the circumstances in which each contract is awarded do not involve impropriety or irregularity”*.

38. July 23, 2006

- **UDC Issues Statement to the Media**

In a statement which was issued to the media and which was published on pages 10 and 11 of the Sunday Observer Newspaper of July 23, the UDC, stated, *inter alia*, as follows:

“... that there is disagreement as to whether or not the procurement procedures to which the Contractor General refers would apply in the circumstance of the case. It should be noted that the decision to continue the employment of the existing consultants under the new company was taken before these guidelines were supposed to take practical effect which we were told by the NCC in September 2001 would be for implementation in October 2001”.

39. Sept. 5, 2006 - **Forensic Audit Team Report Tabled in Parliament**
The Forensic Report into the Sandals Whitehouse Hotel Project, which was commissioned by the Government, was tabled in the House of Representatives.
40. Sept. 6, 2006 - **UDC Issues Another Statement to the Media**
In a statement which was issued to the media and which was published on page A16 of the Gleaner Newspaper, the UDC, stated, *inter alia*, as follows:
- (a) *"The Forensic Audit Report on the Sandals Whitehouse development now provides the Jamaican public with a professional report. It is now clear that the imputation of corruption ... is groundless"*.
 - (b) *"... We accept that the consultants were selected by a non-competitive process"*;
 - (c) *"They (the consultants) were rehired prior to the publishing of the guidelines for public sector procurement in October 2000 and the establishment of the relevant sector committee in August 2001"*;
41. Sept. 6, 2006 - **Contractor General Challenges UDC's Statements**
The CG, by way of letter, challenged the UDC's Sept. 6 media statement. The CG's letter, which was reportedly distributed to the media by Parliament on Sept. 12, stated, *inter alia*, as follows:
- (a) That it appeared that there was a concerted and continuing effort on the part of the UDC to change its story and to mislead the Public;
 - (b) That the Office of the Contractor General (OCG) held UDC documents (namely, letters, dated October 24, 2001, of conditional offers of engagement to consultants) which materially challenged the veracity of the UDC assertion that *"the consultants were rehired prior to the publishing of the guidelines for public sector procurement in October 2000"*;
 - (c) That October 24, 2001 is (a) more than one year following the UDC's alleged pre-October 2000 "rehire" date, (b) one year after the issue of the MOFP's October 24, 2000 Interim Guidelines for Public Sector Procurement, and (c) at least 2 months after the GPPH was issued;
 - (d) That the UDC, within 5 business days, should provide the OCG with documentary evidence to substantiate that which it had asserted in (b) above;
 - (e) That the UDC's assertion that *"the relevant (NCC/UDC) sector committee was established in August 2001"* was inaccurate and that the sector committee was in fact launched on August 11, 2000.

42. Sept. 13, 2006

UDC Responds to Contractor General's Letter of September 6

The UDC, by way of letter, responded to the Contractor General. The UDC did not address or substantiate its assertion of September 6 as it was required to.

It had asserted then that the consultants were "*rehired prior to October 2000*". In its reply, however, it sought, instead, to raise a new assertion to the effect that "*the main consultants were selected prior to ... May 2001*".

The UDC also conceded that its NCC Sector Committee was launched on August 11, 2000 and not "*established in August 2001*" as it had previously communicated in its statement.

43. Sept. 14, 2006

Contractor General Responds to UDC's Letter of September 13

The Contractor General, by way of letter, responded to the UDC's letter of September 13.

The Contractor General communicated, *inter alia*, that the UDC had not substantiated its assertions of September 6 as it had been required to do and that the OCG considered this to be "a serious matter".

The Contractor General reiterated the position which it had previously communicated to the UDC in his letter of July 18, 2006 as follows:

"At the time of the engagement of the referenced consultants by the 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"

The Contractor General maintained his position that the UDC had been changing its story and had been deliberately misleading the Public. The Contractor General sited what, in his view, were several examples of this.

The Contractor General concluded, *inter alia*, that the UDC's "*objective has been to substantially mislead the Parliament and people of Jamaica into believing that the procurement of Consultants on the Sandals Whitehouse Hotel Project was not carried out in violation of applicable Government Procurement Procedures and Guidelines*".

44. SOME FINAL OBSERVATIONS

- (a) The UDC and/or NEWTOWN were, at all material times, “Public Bodies” falling within the meaning of Section 2 of the Contractor General Act.
- (b) The UDC and/or NEWTOWN were, at all material times, “Procuring Entities”, which were subject to the established Government Procurement Procedures and Guidelines.
- (c) The UDC, its former Executive Chairman and its current President and Chief Executive Officer, by virtue of their membership on the NCC/UDC Sector Committee from its inception on August 11, 2000, were, at all material times, fixed, at a minimum, with constructive notice of the ambit, applicability and requirements of the relevant Government Procurement Procedures and Guidelines.
- (d) The subject consultancy contracts were Government contracts which clearly fell within the purview of Section 2 of the Contractor General Act and the relevant Government Procurement Procedures and Guidelines.
- (e) The UDC and/or NEWTOWN, in their capacity as “Public Body” and “Procuring” Entities, selected, engaged and contracted the subject consultants. The subject contracts were awarded by UDC and/or by NEWTOWN.
- (f) Despite the foregoing, there is no evidence which has been provided to the OCG which would lead it to conclude that any of the relevant consultancy contracts were subjected to competitive tendering and/or to endorsement by the National Contracts Commission and the Cabinet, prior to award.
- (g) The available evidence would conclusively suggest that the subject contracts were awarded in flagrant violation of applicable Government Procurement Procedures and Guidelines.
- (h) Finally, there is evidence that the UDC, from as early as July 1987, more than 19 years ago, had confronted the Office of the Contractor General in writing and articulated a Government contracts award posture which openly rejected the need for compliance with the then established Government Procurement Procedures and Guidelines. Nine (9) years later, in his 1996 Annual Report to Parliament, the then Contractor General had reason to record that the UDC had still continued to impress its claim that it was “*exempt from*” the GCC’s procedures.