



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

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May 10, 2006

Senator The Honourable Arnold J. Nicholson, QC  
Minister of Justice and Attorney General  
Ministry of Justice  
NCB Tower (North)  
2 Oxford Road  
Kingston 5

Dear Attorney General:

Re: Investigation of the Contractor General into the Procurement Procedures of Certain Public Bodies – Recommendations of the Contractor General made Pursuant to Sec. 20 (1) of the Contractor General Act

My Office has just concluded Special Investigations into the procurement procedures of the Kingston & St. Andrew Corporation (KSAC), the Social Development Commission (SDC), the Sports Development Foundation (SDF) and the Portmore Municipality.

Our Findings have indicated, among other things, that the practice of awarding Government contracts to contractors who are not registered with the National Contracts Commission (NCC) is prevalent and pervasive. Indeed, in relative terms, and added to other evidence which we have, the practice appears to be widespread.

The award of a Government contract to an entity which is not registered with the NCC, except in very few circumstances, constitutes a violation of what is regarded as one of the most prominent of the existing Government Procurement Procedures.

In consequence of our Findings and in furtherance of the powers which are vested in me by Section 20 (1) of the Contractor General Act, I would therefore respectfully recommend that your Office, working in tandem with the National Contracts Commission, gives urgent consideration to the early implementation of legislation to do any or all of the following:

1. To nullify the entitlement of a contractor to receive payment in respect of any works, goods or services contract, to which he is party, which is so awarded;
2. To make the award of any such contract, by a Public Body, a criminal offence;
3. To provide for certain civil and/or criminal penalties to be imposed upon any public officer, official, employee, or other person, who sanctions or otherwise knowingly participates in the award of any such contract.

I should also like to use this opportunity to allude to the related matter of the debate which has been ongoing regarding the proposal to elevate the existing Government Procurement Procedures to the level of Regulations, thus giving them the force of law.



(2)

The Office of the Contractor General fully supports this proposal and, indeed, has long urged similar action on the part of the Legislature to effectively deal with the issue.

The matter was addressed as far back as 1997 in the Contractor General's 1996 and 10<sup>th</sup> Annual Report to Parliament.

At page 1 of that Report, the then Contractor General, Mr. Gordon Wells, commented on a Circular which was issued by the Minister of Finance on October 7, 1986. The Circular lamented the fact that "... certain statutory agencies ... which administer contracts on behalf of some Ministries and Departments, have not been complying with the approved (procurement) procedures laid down by Cabinet".

The Contractor General had this to say:

*"It is clear that the time for circulars have passed. Unless there is legislation with effective penalty clauses, some agencies will continue to ignore the (Government's procurement) guidelines (which are) issued from time to time by relevant ministries".*

Dealing effectively with this issue should by no means be a herculean task. The will of the Government is all that it requires. Indeed, the basic infrastructure to compel the required discipline and compliance levels which are lacking in the Public Sector procurement process, is already in place.

For example, the National Contracts Commission (NCC), under Section 23E (1) of the Contractor General Act, is already empowered to make Regulations in respect of the critical considerations which matter most in the country's Public Sector procurement process.

These include (a), prescribing the qualifications for the registration of contractors who are to be awarded Government contracts (b), the circumstances in which their registration may be cancelled (c), the procedure for the submission of tenders for Government contracts and (d), competitive bidding in relation to the said contracts.

The existing Government Procurement Procedures should therefore 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.

I so respectfully recommend.

Very respectfully yours,

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Greg Christie  
Contractor-General

Copy: Senator The Honourable Syringa Marshall-Burnett, CD, President of the Senate  
The Honourable Michael Peart, M.P., Speaker of the House of Representatives  
The Hon. Portia Simpson-Miller, Prime Minister of Jamaica  
Mr. Bruce Golding, Leader of the Opposition  
Mr. Donald Miller, Chairman, National Contracts Commission



The Hon. B. St, Michael Hylton, QC, O.J., Solicitor General