



THE INTEGRITY COMMISSION

Special Report of Investigation

Conducted into the Registration of Intelcan Technosystems Inc. with the National Contracts Commission (NCC) and the Implementation of the Contracts for the Design and Construction of Air Traffic Control Towers at the Norman Manley International Airport (NMIA) and the Sangster International Airport (SIA).

**Ministry of Transport and Works
Jamaica Civil Aviation Authority**

TABLE OF CONTENTS

PREFACE.....	3
EXECUTIVE SUMMARY	4
Summary of Key Findings.....	6
TERMS OF REFERENCE	24
JURISDICTION	26
METHODOLOGY	28
DISCUSSION OF FINDINGS	29
Circumstances and Deliberations which led to the Decision to Construct the Air Traffic Control Towers	29
The Visit to Cuba to Examine the Towers which were built by INTEL CAN	35
The Procurement Process for the Selection of INTEL CAN.....	38
Lt. Col. Oscar Derby's Explanation of the JCAA's Engagement of INTEL CAN.....	38
The Other Entities which Submitted Proposals to Construct the Control Towers at the SIA and the NMIA.....	38
Request of Ray Campbell & Associates to prepare project costing.....	49



Discussions held by the JCAA in Relation to the Resubmission of a Proposal by INTELCAN.....	56
The Request for NCC's Endorsement of Canadian Commercial Corporation (CCC) as the Prime Contractor and INTELCAN as the Sub Contractor	61
The Engagement of a Quantity Surveyor for the Evaluation of INTELCAN's Submission.....	72
The Engagement of EQS Jamaica Limited as Project Manager and Client Advisor for the Project	83
Delay in the Signing of the Contract with INTELCAN Due to the Engagement of EQSJ Limited as the Quantity Surveyor for the Project	88
Tender Report Recommending INTELCAN as the Contractor for the Project.....	107
The Absence of Procurement Committee Minutes in Relation to the Construction of the Towers	114
Deliberations Prior to the Signing of the Contract with INTELCAN.....	117
Proposal for 'Gift Giving' at the Signing of the Contract between INTELCAN and the JCAA.....	141
INTELCAN's Registration with the NCC	145
Alleged Involvement of the Canadian High Commission in the Construction of the Control Towers	158
Comprehensive Summary of the Total Time Overrun of the Projects	163
The Completion of the Design and Construction of the Air Traffic Control Towers.....	183
Payment Update in Relation to the Contract between the JCAA and EQS Jamaica Limited for the Provision of Project Management and Client Advisory Services.....	186
CONCLUSIONS	188
RECOMMENDATIONS.....	200
APPENDICES.....	204
APPENDIX I	204
APPENDIX II	206
APPENDIX IV.....	212
APPENDIX V	215



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PREFACE

In 2017, the Government of Jamaica enacted the Integrity Commission Act (ICA), which retroactively became effective on February 22, 2018, as per Gazette dated March 7, 2017. The enactment and subsequent gazette of the ICA, partially repealed the Contractor General Act (1983) and established the Integrity Commission (IC).

Consequently, Sections 1 and 5 of the Integrity Commission Act (ICA), fully subsumed the Office of the Contractor General (OCG), and its functions into the operations of the IC. Section 63(2)(b) of the ICA provides, *inter alia*, as follows:

“The Commission established under this Act may -

...

(b) continue to do any act, thing or investigation which was pending before the appointed day.”



EXECUTIVE SUMMARY

On January 28, 2014, the then Office of the Contractor General (OCG), acting on behalf of the then Contractor General and pursuant to Sections 15 (1) and 16 of the Contractor General Act, initiated an Investigation into the Registration of Intelcan Techno Systems Incorporated (INTELCAN) with the National Contracts Commission (NCC) and the implementation of the contract for the design and construction of the Air Traffic Control Towers at the Norman Manley International Airport (NMIA) and the Sangster International Airport (SIA).

Section 15 (1) of the then OCG Act provides that:

“...a Contractor-General may, if he considers it necessary or desirable, conduct an investigation into any or all of the following matters –

- (a) the registration of contractors;*
- (b) tender procedures relating to contracts awarded by public bodies;*
- (c) the award of any government contract;*
- (d) the implementation of the terms of any government contract;*
- (e) the circumstances of the grant, issue, use, suspension or revocation of any prescribed licence;*
- (f) the practice and procedures relating to the grant, issue, suspension or revocation of prescribed licences”.*

Section 16 of the then Contractor General Act expressly provides that *“An investigation pursuant to section 15 may be undertaken by a Contractor-General on his own initiative or as a result of representations made to him, if in his opinion such an investigation is warranted”.*

The then OCG’s decision to commence a formal Investigation into the subject matter was as a result of, *inter alia*, the following:



1. The contract was being executed in an intermittent manner and was significantly behind schedule, due to numerous delays resulting from matters within the Contractor's purview, and other matters within the purview of the Jamaica Civil Aviation Authority (JCAA).

Further, during the course of the OCG's sustained monitoring, the Office became aware of the fact that as at July 29, 2010, when the contract between INTELCAN and the Jamaica Civil Aviation Authority (JCAA) for the Design and Construction of the subject Control Towers was executed, INTELCAN was not registered with the National Contracts Commission.

The allegations raised several concerns for the OCG, especially in light of the perceived irregularities and infractions of the GoJ Procurement Guidelines and the then Contractor General Act. Section 4 (1) of the Act requires, *inter alia*, that GoJ contracts should be awarded "...impartially and on merit" and that the circumstances of the award should "...not involve impropriety or irregularity".

The OCG's Investigation sought to determine:

- (a) whether there were breaches of the GOJ's Public Sector Procurement Procedures; and
- (b) the circumstances surrounding the award of contract by the JCAA to INTELCAN.

The Findings of the Director of Investigation are premised primarily upon an analysis of the statements and documentary evidence which were provided by the Respondents, who were requisitioned by the OCG, during the course of the Investigation, as well as documents submitted by the JCAA, during the OCG's monitoring of the referenced contract.



Summary of Key Findings

The Decision to Construct a New Air Traffic Control Tower at the Norman Manley International Airport (NMIA) and the Sangster International Airport (SIA)

1. The Jamaica Civil Aviation Authority's (JCAA's) decision to construct the Air Traffic Control Tower at the Sangster International Airport (SIA) in Montego Bay, was as a result of the inability of the Air Traffic Controllers to issue clearances to aircrafts operating at the new gates due to the newly constructed terminal building, which obscured the view of the majority of the new gates from the existing Air Traffic Control Tower.
2. The concerns regarding the obstruction of the view of the Air Traffic Controllers were expressed by Mr. Kurt Solomon, Unit Representative, SIA, to Mr. Stern, Director Air Navigation Services, Civil Aviation Authority, in a letter, which was dated May 17, 2015.
3. The inability of the Air Traffic Controllers to issue clearances to aircrafts operating at the new gates due to the newly constructed terminal building resulted in a protest by the Air Traffic Controllers.
4. The impact of the protest was acutely felt in Canada and the JCAA advised that the protest resulted in INTELCAN Techno Services Inc., a Canadian based company, making a proposal to construct a new tower at the SIA in Montego Bay, in order to address the safety and visibility concerns which were expressed by the Air Traffic Controllers.
5. Mr. Orville Shaw, Special Project Officer, JCAA, advised that the decision to construct a new Air Traffic Control tower at the Norman Manley International Airport (NMIA), was made by the JCAA in order to negotiate a better deal with INTELCAN for the construction of both Air Traffic Control Towers.



Procurement Process Employed by the Jamaica Civil Aviation Authority

6. In a January 31, 2006, meeting of the Board of the JCAA, it was mentioned that INTELCAN and Ashtrom Engineering Consultants expressed an interest in constructing the Towers and the view that the procurement should be put to tender was also expressed by members of the Board.
7. The JCAA advised that INTELCAN arranged, at their expense, a trip to Cuba on January 26, 2006, with Messrs. Courtney Malcolm, P Stern, N. Ellis, O. Shaw, Miss M. Escoe, from the JCAA “to show...firsthand the quality and features of tower they could provide...” as the entity had significant experience in the construction of Control Towers in the Caribbean.
8. The following entities submitted proposals to the JCAA for the construction of the Air Traffic Control Towers at the Norman Manley International Airport (NMIA) and the Sangster’s International Airport (SIA):
 - a. INTELCAN (May 2006);
 - b. Rhoden & Young Enterprises Inc. (May 8, 2006); and
 - c. OMNI Construction Group Inc. (May 2, 2006).
9. The JCAA received a Letter of Commitment dated May 8, 2006, from Rhoden & Young Enterprises Inc., regarding the construction of a New Control Tower in Montego Bay. The letter made reference to “*Rhoden & Young’s Proposal to Engineer, Procure, and Construct a new Airport Control Tower in Montego Bay, JA (GOVOFJAM042606-TOW dated April 26, 2006)*”.
10. The Integrity Commission is in possession of a proposal dated May 2, 2006, which was submitted to the JCAA by OMNI Construction Group Inc.



11. The cost proposed by Omni Construction Group Inc. in its May 2, 2006, proposal to the JCAA, for the construction of the control towers was in the amount of US\$16,500,000.00, which was equivalent to CAD\$18,179,370.00, (as at May 2006).
12. The JCAA was unable to locate the proposal that was submitted to its Office by Rhoden & Young Enterprises Inc.
13. The cost proposed by Rhoden & Young Enterprises Inc. for the construction of the Control Towers was in the amount of US\$16,547,418.00. This figure was equivalent to CAD\$18,231,614.20, (as at May 2006).
14. The cost proposed by INTEL CAN in its May 2006 proposal to the JCAA, for the construction of the Control Towers, was in the amount of CAD\$25,000,000.00.
15. Omni Construction Group Inc. submitted to the JCAA, the lowest proposed cost (CAD\$18,179,370.00) for the construction of the Control Towers, whilst INTEL CAN proposed the highest cost (CAD\$25,000,000.00).
16. The proposals submitted by Rhoden & Young Enterprises Inc. and OMNI Construction Group Inc., were not considered by the JCAA, as they were deemed unsuitable.
17. Mr. Nari Williams-Singh, Director General, JCAA, advised the OCG that the JCAA found no “...*rationale/justification why the other proposals* [Rhoden & Young Enterprises Inc. and Omni Construction Group Inc.] *were deemed unsuitable.*”
18. The Director of Investigation has seen no evidence to indicate that the proposals submitted by Rhoden & Young Enterprises Inc. and OMNI Construction Group Inc. were evaluated by the JCAA.



19. In the Meetings of the Board of the JCAA held on April 25, 2007, May 29, 2007 and July 29, 2010, it was expressed that the proposed cost for the construction of the Control Towers submitted by INTELCAN, was above market rate and the Board suggested that the cost be reduced.
20. The Minutes of the Meeting of the Board of the JCAA held on September 27, 2006, stated that INTELCAN was operating under the pretext that it was already awarded the contract to construct the towers, and that the entity held meetings with the Ministry of Housing, Transport, Water and Works, with the view of providing a design for the Towers.
21. The members of the Board of the JCAA expressed several concerns that the GoJ Public Procurement Procedures were not being followed and instructed the JCAA to ensure that proper procedures be followed when selecting the contractor to design and construct the towers. In particular, the Permanent Secretary, Dr. Alwin Hales advised the Board that if the construction of the Control Towers was urgent, the “*Sole Sourcing*” Procurement methodology should be utilised and a justification for its use be provided.
22. At the Meeting of the Board of Directors of the JCAA, held on July 25, 2007, it was announced that the JCAA sought and obtained approval from the NCC to initiate contractual arrangements directly with INTELCAN, which assumed the role of the prime contractor. INTELCAN agreed that the cost of the undertaking would remain at CAD\$19.5 Million, as indicated in their revised quotation.
23. The Minutes of the Meeting of the JCAA held on May 29, 2007 revealed that INTELCAN had resubmitted a quotation of CAD \$19.5 Million. However, Capt. Andrew Bogle, Board Member of the JCAA, expressed the view that the company should



be approached to reduce the cost to US\$12-14 Million as recommended by aviation experts.

24. In the Meeting of the Board of Directors of the JCAA, held on July 25, 2007, the Canadian Commercial Corporation (CCC) advised that it would take approximately 18 months for the Corporation to complete its due diligence into the project which could be delayed and result in additional costs.
25. The JCAA completed a NCC Transmittal Form which detailed the specifications of the engagement of INTELCAN, including the contract value which was CAD\$19,999,974.00, and the duration period (77 weeks) for the execution of the contract. The Transmittal Form was signed by Mr. Patrick Stern on May 4, 2010.
26. The NCC received the aforementioned Transmittal Form in relation to the engagement of INTELCAN on May 10, 2010.
27. On May 12, 2010, the National Contracts Commission (NCC) endorsed the recommendation to award the contract valuing CAD\$19,999,974.00, to INTELCAN for the design, construction and equipping of two (2) Air Traffic Control Towers, each located at NMIA and SIA, respectively.
28. Mr. Bernard Goyette of INTELCAN, by way of email dated May 13, 2010, advised Mrs. Marva Gordon-Simmonds, General Counsel, JCAA, that plans were being made for the presentation of a gift to administrators/key personnel of the JCAA, including Board Members, at the signing of the contract between INTELCAN and the JCAA.

However, Mrs. Marva Gordon- Simmonds objected as she deemed it inappropriate.



29. Notwithstanding the request of the OCG for all Minutes of the Meeting of the JCAA's Procurement Committee, for the period January 2005 to February 2014, the JCAA has only provided the OCG with the Minutes for the referenced meeting held on February 12, 2014.

The Minutes of the Meeting of the JCAA's Procurement Committee held on February 12, 2014, which was provided by the Authority, made no mention of the construction of the Air Traffic Control Towers at the SIA and NMIA.

30. The contract between the JCAA and INTELSCAN for the proposed towers was entered into on July 29, 2010.

31. The procurement of INTELSCAN's services was neither reviewed nor approved by a Procurement Committee as prescribed by Section 1020 of the November 2008 GPPH.

The Engagement of Ray Campbell Limited for the Preparation of "*project costing*" for the Construction of the Control Towers

32. The Minutes of the Board meeting of the JCAA held on December 13, 2006 indicated that the JCAA engaged Ray Campbell Limited to prepare a "*project costing*" for the construction of the new Air Traffic Control Towers at the SIA and NMIA.

33. The JCAA advised that Ray Campbell Limited operated under the pretext that the Entity was awarded the contract to also design the new Air Traffic Control Towers at the SIA and NMIA, and as such, prepared a detailed architectural design of the Air Traffic Control Towers and submitted an invoice for J\$1.5 million.

34. The JCAA advised the OCG that Ray Campbell Limited submitted Invoice No. 1, dated November 22, 2006, to the Authority, in the amount of \$1,562,498.00 for professional



services rendered in connection with the Air Traffic Control Towers project at the NMIA and SIA.

35. The JCAA stated that the invoice submitted by Ray Campbell Limited submitted was cancelled on the basis that they operated outside of the scope of works which was given to them by the JCAA.
36. The JCAA Minutes of the Board of Directors held on January 31, 2007 advised that Ray Campbell Limited was paid a sum of \$632,000.00 *“for their efforts”* with respect to the design of the Air Traffic Control Towers.
37. The Director of Investigation has not seen any documentation regarding the procurement process utilised to request a proposal from the companies Ray Campbell Limited or Raytheon.

The Alleged Role of the Canadian High Commission

38. The Minutes of the Meeting of the JCAA held on January 31, 2007, noted that the Canadian High Commission had intervened on behalf of INTELCAN, on the basis that it was assumed by INTELCAN that they would have been awarded the contract to design and construct the Air Traffic Control Towers.
39. INTELCAN advised the JCAA, by way of a letter dated March 1, 2007, that the Canadian Commercial Corporation (CCC) would take the role of the prime Contractor with respect to the construction of the referenced towers.
40. In a letter dated March 1, 2007, INTELCAN advised the JCAA that support from the Canadian International Development Agency (CIDA) *“is available to this project*



providing that the contract is awarded to INTELCAN on a negotiated basis. CIDA would withdraw its support if the project was the subject of a public or a restricted tender process”.

41. The JCAA sought the approval of the National Contracts Commission (NCC), by way of letter dated April 19, 2007, to utilise the sole source procurement methodology in order to negotiate a contract with the Canadian Commercial Corporation (CCC) for the erection, supply and commissioning of two (2) Air Traffic Control Towers and relevant equipment for the Sangster International Airport and the Norman Manley International Airport at a cost not exceeding CDN\$20,000,000.00.
42. The justification for the utilisation of the sole source procurement methodology which was proffered by the JCAA to the NCC, that the “...*Canadian Government, through the Canadian Commercial Corporation (CCC) has made an offer of assistance with the project and has recommended that INTELCAN, a Canadian Company with expertise in the field, be sub-contracted to complete the project as a “turnkey” project.*”
43. In a letter dated April 27, 2007, the NCC granted its approval for the JCAA to utilise the sole source procurement methodology in the engagement of INTELCAN.
44. Dr. Alwin Hales, in the December 20, 2007 Meeting of JCAA’s Board of Directors, indicated that the decision to utilise the Sole Source procurement methodology for the project was influenced by the intervention of the Canadian High Commission on INTELCAN’s behalf.
45. The JCAA advised the Integrity Commission by way of letter dated May 25, 2018, that “*The Canadian Government did not provide support to the JCAA neither directly nor through the Canadian High Commissioner in Kingston and/or the Canadian International Development Agency (CIDA), and/or the Canadian Commercial*



Corporation (CCC), in relation to the execution of the contract to design and construct the Air Traffic Control Towers at the Norman Manley International Airport (NMIA) and the Sangster International Airport (SIA).”

The Engagement of a Quantity Surveyor for the Evaluation of Intelcan’s Submission

46. It was indicated by Capt. Bogle in the Minutes of the Meeting of the JCAA held on July 25, 2007, that the services of a local engineering consultant who is technically qualified and has the ability to thoroughly examine the revised quotation submitted by INTELCAN, should be engaged.
47. In the Minutes of the Meeting of the Board of the JCAA dated December 20, 2007, it was indicated that the Procurement Committee would evaluate the contract and that the services of a local, qualified Quantity Surveyor would be required to advise the JCAA on the cost of the project. It was also suggested that Maurice Stoppi, Berkley and Spence or EQS Jamaica Limited be considered for this undertaking.
48. In the Minutes of the Meeting of the JCAA’s Board of Directors dated December 20 2007, Capt. Bogle stated his dissatisfaction with the selection of INTELCAN, as the “*sole tender*” of the project. In the said meeting, Mr. Royland Williams, JCAA Board Member, supported the Chairman’s view and suggested that the procurement procedures be applied, as he favoured competitive tendering.
49. The concern was expressed in the December 20, 2007 Meeting of JCAA’s Board of Directors that if the JCAA failed to award INTELCAN the contract for the construction of the Control Towers, there could be the possibility of INTELCAN challenging the JCAA with respect to the infringement of their Intellectual Property Rights, on the basis that they designed the towers.



50. Capt. Bogle, in the Minutes of the Meeting of the JCAA Board held on January 30, 2008, stated that INTELCAN was reluctant to submit details of the proposed contract to the Board. It was also mentioned that several attempts were made to obtain architectural drawings and costing amongst other details relating to the project. It was further stated that INTELCAN should be advised that the Board could not negotiate a contract until it received the details requested.
51. The Minutes of the Meeting of the JCAA's Board held on January 31, 2007, indicated that a Request for Proposal was being created in order to engage the services of a Quantity Surveyor to evaluate INTELCAN's proposal.
52. The Minutes of the Meeting of the JCAA's Board held on February 28, 2008, stated that three (3) local Quantity Surveyors, namely, Maurice Stoppi, Berkley & Spence and EQS Jamaica Limited, were invited to participate.
53. The Minutes of the Meeting of the JCAA Board of Directors dated April 24, 2008, indicated that only EQS Jamaica Limited responded to the request to provide Quantity Surveying Services for the project.
54. The Minutes of the Meeting of the JCAA Board held on May 29, 2008, noted that EQS Jamaica Limited, quoted \$1.2 million dollars excluding GCT, for the provision of an estimate and delivery of the final report for the construction of the towers at NMIA and SIA. It was further stated that they would have been preparing a sketch of the towers and not a design. The submission made by EQS Jamaica Limited was approved by the Board in the said meeting.
55. The proposed cost submitted by EQS Jamaica Limited for the pricing of the construction of the Air Traffic Control Towers at SIA and NMIA was CAD \$15 million, CAD \$1 Million lower than the cost proposed by INTELCAN of CAD \$16 million.



56. Mr. Robert Evans, Deputy Chairman of the JCAA Board, in the JCAA's Board meeting of September 25, 2008, informed the Board that EQS Jamaica Limited had submitted a document which outlined the methodology used to determine the cost of the construction of the Control Towers. *"He explained that [it was] difficult to compare the cost submitted by the EQS Jamaica Limited with those previously submitted by INTELCAN as there are marked differences with respect to the dimension used for the Tower cab and other structures and services provided by INTELCAN."*

The Engagement of EQS Jamaica Limited for the Provision of Client Advisory Services

57. Subsequent to the engagement of EQS Jamaica Limited as Quantity Surveyors, the JCAA sought the assistance of the Permanent Secretary in the Ministry of Transportation and Works to obtain the permission of the NCC to engage the entity as the *"Client Advisor"* for the referenced Project, by way of the *'Sole Source or Direct Contracting'* Procurement Methodology. The JCAA's request was supported by the following:

- a. Time constraints;
- b. EQS Jamaica Limited's familiarity with the Project; and
- c. EQS Jamaica Limited's engagement was classified as a follow-on procurement.

58. The cost for the provision of the client advisory services by EQS Jamaica Limited, was in the amount of Seven Hundred and Sixty Thousand Canadian Dollars (CAD\$760,000.00) and was endorsed by the NCC on February 11, 2009. The endorsement of EQS Jamaica Limited, for the provision of client advisory services with respect to the negotiations with INTELCAN was contained in a letter dated February 13, 2009.



59. On June 26, 2009, the NCC endorsed the request from the JCAA to add the Project Management Services to the Client Advisory Services, previously approved by the NCC to EQS Jamaica Limited, with a revised amount of CAD \$800,000.00.
60. Mr. Patrick Stern, Acting Deputy Director General of the JCAA, at the JCAA Board Meeting held on October 29, 2009, advised the Authority that the Cabinet in its decision dated September 1, 2009, granted approval for the engagement of EQS Jamaica Limited for the provision of Project Management and Client Advisory services in connection with the Design, Construction, Equipping and Commissioning of Air Traffic Control Towers at NMIA and SIA.
61. On December 17, 2009, the JCAA signed a contract with EQS Jamaica Limited for the provision of Project Management and Client Advisory Services in connection with the Design, Construction, Equipping and Commissioning of Air Traffic Control Towers at the NMIA and SIA.
62. The Minutes of the Meeting of the Board of the JCAA held on January 13, 2010, indicated that there was dissatisfaction amongst some Board members as to the process which led to the signing of the contract with EQS Jamaica Limited. In particular, Capt. Andrew Bogle expressed his dissatisfaction that the project was approved without the scrutiny of the Board members and without a Business Case. He further questioned the manner in which the funds expended would be recovered.
63. In a meeting held on March 18, 2010, with JCAA representatives, EQS Jamaica Limited and INTEL CAN, EQS Jamaica Limited, in their capacity as Project Managers and Client Advisors, indicated that they negotiated the best price with INTEL CAN.



64. Based upon the Minutes of the Meeting of the Finance Committee of the Board of the JCAA dated August 19, 2010, an Agreement was signed between EQS Jamaica Limited (Project Manager) and INTELCAN (contractor).

Intelcan's Registration with the NCC

65. INTELCAN was not registered with the NCC prior to the signing of the contract on July 29, 2010, for the construction of the Air Traffic Control Towers at the NMIA and the SIA.
66. Based on the scope and value of the contract for the construction of the Control Towers, INTELCAN was required to be registered with the NCC as a Grade 1 Contractor in the category of Civil Engineering and Building Construction prior to the signing of the contract.
67. The award and subsequent signing of the contract with INTELCAN, constitutes a breach of Sub-Section No.:S2080 of the then applicable November 2008 Government of Jamaica Handbook of Public Sector Procurement Procedures (GPPH).

Sub-Section No.:S2080 states, *inter alia*, as follows:

“... Registration of foreign bidders should not be a requirement for bidding from the onset under Open Tendering procedures. However, the successful bidder will have to be registered before the award of contract.”

68. Mrs. Marva Gordon-Simmonds, General Counsel, JCAA, advised representatives of the JCAA, INTELCAN and EQS Jamaica Limited, that prior to the execution of the contract for the construction of the referenced Control Towers, the Contractor must be in



possession of a valid Tax Compliance Certificate (TCC) and be registered with the National Contracts Commission (NCC).

69. On September 1, 2010, the NCC acknowledged receipt of an application from INTELCAN for NCC registration in the category of Grades One (1), Civil Engineering and Building Construction. **The application was submitted approximately two (2) months after the contract was signed by the JCAA and INTELCAN.**
70. There were significant delays in the NCC's Registration of INTELCAN as a Grade 1 Contractor as a result of significant deficiencies in the application submitted by INTELCAN.
71. Mr. Patrick Stern, Acting Director General, JCAA, by way of an email dated July 21, 2010 stated that he was informed by the Chairman of the Board of the JCAA, that the Minister of Transport and Works, indicated that regardless of the perceived difficulties, he wished to sign the contract with INTELCAN subsequent to his contribution in Parliament, in the Sectoral Debate on July 27, 2010.
72. The Minister of Transport and Works, at the time of the signing of the contract between the JCAA and INTELCAN, was the Honourable Lester Michael Henry, C.D., M.P.
73. Mr. Allan Cochran, CEO, EQS Jamaica Limited advised Mr. Patrick Stern, then Acting Director General, JCAA, *et al*, that INTELCAN should have no problem receiving NCC registration in the category of a Grade 1 Civil Engineering and Building Construction. Mr. Cochran further advised that *"we can insert a proviso that the registration shall be obtained within six weeks."*



74. INTELCAN was first registered with the NCC on November 18, 2013, as a Grade One (1) contractor in the categories of Civil Engineering and Building Construction. This was approximately three (3) years after the contract was entered into between the JCAA and INTELCAN on July 29, 2010.
75. The Project for the design and construction of the Air Traffic Control Towers at the NMIA was substantially completed on June 30, 2014, whilst the Project for the design and construction of the Air Traffic Control Towers at SIA was substantially completed on September 5, 2014.
76. INTELCAN received Grade one (1) registration with the NCC on November 18, 2013, in the category of Civil Engineering and Building Construction contractor.

Variations to the Contracts and Delays in the Implementation of the Contract by INTELCAN

77. The delays in relation to the implementation of the contract by INTELCAN, were as a result of the following:
- a. The site definition and relocation, in addition to the demolition of the ‘Ground Handlers Building’;
 - b. Delays in the design process were attributed to an inability to finalize the building site boundaries. The site at the SIA, which was designated for the tower, was relocated due to the fact that the original site was found to be comprised of 85% swamp land;
 - c. Though the designated location for the construction of the tower was relocated to the west, the conditions of the land continued to impact the construction by INTELCAN. To this end, the JCAA then arranged to have a section of the swamp



reclaimed by 15% engineered fill, which was not contemplated by INTELCAN in the original contract sum;

- d. The decision was made by INTELCAN to replace Stresscon with Tankweld as the primary contractor due to the complexity of the construction procedures and the competency of the contractors. *“This was done at Intelcan’s considerable cost and time for the benefit of the project...”* and ultimately the JCAA;
- e. Delays as a result of error in the piling design as completed by both the local and foreign designers and a failure to review and correct the designs in a timely manner;
- f. Construction at both of the sites was impacted by weather delays, typically due to high winds and/or heavy rains from tropical storms Ernesto, Isaac and Hurricane Sandy resulting in suspension of activities, particularly related to shaft and cab construction. However, under the contract, the Contractor is entirely responsible for any weather related delays; and
- g. The JCAA indicated that INTELCAN claimed that the JCAA’s TCC renewal caused delays of the release of critical materials which were detained by the Jamaica Customs Agency.

78. As a result of the delays which were experienced, the cost of the project had increased by 4.99%, bringing the total cost of the project to CAD\$20,996,673.73

79. There were a total of four (4) variations to the project for the design and construction of the Air Traffic Control Towers at the NMIA and SIA, three (3) of which were cost variations. The respective amounts for each variation are as follows:



Contract and Variation Details	Cost (CAD\$)	
Contracted Project Cost		\$19,999,974.00
Variation No.001	No Cost	
Variation No.002 NMIA	\$923,899.00	
Variation No.003SIA	\$10,091.94	
Variation No.003NMIA	\$6,482.79	
Variation No.004NMIA	\$56,226.00	
Variation Total		\$996,699.73
Total Project Cost		\$20,996,673.73

Variation #2 was endorsed by the NCC by way of a letter dated December 15, 2011, to Mrs. Audrey Sewell, Acting PS Ministry of Transport and Works.

Variation#3S and Variation #3N were approved internally by Mr. Patrick Stern the then Director General of the JCAA on April 7, 2011. Mr. Stern also approved Variation #4 on June 13, 2011.

80. There was a variation in the amount of CAD\$353,515.33 to the contract which was entered into between the JCAA and EQS Jamaica Limited for the provision of Project Management and Client Advisory Services for the Project in connection with the Design, Construction and Equipping of Air Traffic Control Towers at the NMIA and SIA. The original contract sum was CAD\$800,000.00, as such the variation in the amount of CAD\$353,515.33, represents a 44% increase in the contract amount.

The referenced variation received the approval of Cabinet by way of *Decision No. 23/15 dated June 15, 2015*.



Completion of the Design and Construction of the Air Traffic Control Towers

81. The JCAA informed the OCG by way of letter dated May 10, 2017, that all payments to EQS Jamaica Limited have been made for the Project Management and Client Advisory Services for the Project in connection with the Design, Construction and Equipping of Air Traffic Control Towers at the NMIA, Kingston and the SIA, Montego Bay.
82. The Taking Over Certificate for the NMIA Control Tower was issued effective June 30, 2014, and the contractual one (1) year defects notification period ended on June 29, 2015, and all outstanding defects were completed in October 2015.
83. The Norman Manley International Airport Control Tower was commissioned on October 20, 2016 at 2359 UTC.
84. The Taking Over Certificate for the SIA Tower was issued effective September 5, 2014, and the contractual one (1) year defects notification period was due to end on September 4, 2015, and there were outstanding electrical issues which were remedied during the defect liability period. As at March 3, 2015, there were twenty-one (21) outstanding tasks at the SIA.
85. The Control Tower located at the Sangster International Airport was commissioned on February 19, 2018 at 0000 UTC.



TERMS OF REFERENCE

The primary objective of commencing the Investigation into the circumstances surrounding the award and implementation of the contract for the design and construction of the Air Traffic Control Towers at the NMIA and SIA and the registration of INTEL CAN with the NCC is to determine, *inter alia*, whether there was compliance, on the part of the JCAA, with the provisions of the following:

- a. The Contractor General Act, 1983 and, in particular, to determine whether the award of the contract was impartial, based upon merit and was premised upon circumstances which did not involve impropriety and/or irregularity;
- b. The applicable Government of Jamaica (GoJ) Handbook of Public Sector Procurement Procedures and the Public Sector Procurement Regulations;
- c. The Financial Administration and Audit Act; and
- d. The Public Bodies Management and Accountability Act.

Specific Objectives

1. The circumstances leading to the award of the contract to INTEL CAN for the design and construction of Air Traffic Control Towers at the two (2) named airports.
2. Whether the prescribed GoJ Procurement Procedures and the attendant Public Sector Procurement Regulations were complied with in the award of the referenced contract.
3. To determine the overall cost of the contract and whether the GoJ received value for money in the award of the contract to INTEL CAN.
4. To determine whether INTEL CAN adhered to the terms and conditions of the contract.



5. To determine whether there were delays in the implementation of the contract and the reason(s) for same.
6. To ascertain the circumstances which lead to the registration of INTELKAN with the National Contracts Commission (NCC), as a Grade 3 and Grade 2 contractor during the initial stages of the implementation of the contract.



JURISDICTION

The OCG relied upon the provisions of Section 2 of the Contractor General Act, which provides, *inter alia*, as follows:

“government contract” includes any licence, permit or other concession or authority issued by a public body or agreement entered into by a public body for the carrying out of building or other works or for the supply of any goods or services;

...

“public body” means-

- a. a Ministry, department or agency of government;*
- b. a statutory body or authority;*
- c. any company registered under the Companies Act, being a company in which the Government or an agency of Government, whether by the holding of shares or by other financial input, is in a position to influence the policy of the company.”*

Consequently, the OCG’s remit to monitor and investigate the award of Government contracts by the then Minister of Transport and Works (MTW) and the JCAA are provided under Sections 4, 15 and 16 of the then Contractor General Act, which states, *inter alia*, as follows:

Section 4(1) of the Act provides that:

“Subject to the provisions of this Act, it shall be the function of a Contractor-General, on behalf of Parliament -

- a. to monitor the award and the implementation of government contracts with a view to ensuring that -*
 - (i) such contracts are awarded impartially and on merit;*
 - (ii) the circumstances in which each contract is awarded or, as the case may be, terminated, do not involve impropriety or irregularity;*



- (iii) *without prejudice to the functions of any public body in relation to any contract, the implementation of each such contract conforms to the terms thereof...*

Section 15 (1) provides that:

“Subject to subsection (2), a Contractor-General may, if he considers it necessary or desirable, conduct an investigation into any or all of the following matters-

- (a) the registration of contractors;*
- (b) tender procedures relating to contracts awarded by public bodies;*
- (c) **the award of any government contract;***
- (d) the implementation of the terms of any government contract;*
- (e) the circumstances of the grant, issue, use, suspension or revocation of any prescribed licence;*
- (f) the practice and procedures relating to the grant, issue, suspension or revocation of prescribed licences.”¹ (OCG Emphasis)*

Section 16 of the Act expressly provides that:

“An investigation pursuant to section 15 may be undertaken by a Contractor-General on his own initiative or as a result of representations made to him, if in his opinion such investigation is warranted.”

¹ Section 15 (1) of the CGA.



METHODOLOGY

The OCG, during the conduct of its investigation in the referenced matter, requisitioned the following individuals:

1. Mr. Leroy Lindsay, Former Director General, JCAA;
2. Mr. Nari Williams-Singh, Director General, JCAA; and
3. Mr. Walter Bernyck, Councillor, Development Section, Canadian High Commission, Jamaica.

As it regards to the requisition which was addressed to Mr. Leroy Lindsay, former Director General, JCAA, the Director of Investigation notes that Mr. Lindsay had resigned from office prior to the deadline for the submission of the response. Consequently, the response was completed and submitted to the Office by Mr. Nari Williams-Singh, then Acting Director General, JCAA.

It is also instructive to note that prior to the launch of the Investigation, the OCG through its monitoring activities, requested several documents regarding the referenced project from the Jamaica Civil Aviation Authority. In this regard, the findings of this Investigation also relied on documentation received by the OCG through its monitoring of this project.

With regard to the Contractor's Registration with the NCC, an internal enquiry was conducted by the NCC Secretariat into the Registration of INTELCAN.

The Findings of the Director of Investigation are based upon information ascertained from the internal enquiry, and an analysis of the statements and documents provided to it by the respondents who were requisitioned.



DISCUSSION OF FINDINGS

Circumstances and Deliberations which led to the Decision to Construct the Air Traffic Control Towers

The Jamaica Civil Aviation Authority's (JCAA's) decision to construct the Air Traffic Control Towers arose as a result of concerns raised by Air Traffic Controllers at the Sangster International Airport, Montego Bay in 2005. By way of a letter which was dated May 17, 2005, Mr. Kurt Solomon, Unit Representative, Sangster International Airport (SIA) wrote to the Director Air Navigation Services of the JCAA, indicating the following:

"The controllers at the SIA have a few concerns about the new terminal being built by MBJ. I am, using this medium to voice our concerns and to clearly state our position on the matter.

*We have heard that MBJ plans to incorporate the use of the new terminal gates July 1, 2005. The controllers here stand united in saying that we will not give ATC instructions to any aircraft in or proceeding to that area. There are several reasons for our stance. **The first and foremost is MBJ has built a terminal building that is approximately the height of the control tower that obscures most of the new gates. The percentage of ramp operations that will be seen by the control tower is reduced to 23.3% from 57.4% approximately. That is simply, a safety issue.** We also reject the idea of the use of video cameras as we feel that these tools are insufficient for us to ensure the safety of aircraft taxiing. (DI Emphasis)*

*The logistics of the terminal, without the consultation of the ATC in our opinion will also pose a problem for the future of the airport. **We hence, have deemed the lack of dialogue with us with regard to airport development as a step in the wrong direction. Since we are responsible for the issue of clearances we cannot issue safe clearances to aircraft operating at these new gates; new terminal building***



without us having the proper tools to do this job. It is imperative that a new control tower be built before these gates are even commissioned so that we can do the job we are paid to do. (DI Emphasis)

We are also disappointed and saddened with the performance of the CAA, as the regulatory body; who apparently did not guide MBJ in building this new terminal or developing the airport. We ask that you research the issue and encourage dialogue between CAA, controllers and MBJ with regards to new operations on the airport.”²

The issue was also reported in a Gleaner article published on Thursday, December 29, 2005. The article was entitled “*Visibility poor at Sangster Airport's new concourse*” and reported as follows:

“LESS THAN two weeks after the official opening of the eastern concourse at the Sangster International Airport in Montego Bay, St. James, air traffic controllers have expressed concern about the diminished visibility of aircraft operating in that section of the airport.

"The core responsibility of air traffic controllers is to prevent collision between aircraft in the air, and on the ground with other aircraft and vehicles on the manoeuvring area," said Howard Greaves, president of the Air Traffic Controllers Association.

"What has happened is that when an aircraft is parked on the new wing, a controller cannot see that aircraft in its entirety nor can it see any vehicle or personnel that might be operating in close proximity."

According to Mr. Greaves, this creates a serious problem, as the controllers cannot give "positive clearance" to pilots requesting permission to start their engines.

² Letter which was dated May 17, 2005, from Mr. Kurt Solomon, Unit Representative, Sangster International Airport (SIA) to the Director of the Jamaica Civil Aviation Authority.



Noting the air traffic controllers' concerns, Curtis Grad, vice-president of operations at MBJ Airport Ltd., said these problems are not unusual in large airports.

"We have had ongoing dialogue with the entire tower management in Montego Bay and Kingston," he said. "We have been addressing issues as they come up, I would not characterise it as problematic. Situations like these are not unusual for large airports and are often overcome with procedures and technology."

MEASURE INADEQUATE

Mr. Greaves acknowledged that MBJ Airports Limited had formulated a safety procedure to address their initial concerns, but insists that the measures are inadequate.

He said, "What we do (now) is provide taxi clearance to a specific point and then from there a vehicle will escort the aircraft to its parking gate. Similarly, when an aircraft needs to taxi off from that location it is escorted from that point to where the air traffic controller can see it clearly before it can get positive clearance. However, it is not happening with the regularity that it ought to as sometimes the vehicle is not available."

*Mr. Greaves further contended that **the construction of a new airport tower would be the only way to avert possible disasters. But this suggestion was dismissed by Mr. Grad who noted that the construction of a new tower "is not a part of our original work and would have to be a Government of Jamaica decision"**.(DI Emphasis)*



The new eastern concourse features 12 boarding gates, 13 commercial outlets and a spacious waiting area constructed at a cost of J\$2.88 billion.

Responding last night, Transport and Works Minister Robert Pickersgill said that the Ministry and the Civil Aviation Authority (CAA) are aware of the situation at the airport. He said the CAA had been in dialogue with the air traffic controllers.

According to Mr. Pickersgill, the CAA has issued interim operating procedures to the controllers to address the immediate operational concerns. These procedures involve all parties - the pilots, ground handlers, concessionaires and the controllers to ensure safe operations.

The Minister said the requirement for a new control tower at the airport is being addressed and the CAA has made budgetary provision for that project.”³

³Gleaner article published on Thursday December 29, 2005 entitled “*Visibility poor at Sangster Airport's new concourse*” <http://jamaica-gleaner.com/gleaner/20051229/lead/lead5.html>



It is the observation of the Director of Investigation that it took approximately five (5) years for the procurement process for the design and construction of the Air Traffic Control Towers to be completed. In this regard, it was found prudent to examine the deliberations which led to the engagement of INTELCAN to construct the Air Traffic Control Towers. Based on documents reviewed by the Director of Investigation, discussions relating to the construction of the towers were initiated in December 2005. The contract for the construction of the towers was signed on July 29, 2010.

Subsequent to the foregoing letter from the Air Traffic Controller's Representative, the following was discussed by the Board of the Jamaica Civil Aviation Authority during a meeting held on Wednesday, January 31, 2006:

“Proposal to construct “Stand Alone” Tower –SIA

Col. Lewis explained the necessity for a “Stand Alone” tower to be erected at the Sangster International Airport in the light of the problems being experienced by the Air Traffic Controllers with the issuance of clearance to aircraft entering or leaving the four newly constructed gates at the facility. Minister Pickersgill had given his undertaking to have a new control tower erected to alleviate current and anticipated problems being experienced by the controllers.

To this end, a team comprising the Director of Air Navigation Services, representatives from JATCA, the Tower Chief for the SIA and technical personnel from Aerotel, were sent to visit the Air Traffic Control Tower constructed by INTELCAN in Havana Cuba. This visit allowed the team to ascertain whether a similar tower would be suitable for the SIA. The report on this visit will be submitted to the JCAA.

The meeting noted that both INTELCAN and Ashtrom Engineering Consultants were interested in undertaking the construction of the new control tower. Members



of the Board expressed the view that this project should be put to tender.⁴ (DI Emphasis)

Further, Mr. Orville Shaw, Special Project Officer, JCAA, advised the OCG of the following:

“When I first returned to Sangster Tower to act as Unit Chief in 1997 I discovered to my surprise that an eastern wing had been added to the terminal building since I last worked there as an air traffic controller.

The eastern wing was constructed such that aircraft were now parked on the northern and southern section of the building, which is not the case with the main terminal building. While the controllers were able to see the ramp and portions of the aircraft parked on the northern side of the wing, the ramp and the aircraft parked on the southern side were completely out of sight from the tower.

Controllers were issuing advice to aircraft operating in that area to do so ‘at their discretion’ in order to absolve themselves and the JCAA of any liability as a result of any incident that happen when the aircraft operated in that area.

I found this situation unacceptable.

While I was at Sangster as the appointed Unit Chief between 2002 and 2005, that wing was demolished and a new one built further south compounding the problem of lack of visibility for the tower.

*In order to find a solution to the problem **I arranged with the airport operators to place cameras in the area so that controllers could have a visual representation of what was taking place on the ramp and taxiway in that area and hence issue positive control instructions.***

⁴ Minutes of the Board of the Jamaica Civil Aviation Authority held on Wednesday January 31, 2006.



The controllers vehemently objected to my instructions and resorted to industrial action in the busy December traffic period to press home their point.

The industrial action resulted in severe disruption of the air traffic services and the impact was felt acutely in Canada.

*When the reason for the industrial action was revealed, Intelcan approached the JCAA and offered to build a tower at Sangster that would provide coverage for the area as well as address many of the short comings of the current tower. Later the scope of work was expanded to include a new tower for Manley Airport [sic] as well and due to the fact that now we were engaging Intelcan to build not one but two new towers, we thought this would enable us to negotiate a better deal with Intelcan.*⁵ (DI Emphasis)

The Visit to Cuba to Examine the Towers which were built by INTELSCAN

Mr. Orville Shaw, Special Project Officer, JCAA, advised the OCG by way of his response of the reasons and arrangements concerning the visit to Cuba for the inspection of control towers which had been constructed by INTELSCAN⁶:

“ ...

Intelcan ... arranged at their expense, a trip to Cuba to show us firsthand the quality and features of tower they could provide for us. (DI Emphasis)

The trip was for one weekend during which time we were shown the tower in Havana and the Havana Air Traffic Centre”.⁷

The following represents extracts of the Report on the visit to Cuba which was prepared by Mr. Courtney Malcolm, Jamaica Air Traffic Controllers Association (JATCA) Representative:

⁵ Mr. Orville Shaw's response was contained in Mr. Nari Williams-Singh's response dated March 31, 2015.

⁶ Mr. Orville Shaw's response was contained in Mr. Nari Williams-Singh's response dated March 31, 2015.

⁷ JCAA's March 31, 2015 response to the OCG's February 23, 2015, Requisition. Response 13b (Appendix 13b)



“Our trip to Havana, Cuba on the 26th January 2006 was both educational and inspirational. The Jamaican delegates were Mr. P. Stern, N. Ellis, O. Shaw, Miss M. Escoe and myself.

On arrival we were met by. Mr. Bernard Goyette, Director of Business Development INTELCAN and Mr. Raul, a representative from the Cuban Civil Aviation Department...

We had a meeting with representatives from INTELCAN and Corporation de la Aviacion Cubana, S.A. (CACSA), which included Lic. Alfredo Nunez Sarmiento, Director de Negocios/Business Manager. Mrs Gretel Garcia Regional Sales Manager of INTELCAN. The Director General of Civil Aviation of Cuba, among other CACSA and INTELCAN representatives.

During the meeting we were told of the difficulties experienced by the Cubans in constructing the Tower and renovating the Area Control Centre at the Hose Marti International Airport. Interestingly, the Cubans did all the designing and constructing of the Tower Base. The equipment and the Tower Cab in its entirety were supplied and installed by INTELCAN.

The total cost for complete project; building and furnishing the Tower was not readily available as it was the combined efforts of two parties (CACSA and INTELCAN) brought together to produce the final result.

Following the meeting, we toured the ATC facilities...

The Cubans work twelve (12) hour shifts, 7:30 am -7:30 p.m. and 7:30 pm- 7:30 am with (3) days off after each round. Interestingly their traffic density is far less than that at either of our International Airports



Minor complains [sic] were received about a few Controllers. Overall, in my opinion, the relationship between MUHA ACC and KATCC is great.

The official segment of our visit was concluded with a debriefing Friday evening. Mr. Goyette promised to send a team of experts here, as soon as possible, to view potential sites on which to erect the towers in order for project cost figures to be provided.

Interestingly the Controllers at Hose Marti Tower, based on their experience recommended for smooth operations, the Approach Units at the Towers is the best way to go, however, the JCAA needs to project and decide conclusively, whether or not Radar Approach services will be provided from suites inside the Tower Cab, below the Cab or we need just a Cab for VFR Control only.

Mr. Stern expressed satisfaction and appreciation to all who contributed in making our trip memorable.”⁸

⁸ Report on the Visit to Cuba which was prepared by Mr. Courtney Malcom, JATCA Representative Response #13C (Appendix 13C) of the JCAA’s March 30, 2015 Response to the OCG’s February 23, 2015 Requisition.



The Procurement Process for the Selection of INTELCAN

Lt. Col. Oscar Derby's Explanation of the JCAA's Engagement of INTELCAN

By way of a letter dated September 15, 2010, to the OCG from Lt. Col. Oscar Derby, the then Director General of the JCAA, the following explanation was given regarding the engagement of INTELCAN.

*"Based on a report of the situation in the local press **an unsolicited proposal was made by the INTELCAN TECHNOSYSTEMS to construct Air traffic Control Towers in Jamaica.** The efforts of INTELCAN were fully supported by the Canadian High Commission. Examples of INTELCAN'S Tower Construction projects were examined by way of site visits. (DI Emphasis)*

*Subsequently, INTELCAN made a bid to do the job and there were at least two other contracting entities which made similar proposals. **One such proposal was that made by OMNI CONSTRUCTION GROUP but this as well as the other was not pursued because each was deemed unsuitable for our needs.** Accordingly the JCAA adopted a sole source procurement method with the appropriate approvals."*⁹ (DI Emphasis)

Based upon documents reviewed by the Director of Investigation, it was found that two other entities did in fact submit proposals.

The Other Entities which Submitted Proposals to Construct the Control Towers at the SIA and the NMIA

Approximately four (4) months after the JCAA's Board Meeting of January 31, 2006, the entity received a "Commitment Letter for New Control Tower in Montego Bay, Jamaica" dated May 8,

⁹ Letter to the OCG from Lt. Col Oscar Derby, the then Director General of the JCAA.



2006, from Rhoden & Young Enterprises Inc. which made reference to *Rhoden & Young's Proposal to Engineer, Procure, and Construct a new Airport Control Tower in Montego Bay, JA (GOVOFJAM042606-TOW dated April 26, 2006)*". Another proposal which was dated May 2, 2006 was submitted by OMNI Construction Group. Of note, INTELCAN's proposal was dated May 2006.

It is instructive to note, however, that in the Minutes of the Board Meeting of the JCAA held on Wednesday, May 31, 2006, it was indicated that proposals were submitted by OMNI Construction Group and INTELCAN Techno Systems Inc., for the SIA.

The following is an extract of the Minutes of the referenced May 31, 2006, Meeting:

"Proposed Construction of new Control Tower -SIA

Mr. Baker informed the meeting that he had received two proposals for the construction of the Control Tower at MBJ one from Omni Construction Company an enterprise based in the USA and the other from INTELCAN, based in Canada.

The quotation from OMNI gives an estimate of US\$8.5 Million for providing the design and building the tower at MBJ while the other from INTELCAN quotes CAD \$25 Million for providing the design and the building of the towers at the NMIA and the MBJ and also providing the required equipment for the facilities.

The Chairman supported the suggestion from Mr. Knibbs that the bidders should be given a common design which should have been developed for the tower. (DI Emphasis)



Following discussions, it was agreed that the written quotations from the two companies should be submitted to the Board for review.”¹⁰

Based upon the foregoing, there was no mention of the proposal or commitment letter which was submitted by Rhoden & Young Enterprises. This is despite the fact that Rhoden & Young Enterprises Inc.’s Commitment Letter, referenced above, was dated May 8, 2006, notably, prior to the May 31, 2006 meeting of the Board of the JCAA. The Commitment Letter stated as follows:

*“**Subject:** Commitment Letter for New Control Tower in Montego Bay, Jamaica*

Reference: Rhoden & Young’s Proposal to Engineer, Procure, and Construct a new Airport Control Tower in Montego Bay, JA (GOVOFJAM042606-TOW dated April 26, 2006)

Dear Mr. Col Smith:

Rhoden & Young Enterprise (RYE) is pleased to present its commitment letter to engineer, procure, and construct a new control tower in Montego Bay, JA. This letter and all enclosures are to be considered part of our proposal.

RYE commits to complete the control tower at Montego Bay, JA airport for the amount of \$8,498,709.00 (US dollars).

RYE is agreeable to commit to complete a second tower with the same specification as the Montego Bay control tower at the Kingston, JA airport after the completion of the Montego Bay tower based on a schedule to be negotiated with the Civil Aviation Authority (CAA) for the same price as the Montego Bay tower.

¹⁰ Minutes of the Board of the Jamaica Civil Aviation Authority held on Wednesday May 31, 2006.



However if the CAA commits to procuring both towers at the same time from RYE, RYE will commit to complete concurrently the Montego Bay control tower and then the Kingston control tower for \$16,547,418.00 (US dollars).

All prices listed in this letter are based upon all assumption made in RYE proposal number GOVOFJAM042606-TOW dated April 26, 2006. The pricing RYE provided does not include any fees for RYE financing the project. (DI Emphasis)

Please specify in your delivery order that it incorporates, in its entirety, the Rhoden & Young proposal, as submitted April 26, 2006. In any event, award of a delivery order based on this submittal will signify the Government's acceptance of all aspects of this proposal."¹¹

The foregoing Commitment Letter, which was provided to the OCG by Lt. Col. Oscar Derby, made reference to a proposal which was submitted by Rhoden & Young Enterprises. A copy of this alleged proposal was not provided by the JCAA in the responses submitted pursuant to requisitions issued by the then OCG. In point of fact, the JCAA informed the OCG that they were unable to locate the referenced "(GOVOFJAM042606-TOW dated April 26, 2006)".

Notwithstanding the failure of the JCAA to locate and provide a copy of the proposal submitted by Rhoden & Young Enterprises, it is noted that the cost stated by the entity in its commitment letter was markedly lower than that proposed by INTELCAN. Of note, INTELCAN's proposed cost was in the amount of CAD\$25,000,000.00, whilst Rhoden & Young Enterprises' proposed cost was in the amount of US\$16,547,418.00, which was equivalent to CAD\$18,231,614.20¹², (as at May 2006). The cost proposed by Omni Construction Group, Inc. was also lower than the price which

¹¹ Letter of Proposal from Shawn Rhoden of Rhoden & Young Enterprises, which was dated May 8, 2006

¹² <https://www.canda.com/currency/converter/>



was submitted by INTELCAN. The cost proposed for both Control Towers was in the amount of US\$16,500,000.00, which was equivalent to CAD\$18,179,370.00¹³, (as at May 2006).

With regard to INTELCAN's proposal, the Director of Investigation found that the JCAA had concerns in relation to the cost which was proposed. The concerns were discussed at a meeting which was held on July 26, 2006, where the following was stated:

"Proposed Construction of ATC Towers",

Mr Baker informed the meeting that the cost submitted by INTELCAN for the design and purchase of the tower was unacceptable. He has approached a local architectural firm Morrison and Woodstock to complete a preliminary design of the tower.

The Board supported the view of the Acting Chairman that the JCAA should not engage the services of an architect to do a preliminary design for the tower. He cautioned the JCAA to adhere closely to the Government Procurement procedures.

(DI Emphasis)

*Dr. Hales expressed the view that the JCAA should again approach INTELCAN with a view to having the initial cost reduced"*¹⁴

Based upon the contents of the meeting Minutes, that there were no discussions regarding the proposals submitted by the other bidders. This is despite the fact that the Minutes of the Board meeting of the JCAA, held on Wednesday, May 31, 2006, recorded, *inter alia*, the following:

¹³ <https://www.canda.com/currency/converter/>

¹⁴ Minutes of the Meeting of the Board of the Jamaica Civil Aviation Authority, held on July 26, 2006.



*“The Chairman supported the suggestion from Mr. Knibbs that the **bidders** should be given a common design which should have been developed for the tower.”*

Based upon a review of the Minutes of the Board Meeting of the JCAA dated May 31, 2006, and July 26, 2006, no further discussions were had regarding the proposals submitted by the other named bidders.

The JCAA’s letter of September 15, 2010, to the OCG indicated that the “...**proposal was... made by OMNI CONSTRUCTION GROUP...as well as the other was not pursued because each was deemed unsuitable for our needs**”¹⁵ (DI Emphasis). There is no record of any such discussion in the JCAA’s Minutes of the Board meetings which were submitted to the OCG. Further, there is no record which indicates that the proposals submitted by Omni Construction Group and Rhoden & Young Enterprises Inc. were evaluated or the reasons for which they were deemed unsuitable.

It is also instructive to note that Mr. Nari Williams-Singh, Director General, JCAA, in his response which was dated March 31, 2015, stated that “**we have not found any indication of the rationale/justification why the other proposals were deemed unsuitable.**”¹⁶ (DI Emphasis)

The Minutes of the Board meeting of the JCAA held on Wednesday, September 27, 2006, stated as follows:

*“**Proposed Construction of ATC Tower***

Col. Lewis informed the Board that INTELCAN, were operating under the pretext that they had already been given the contract to build the Towers. They have had meetings with the Ministry of Housing, Transport, Water and Works with the view of providing a design for the Towers.

¹⁵ The JCAA’s letter dated September 15, 2010, to the OCG.

¹⁶ Mr. Nari Williams-Singh’s Response to the OCG’s requisition dated March 31, 2015.



Members of the Board expressed concern that the Government's Procurement Procedures were not being followed and instructed the JCAA to ensure that proper procedures be followed when choosing the contractor in this regard.

Mr. Stewart expressed the view that the JCAA should not be negotiating with INTELCAN regarding the award of a contract as the Authority will not be providing the funds for the project. Negotiations should instead be done by the Ministry. The JCAA, being the Regulatory Agency, should act as technical consultants and be responsible for approving the design submitted.¹⁷(DI Emphasis)

Based on the Minutes of the Board meeting of the JCAA held on Wednesday September 27, 2006, there was no indication that a formal tender was executed. Additionally, there was no indication as to the reason(s) for the selection of INTELCAN as the preferred bidder and by extension the basis for the pretext that INTELCAN had been awarded the contract to construct the towers.

The Minutes of the Board meeting of the JCAA held on Wednesday, October, 25, 2006, also indicated that INTELCAN was under the impression that they were awarded the contract. The following was discussed at the meeting:

"Construction of the Air Traffic Control Tower

The meeting expressed concern that INTELCAN was operating under the assumption that they had already been given the contract to design and build the towers. INTELCAN had quoted CAN\$25 Million to complete this project. The JCAA considered this quotation to be high.

¹⁷ Minutes of the Meeting of the Board of the Jamaica Civil Aviation Authority, held on September 27, 2006.



The Board, fearing that Government Procurement Procedures were not being followed, cautioned the JCAA to ensure the proper procedures are observed when choosing the contractor for this project.

Dr. Hales advised the Board that if the construction of the towers was urgent, then the JCAA should consider the engagement of the “Sole Sourcing” Procurement procedure and provide justification for its use.

Capt. Bogle recommended that the design for the tower should be considered prior to the awarding of the contract to build the towers. The job of providing a design for the towers should be awarded to a contractor who has a good track record and who was prepared to adhere to instructions given by the JCAA. When this design is completed, the JCAA should go to tender.

Lt. Col. Derby pointed out that the Canadian Contractors, including INTELCAN, had gained much experience in the installation of aviation related equipment and buildings within the Caribbean; INTELCAN had erected 10 towers in Cuba. He therefore considered it prudent to award INTELCAN the contract to design and build the towers.

Mrs. Henriques expressed the view that the JCAA should indicate to INTELCAN that their quotation for the undertaking was exorbitant and unless they were prepared to reduce same, the Authority would be forced to invite quotations from other tenders. (DI Emphasis)

Mr. Stewart suggested that research should be done to determine an acceptable price for the undertaking. To this end, the meeting agreed that the JCAA should ask the Ministry of Foreign Affairs to contact the Jamaican Embassy in Cuba to seek



information from the Cuban Aviation Authority as to the cost for similar projects undertaken by INTELCAN.

The meeting agreed that the JCAA, in the meanwhile, should keep the Minister abreast of all development regarding this project.”¹⁸

Having regard to the foregoing and, in particular, the suggestion that was made for the utilization of the Sole Source procurement methodology, by the P.S of the Ministry of Transport and Mining, the Director of Investigation highlights hereunder the provisions of Section 2.1.3.4- Sole Source or Direct Contracting of the Handbook of Public Sector Procurement Procedures (May, 2001) (GPPH):

“Sole Source or direct contracting is a form of limited tendering where only one contractor is invited to participate.

Use of this method may be justified when procurement is of a “sensitive” nature, when the procuring entity receives an unsolicited proposal that it considers to be meritorious, in the case of follow-on procurement, when there is unusual and compelling urgency, industrial mobilization, where there is need for highly specialized expert services, pursuant to external agency agreement or treaties, or where it is otherwise in the public interest.

Procurement effected through the use of sole source or direct contracting methods must contain justification for its use in the record of the procurement.

The procurement officer of the entity must be satisfied that the contractor/supplier is qualified and appropriately registered on the Government approved register of

¹⁸ Extracts of Minutes of the Board meeting of the Jamaica Civil Aviation Authority held on Wednesday October, 25, 2006.



contractors, and that value for money is obtained (e.g. prices quoted by the contractor are reasonably competitive with current market prices)

Sole Source or Direct Contracting Procurement method must have prior written approval from Accounting Officers for Contracts less than \$1M. This approval and the justification for its use must form part of the procurement record.

All Sole Source or Direct Contracting greater than \$1M must receive prior written approval from the NCC through the Accounting Officer.”¹⁹

It is being highlighted that the GPPH stipulates that the Sole Source Procurement Methodology could be used if an entity receives “...an unsolicited proposal that it considers to be meritorious”²⁰.

The cost which was proposed by INTELCAN was discussed in the Minutes of the Board meeting of the JCAA which was held on Wednesday, August 30, 2006. The meeting Minutes stated as follows:

“Proposed Construction of the ATC Tower

The meeting recalled that the cost submitted by INTELCAN for the design and purchase of the tower was unacceptable.

Col. Lewis reported that the JCAA had approached INTELCAN with a view to having the initial cost reduced.”²¹

The issue of cost was also discussed in the Minutes of the Board meeting of the JCAA held on Wednesday, December 13, 2006. The following was stated in the referenced meeting:

“Construction of Air Traffic Control Towers

¹⁹ Section 2.1.3.4 of the Handbook of Public Sector Procurement Procedures (May, 2001)

²⁰ Section 2.1.3.4 of the Handbook of Public Sector Procurement Procedures (May, 2001)

²¹ The Minutes of the Meeting of Board of the Jamaica Civil Aviation Authority held on Wednesday August 30, 2006.



The meeting was reminded that INTELCAN had quoted CAN\$23.4 million for providing the two towers proposed for NMIA and SIA including equipment for these towers. The JCAA had considered this quotation to be exorbitant and had asked INTELCAN to reconsider their quotation.

The Board was informed that the management of the Authority met with Ray Campbell & Associates and requested that they prepare a project costing for the proposed new Air Traffic Towers at SIA & NMIA. The company was also given a copy of the Scope of Works for the Towers to assist in the designing process.

Ray Campbell & Associates have now produced a preliminary estimate for the construction of one tower amounting to J\$67Million. The company also produced a plan from which a detailed architectural design for the tower could be developed and submitted an invoice for J\$1.5 million which represents their billing to date.

There was a purposeful misunderstanding on the Contractors' part however; as they made an assumption that the total job was given to that company. This was not the case as projects of this nature and amount however, would be required to be put to tender in accordance with Government Procurement Guidelines. (DI Emphasis)

A meeting is schedule[d] with Ray Campbell & Associates on December 14, 2006 to clarify issues regarding the cost for the design.

Lt. Col. Derby, who will be representing the JCAA at this meeting, advised the Board that he will be communicating with Col. Lewis and Mr. Baker to obtain clarification on the project.



Mr. Stewart requested the Board to mandate Lt. Col. Derby to ensure that the entire process in relation to the receipt of a design from Ray Campbell & Associates is done in accordance with Government Procurement Guidelines.²²

(DI Emphasis)

Request of Ray Campbell & Associates to prepare project costing

Ray Campbell & Associates prepared a project costing for the proposed new Air Traffic Control Towers at the SIA & NMIA. The Director of Investigation has, however, seen no evidence of the procurement methodology which was utilized and/or the circumstances under which the company was engaged to prepare the project costing for the design.

The then OCG by way of a Requisition dated May 8, 2017, requested clarification regarding the engagement of ‘Ray Campbell and Associates’. In a response dated May 15, 2017, the JCAA indicated as follows:

“The OCG’s queries reference “Ray Campbell & Associates”. The Authority found no engagement for services or payments made to “Ray Campbell & Associates”. The Authority however, has a record of one (1) payment made to “Ray Campbell Limited” in respect of “professional services”; the responses to the OCG queries therefore, reference this payment.

*Pursuant to the Extract from the Minutes of Meeting of the Board of the Jamaica Civil Aviation Authority, Wednesday, December 13, 2006 attached as **Appendix 1**) (“the **December 13, 2006 Board Meeting Extract**”), the Authority had received a quotation for the construction and equipping of the Air Traffic Control Towers Project which it considered exorbitant. The Board of the Authority was subsequently informed that the Management of the Authority “met with Ray Campbell and*

²² Minutes of the Board meeting of the JCAA held on Wednesday, December 13, 2006.



Associates and requested that they prepare a project costing for the proposed new Air Traffic Control Towers at SIA & NMIA”. (See December 13, 2006 Board Meeting Extract, attached as Appendix1).

*Ray Campbell Limited was engaged pursuant to Letter and Scope of Works dated October 17, 2006, attached as **Appendix 2** (the “**JCAA Letter and Scope of Works**”) Ray Campbell Limited was engaged by the Jamaica Civil Aviation Authority to prepare a preliminary estimate to be used for the Air Traffic Control Towers (NMIA & SIA) Project, as described in the Letter and Scope of Work, dated October 17, 2006, presented at **Appendix 2**. Ray Campbell Limited from its perspective provided professional services rendered in connection with the site evaluation and the preparation of detailed acceptable architectural design presentation and preliminary estimate for the Air Traffic Control Towers, Project at the Norman Manley International and Sangster International Airports, as described in the Ray Campbell invoice No. 2, dated January 22, 2007 found at **Appendix 3** (the “**Ray Campbell Invoice No. 2**”).*

*The information provided in the Recommendation in regard to services of Ray Campbell Limited (ATC Towers), dated January 19, 2007, and attached at **Appendix 4** (“the **Recommendation**”), indicates that Ray Campbell Limited “was selected because the actual project was one which would require the supply of electrical and electronic services in the integration of Communications, Navigation and Surveillance (CNS) equipment for the Air Traffic Control Towers (ATC) Tower cap”. The JCAA Letter and Scope of Works (Attached as **Appendix 2**) was developed and presented to the Provider by the JCAA. It is indicated in the Recommendation and the Extract from the Minutes of Meeting of the Board of Jamaica Civil Aviation Authority, Wednesday, January 31, 2007, attached as **Appendix 5** (the “**January 31, 2007 Board Meeting Extract**”) that further to a misunderstanding, the provider took it as a “request [by the Authority] to deliver*



*Detailed Architectural Designs”. It was reported to the Authority’s Board of Directors, this was deemed by the Management to be “more than was sought” from the provider, and that Ray Campbell entity was asked to provide a **cost estimate** for a 45 meter structure for a tower cabin (See Recommendation and January 31, 2006 Board Meeting Extract”). The Ray Campbell Limited Report and Preliminary Cost Estimate, dated November [illegible], 2006 are included at **Appendix 6**. Pursuant to the Recommendation in regard to the services of Ray Campbell Limited (ATC Towers) (**Appendix 4**), the Ray Campbell Invoice No. 2 (**Appendix 3**), and JCAA Payment Voucher No. 00000003727, dated January 23, 2007, attached as **Appendix 7**) (the “**Payment Voucher**”), in the amount of \$636,000.00; representing the value of contract in respect of the services for which “Ray Campbell Limited” was engaged.*

The documentary evidence to support the Authority’s responses and assertions are included in the referenced Appendices.”²³

It was further indicated that:

*“One (1) payment was made to “Ray Campbell Limited” in the amount of \$636,000.00 Payment Voucher No. 00000003729, dated January 23, 2007 details this payment made by the Authority to “Ray Campbell Limited” (See **Appendix 7**). This payment was made for professional services rendered in connection with Air Traffic Control Towers at the Norman Manley International Airport, Kingston and the Sangster International Airport.”²⁴*

In support of its response to the OCG, the JCAA provided a document entitled “**Recommendation in regard to the services of Ray Campbell Limited (ATC Towers)**”. The document was prepared by

²³ The JCAA’s May 15, 2017, Response to the OCG’s Requisition.

²⁴ The JCAA’s May 15, 2017, Response to the OCG’s Requisition.



the Legal Counsel in conjunction with ‘DDGRA’ and the Internal Auditor and dated January 19, 2007. The document stated as follows:

“In an effort to determine where the procurement might fall, the Director General sought an “estimate” from Ray Campbell Limited (the provider). Ray Campbell Limited is registered with the National Contract Commission but as a provider of electrical engineering services. However this organization was selected because the actual project was one which would require the supply of electrical and electronic services in the integration of CNS equipment for the ATC Tower cab. Ray Campbell would therefore be a good fit as it would have been expected that they would consult with civil engineers and architects as necessary.

No details of discussion were written but a “Scope of Works” was provided and taken by the provider as request to deliver Detailed Architectural Designs”.

Given the level of enthusiasm which seem to have been shown for the designs provided- its efficiency, apparent good-fit and cost – it is material which could find favour sufficient to form the basis of the procurement exercise.

However, the further expectation of the provider, that they would necessarily be the contractor in or even be part of the full project, cannot be substantiated.

In our discussions (Ray Campbell, Leroy Gordon, Lt Col. Oscar Derby, Jason McPherson and Marva Gordon-Simmonds) on 19 December 2006, both parties agreed that there had been a misunderstanding and that the provider had delivered more than was sought. Accordingly, it was further decided that what should be paid would be a sum which represents a reasonable estimated fee for the “pure estimate which the Authority was seeking. The following is the rationale developed:



Using as a **guideline** only, the form of Agreement issued by the Jamaican Institute of Architects (“JIA”) for General Use between a Statutory Body and an Architect, entitled “Client/Architect Agreement for Architectural Services” (revised September 2005). Section III BASIS OF COMPENSATION in sub-paragraph 2 of Paragraph A states in extract “the method of payment for Normal Services shall be as set out below:

- a) *Interim percentage payments shall be made on account as follows:*
- i) ***On completion of Schematic Design Stage, fifteen percent (15%) of the total percentage applicable. The estimate of the implementation cost accompanying the Draft Sketch shall be considered to be the cost of the Works for computing the fees due on account”***

In the case at hand, it would be considered that (despite it not being sought as stated above), the preliminary design delivered would be equivalent to the Schematic Design.

Using Ray Campbell’s figures:

With Estimated Cost of construction of \$67,060,000, this gives an Architectural Fee of \$4,023,600. Therefore taking 15% thereof would work out at \$603,450.00

Using Recommended Scale of Professional Charges of the JIA Sep 1993)Pg 4-Airport

With Estimated Cost of Construction of over \$50M, this gives an architectural fee of (\$3,550,000+ 6% on balance over \$50M)=(\$3,550,000+6%o of \$17,060,000)=\$4,570,000. Therefore taking 15% thereof would work out at \$686,040



*plus the G.C.T.) represented one third (1/3) of a total architectural fee of \$4,023,600.00 Invoice No.1. appears to apply to “preliminary design”. No payment was made by the Authority to the Ray Campbell Limited towards this invoice for the reasons expressed in the Recommendation (attached at **Appendix 4**). Ray Campbell Limited subsequently submitted invoice No.2. (described above, and attached at **Appendix 3**) which was paid by the Authority as evidenced by payment Voucher No. 00000003729 (see appendix 7).*

Having regard to the circumstances relating to the engagement of Ray Campbell & Associates, the Director of Investigation highlights hereunder the provisions which are stipulated for Consultancy Contracts, as per the May 2001 GPPH:

“5.1.2.3 Advertising Guidelines

Under J\$4 million

Advertising not required. Procuring entities should invite proposals from a minimum of three (3) appropriately qualified consultants registered with the NCC. Participation shall be restricted to domestic consultants only, except where no such qualified consultant is registered with the NCC.”²⁶

Based upon the foregoing, the engagement of services for the preparation of the project costing for the proposed new Air Traffic Control Towers at the SIA & NMIA should have been competitively tendered. Of note, this observation was made during the JCAA Board meeting of December 13, 2006.

²⁶ Section 5.1.2.3 of the GPPH 2001



Discussions held by the JCAA in Relation to the Resubmission of a Proposal by INTELCAN

The Minutes of the meeting of the Board of the JCAA, held on Wednesday, January 31, 2007, recorded, *inter alia*, the following:

“Construction of Air Traffic Control Towers

The meeting recalled that INTELCAN had quoted CAN\$23.4 Million for erecting and equipping the towers at the NMIA and SIA. This quotation was considered to be exorbitant and the JCAA had asked INTELCAN to reconsider the quotation.

Col. Lewis informed the Board that the Canadian High Commission had intervened on behalf of INTELCAN and also on behalf of Raytheon who was not considered by the JCAA for the project. At a recent meeting with representatives of the Ministry of Housing, Transport, Water and Works and the JCAA, the High Commissioner had expressed disappointment that INTELCAN had not yet been awarded the contract as the company had made the assumption that the project would be awarded to them.

The JCAA, at that meeting, had explained that the Authority was adhering to the Government’s Procurement Guidelines with respect to the awarding of contracts and that any award given on the basis of “sole sourcing” had to be clearly justified. Col. Lewis had also explained that Raytheon’s involvement resulted from the overly excessive quotation submitted by INTELCAN; as a Scope of Works was prepared and presented to Raytheon who were asked to submit costing for the project.

The High Commissioner was satisfied with the JCAA’s explanation as they realized that INTELCAN could still make a revised submission.



During discussions, Dr. Hales explained that any award based on “sole sourcing” would require justification and could only be done with a “Government to Government” involvement in the project. Capt. Bogle expressed the view that the JCAA should not relinquish its ability to source and select a tenderer for this undertaking. (DI Emphasis)

Following discussions, it was agreed that the JCAA should appoint an Evaluation/Procurement Committee which would include two members of the Board to analyse and determine whether the revised proposal from INTELCAN can justify the “sole sourcing” method of selection to the National Contracts Commission.

It was suggested that Capt. Bogle and Dr. Hales represent the Board on this Committee.

It was also noted that INTELCAN would be approaching the Canadian Government for assistance in securing the award of the project through the “sole sourcing” method.

The Board agreed that the Request for Proposal (RFP) be developed to provide guidance for INTELCAN in making another proposal to the JCAA. (DI Emphasis)

The JCAA should immediately write to INTELCAN making reference to the meeting with the Canadian High Commission and give them a time frame within which their submissions should be made.

The meeting recalled that Ray Campbell & Associates had produced a plan from which a detailed architectural design for the tower could be developed and had subsequently submitted an invoice in the amount of \$1.5 Million which represented their billing to date.



*Lt. Col. Derby reported that the JCAA held a meeting with Ray Campbell who were under the assumption that they would be given the contract to build a tower. Lt. Col. Derby explained that Ray Campbell & Associates were asked to provide a cost for a 45meter structure for a tower cabin. They instead, operated outside the Scope of Works given by the JCAA. Subsequently, the cost for the work done was computed by the JCAA's Internal Auditor and the Legal Officer and it was agreed that they should be paid \$632,000 for their efforts. A new invoice for this amount was resubmitted by the company".*²⁷ (DI Emphasis)

INTELCAN was given the opportunity to resubmit a revised proposal. The Director of Investigation found that that Minutes of the meeting of Board of the JCAA held on Wednesday February 28, 2007, stated as follows:

“Construction of Air Traffic Control Towers

*Col. Lewis reported that INTELCAN will be making a presentation of their revised proposal which will include the input of the Canadian Government. With the contribution from the Canadian Government, it is anticipated that the revised quotation will be competitive. The JCAA is awaiting the presentation of this revised proposal.”*²⁸

Further to the February 28, 2007, meeting of the Board of Directors of the JCAA, the Director of Investigation notes the following letter to Col. Lewis from INTELCAN which was dated March 1, 2007. The letter was under the subject *“Construction of two Control Towers in Montego Bay and Kingston, revision of the Scope of Work and Operational Requirements for the Control Towers at NMIA and SIA.”* The letter stated, *inter alia*, as follows:

²⁷ Minutes of the Meeting of the Board of the Jamaica Civil Aviation Authority held on Wednesday January 31, 2007.

²⁸ Extracts of Minutes of the Board of the Jamaica Civil Aviation Authority held on Wednesday February 28, 2007.



“Further to our meeting in your office on 7 February 2007, we are pleased to submit for your review and consideration a revised contractual package which takes into account the various changes JCAA wished to bring to the scope of work of the project. The variations from our previous presentation are the following:

1- As a key contractual issue, we are including as discussed a letter from the Canadian Commercial Corporation (CCC) which indicates that they would take the role of the Prime Contractor. As explained, CCC’s position in the contract will confer to the project the dimension of a Government to Government transaction. As such, JCAA will have a Canadian State guaranty that the project will be executed to its entire satisfaction. Along with Export Development Canada (EDC) which provides the financiers with a Country risk guarantee and the support towards training that the Canadian International Development Agency (CIDA) is providing, the project is entirely endorsed by the Canadian Government.

2- A change in the method of construction of the control tower shaft and cab which now uses prefabricated concrete panels and steel as opposed to a site poured concrete technology.

3- Presentation of a set of drawings showing the floor plans of the cab, access level, service level and ground level.

4. Inclusion of a security fence and parking facility for 15 cars.

5. Procurement of VHF radios for NMIA and deletion of the requirement for the FDPS at SIA and NMIA.

*It is worth mentioning that the support from CIDA is available to this project providing that the contract is awarded to Intelcan on a negotiated basis. **CIDA***



would withdraw its support if the project was the subject of a public or a restricted tender process. (DI Emphasis)

For your information, we are also including information about a Control Tower construction project at Grand Canyon National Park Airport. The project offers similarities to that of JCAA. The tower is 34 meters high and has an administrative base building of comparable dimensions to that of our project. The tower shaft is also made of prefabricated concrete panels. It was completed in 2001 with a budget of \$7.6M US exclusive of ATC related equipment. This amount represents a budget of approximately \$9.3M US in 2007 dollars [sic]. This information is appended to the price section along with the Cost Comparison exercise which was submitted to the JCAA earlier. Please note that our project is priced at \$18M US, for two towers (SIA tower being 10 meters higher), including all requested ATC Equipment and that the foundations in our case are much more complex than it was the case for the Grand Canyon project.

Although our documentation is submitted electronically as a series of files, we will endeavor to have a hard copy delivered to your attention within the best delays.

We thank you again for this opportunity to further clarify our presentation and we confirm our availability to discuss with you at further length.”²⁹

Based on the contents of the abovementioned letter, INTELCAN advised that the Canadian Commercial Corporation (CCC) would assume the role of the Prime Contractor. It was also noted that support from CIDA would be available provided that the contract is awarded to INTELCAN on a negotiated basis and that **CIDA would withdraw its ‘support’ if the project was the subject of a public or restricted tender process.** In this regard, it is important to highlight that Section 2.4 of the GPPH May 2001 states the following:

²⁹ Letter to Col. Lewis, JCAA, from INTELCAN which was dated March 1, 2007.



“COMPETITION REQUIREMENTS

Procuring entities should employ competitive procedures best suited to the circumstances of the contract action, as guided by this Handbook and consistent with the need to fulfil GOJ's requirements efficiently and effectively.

2.4.1 IMPARTIALITY

GOJ promotes fair and equal opportunity for all qualified and appropriately registered providers of works, goods and services, without regard to political affiliation, race, gender, age or religion.”

The request from the CCC to forego a public tender for the construction of the towers, contravenes the stipulations outlined in the then May 2001 GPPH and goes against best practices in public procurement.

The Request for NCC's Endorsement of Canadian Commercial Corporation (CCC) as the Prime Contractor and INTEL CAN as the Sub Contractor

The NCC was asked to endorse the use of the Sole Source Procurement Methodology to engage the services of INTEL CAN. By way of a letter which was dated April 19, 2007, to the then Chairman of the NCC, the Hon. Shirley Tyndall, OJ. from Col. Torrance Lewis, the then Director General, JCAA, the following was stated:

“Re: Sole Source Procurement for the Erection, Supply and Commissioning of two (2) Air Traffic Control Towers and relevant equipment for the Sangster International Airport and the Norman Manley International Airport”

“The Jamaica Civil Aviation Authority (JCAA) is proposing to proceed with plans for erecting new Air Traffic Control (ATC) Towers at the Norman Manley



International Airport and Sangster International Airport. The development of these airports with modern facilities has rendered the present towers inadequate for visual and effective control of the manoeuvring areas at this time. It also provides an opportunity for modernizing the present amenities for staff and equipment.

In this project therefore, the JCAA will cater for upgraded facilities for the Air Traffic Control staff who work on 8-hour shifts around the clock and for redundancy for equipment at every level- this is a critical security/safety feature for Air Traffic Control operations.

A preliminary site and the allocation of an area suitable for these towers has taken place and is now being formally confirmed with MBJ Airports Limited and the Airports Authority of Jamaica as well as the airport operators NMIA Airports Limited in regard to Sangster International Airport and the Norman Manley International Airport (NMIA) respectively. (DI Emphasis)

The Canadian Government, through the Canadian Commercial Corporation (CCC) has made an offer of assistance with the project and has recommended that INTELCAN, a Canadian Company with expertise in the field, be sub-contracted to complete the project as a “turnkey” project. *With the participation of the Canadian Government we feel assured of a satisfactory determination of the project and at reasonable cost. Financing would be arranged through the IDB and CIDA with the appropriate approval and guarantees from the Ministry of Finance and Planning.*

INTELCAN has completed several projects of this nature and presented one such project in Cuba to the JCAA. Attached is a profile on the company as well as the Quotation for the works.



*In assessing this project we have taken into account the participation of CCC and the Canadian Government – and the financing to be provided. **It is to be noted that the JCAA had received proposals of interest from two other companies which were deemed to be unsuitable for the needs of the JCAA.***

***We expect the project to be completed within a period of 18 months and now request approval to proceed with negotiations with CCC for the project using the sole source methodology.** CCC through INTELCAN has made a proposal and has refined the presentation to needs of the JCAA.*

We therefore seek the approval of the NCC to utilize the sole source procurement methodology to negotiate a contract with the Canadian Commercial Corporation for the Erection, Supply and Commissioning of two (2) Air Traffic Control Towers and relevant equipment for the Sangster International Airport and the Norman Manley International Airport at a cost not exceeding CDN\$20 Million.”³⁰

The Minutes of the Meeting of the Board of the JCAA held on Wednesday, April 25, 2007, stated the following:

“Construction of Air Traffic Control Towers

Col. Lewis advised the Board that he had written a letter to the Permanent Secretary, Minister of Housing, Transport, Water and Works informing him that the Authority had received a proposal from a Canadian Company to act on behalf of the Government of Canada to supervise the activities of INTELCAN, which had resubmitted a reduced quotation of \$19.5 Million Canadian Dollars for the construction of two towers.

³⁰ Letter dated April 19, 2007, to the then Chairman of the National Contracts Commission, Hon Shirley Tyndall, OJ. From Col. Torrance Lewis the then Director General, JCAA



Capt. Bogle expressed the view that an approach should be made to the company to have the cost further reduced to US\$12 Million as recommended by experts. (DI Emphasis)

The meeting agreed that although a letter had already been received from the National Contracts Commission giving approval for JCAA to proceed with sole sourcing in this regard, the JCAA was allowed to continue negotiations in regard to the cost of the contract.”³¹

The Director of Investigation found that the NCC’s letter of endorsement was dated April 27, 2007, and was addressed to the Permanent Secretary in the Ministry of Housing, Transportation, Water and Works, Dr. Alwin Hales. The referenced letter stated, *inter alia*, as follows:

“Re: Procurement of Two (2) Air Traffic Control Towers

We refer to your letter of 2007 April 19, regarding the captioned matter.

The National Contracts Commission (NCC) considered the matter at its meeting held on 2007 April 25 and endorsed the request of the Jamaica Civil Aviation Authority (JCAA) to utilize the sole source procurement methodology to negotiate a contract with the Canadian Commercial Corporation for the erection, supply and commissioning of two (2) Air Traffic Control Towers and relevant equipment for the Sangster International Airport and the Norman Manley International Airport at a cost not exceeding Twenty Million Canadian Dollars (CND\$20,000,000.00). (DI Emphasis)

³¹ Extracts of Minutes of the Board of the Jamaica Civil Aviation Authority held on Wednesday April 25, 2007.



Please submit the recommendation for award through the appropriate Sector Committee.”³²

The Minutes of the Board Meeting of the JCAA held on Wednesday, May 29, 2007, stated, *inter alia*, as follows:

“Construction of Air Traffic Control Tower

Col. Lewis informed the meeting that the National Contracts Commission had endorsed the request of the JCAA to utilize the sole source procurement methodology to negotiate a contract with INTELCAN through the Canadian Commercial Corporation to construct two towers at NMIA and SIA.

The meeting noted that the Canadian company acting on behalf of the Government of Canada, will supervise the activities of INTELCAN which has resubmitted a reduced quotation of CDNS\$19.5 Million for the construction of the towers. A committee will be set up to negotiate the contract with INTELCAN.

Capt. Bogle expressed the view that an approach should be made to the company to have the cost of this project further reduced to US\$12-14 Million as recommended by aviation experts.”³³

By way of a letter dated July 19, 2007, the NCC again wrote to Dr. Alwin Hales, Permanent Secretary, Ministry of Housing, Transport, Water and Works stating the following:

³² Letter from the NCC which was dated April 27, 2007, and addressed to Dr. Alwin Hales, Permanent Secretary, Ministry of Housing Transportation Water and Work.

³³ Extracts of Minutes of the Board of the Jamaica Civil Aviation Authority held on Wednesday, May 29, 2007.



“Re: Sole Source Procurement for the Erection, Supply and Commissioning of two (2) Air Traffic Control Towers and relevant equipment for the Sangster International Airport and the Norman Manley International Airport

Please refer to a letter dated 2007 July 06, from Col. Torrance Lewis, Director General of the Civil Aviation Authority, regarding the subject captioned.

*The National Contracts Commission considered the matter at its meeting on **2007 July 18** and endorsed the request to enter into a direct contract with Intelcan Technosystems Incorporated (INTELCAN) for the erection, supply and commissioning of two (2) Air Traffic Control Towers at Norman Manley International and Sangster International Airports at a cost not exceeding Twenty Million Canadian Dollars (**CND \$20,000,000.00**).*

Please submit the recommendation for award through the appropriate Sector Committee.”³⁴

The Minutes of the Meeting of the JCAA held on Wednesday, July 25, 2007, stated, *inter alia*, as follows:

“Construction of Air Traffic Control Towers

*Col. Lewis recalled that the National Contracts Commission (NCC) had given its approval for the JCAA to enter into contractual arrangement with the Canadian Commercial Corporation (CCC) to interface with INTELCAN in the construction of the towers. **However, the CCC has subsequently advised that it would take some 18 months for the Corporation to complete its due diligence into the project and***

³⁴ Letter dated July 19, 2007, from the NCC to Dr. Alwin Hales, Permanent Secretary, Ministry of Transport Works and Housing.



therefore the commencement of the project could be delayed and result in additional costs.

The CCC has suggested that they could offer their services as a provider through the Procurement Services Agreement while interacting with INTELCAN and the JCAA. This would enable the project to be completed within the stipulated time frame.

Col. Lewis pointed out that the JCAA has subsequently sought and obtained approval from the NCC to initiate contractual arrangements directly with INTELCAN which will now become the prime contractor. INTELCAN has agreed that the cost of the undertaking would remain that given in their revised quotation.

Capt. Bogle expressed the view that the JCAA should acquire the services of a local engineering consultant who is technically qualified and has the ability to thoroughly examine the revised quotation submitted by INTELCAN. This consultant should also give guidance to the JCAA in its negotiations with INTELCAN.

*Mrs. Henriques suggested that the Terms of Reference for this consultant should be clearly defined and agreed.*³⁵ (DI Emphasis)

The CCC advised that it would take approximately eighteen (18) months for the Corporation to complete its due diligence into the project and therefore, the commencement of the project could be delayed and result in additional costs. In this regard, the decision was taken for INTELCAN to become the main contractor.

Additionally, the Minutes of the Meeting of the Board of the JCAA held on Wednesday, November 28, 2007, stated, *inter alia*, as follows:

³⁵ Extracts of Minutes of the Board of the Jamaica Civil Aviation Authority held on Wednesday, July 25, 2007.



“Construction of Air Traffic Control Towers

Col Lewis advised on the progress being made with respect to the proposed construction of the Air Traffic Control (ATC) Towers at the Sangster and the Norman Manley International Airports.

He informed the meeting that a local engineering consultant, Peter Jervis would be meeting with members of the JCAA and INTELCAN on December 4, 2007 to provide guidance to the Authority in its negotiations with Intelcan which had submitted a revised quotation for the project.”³⁶ (DI Emphasis)

The Minutes of the Board Meeting of the JCAA held on Wednesday, December 20, 2007, stated, *inter alia*, as follows:

“Construction of Air Traffic Control Towers

Col. Lewis informed the Board that the JCAA had been given permission by the Contracts Commission for INTELCAN to provide two control towers- one at the Sangster International Airport (SIA) and the other at the Norman Manley International Airport (NMIA). The site for the construction of the tower at SIA had been identified and the JCAA was in the process of developing a contract in the amount of CND \$19 Million for the construction of the two towers.

Funds for this project will be accessed through the Ministry of Transport and Works. Col. Lewis further advised that representatives of INTELCAN are scheduled to arrive in January 2008 to continue negotiations.

Capt. Bogle recalled his dissatisfaction with the choice of INTELCAN as the sole tender or [sic] the project.

³⁶ Extracts of Minutes of the Board of the Jamaica Civil Aviation Authority held on Wednesday November 28, 2007



Following discussions, the Chairman instructed the JCAA to present to the Board, quotations, architectural drawings and full details on all segments of the proposed contract with INTELCAN along with proposal by the Government to finance the project. (DI Emphasis)

It was suggested that Mr. Evans, being a Structural Engineer, be allowed to sit on a Procurement Committee which would evaluate the contract. The services of a local, qualified Quantity Surveyor will also be required to advise the JCAA on the cost of the project.

It was suggested that Maurice Stoppi, Berkley and Spence or EQS Jamaica Limited be considered for this undertaking.

Mr. Williams supported the Chairman's views and suggested that procurement procedures applied in regard to this project should be revised as he favoured competitive tendering.

Dr. Hales recalled that the JCAA and the Ministry of Transport and Works had voiced various concerns during their initial negotiations with INTELCAN. However, the JCAA's decision to utilize the sole sourcing method for the project was influenced by the intervention of the Canadian High Commission on INTELCAN's behalf.

The meeting pondered whether the JCAA could be challenged by INTELCAN for infringing on its Intellectual Property Rights, with respect to the design of the building, should they fail to be awarded the contract.



To this end, it was agreed that the Ministry of Transport and Works should be requested to write to the Canadian High commission regarding Intellectual Property Rights held by INTELCAN in the design of the building.³⁷ (DI Emphasis)

It must therefore be highlighted that INTELCAN was selected for the contract before an evaluation of its proposal was conducted.

Having regard to the foregoing, the Director of Investigation notes that, it was suggested that the Procurement Committee should evaluate the contract. Based upon the procurement guidelines, the proposal should have been evaluated prior to the selection of the preferred bidder. Based on Section 2.1.3.4 of the GPPH 2001 Sole Source or Direct Contracting “...*The procurement officer of the entity must be satisfied that the contractor /supplier is qualified and appropriately registered on the Government approved register of contractors, and that value for money is obtained (e.g. prices quoted by the contractor are reasonably competitive with current market prices)*”.³⁸

The Minutes of the Meeting of the Board of the JCAA held on Wednesday, January 30, 2008, which stated, *inter alia*, as follows:

“Construction of Air Traffic Control Towers

*Col. Lewis recalled that the JCAA was instructed to present to the Board, quotations, architectural drawings and full details of all segments of the proposed contract with INTELCAN, along with the proposal by the Government to finance the project. It had also been suggested that the services of local quantity surveyors should be sought to advise the JCAA on the cost of the project. **The Chairman had***

³⁷ Extracts of Minutes of the Board of the Jamaica Civil Aviation Authority held on Wednesday, December 20, 2007.

³⁸ Section 2.1.3.4 of the GPPH 2001 Sole Source or Direct Contracting



also questioned the procurement procedure applied with regard to this project and had expressed the view that he favoured competitive tendering.

He informed the meeting that he had held discussions with the Minister of Transport and Works on the proposed contract with INTELCAN. The Minister who had previously met with the Canadian High Commissioner to discuss the matter, had subsequently instructed the Permanent Secretary to write to the High Commissioner to advise him that after receiving further communication from the Board of the JCAA, there was a decision taken to include Jamaican engineers, Quantity Surveyors and other professionals in the project.

Capt. Bogle noted that INTELCAN was reluctant to submit details of the proposed contract to the Board.

Several attempts have been made to obtain architectural drawings and costing and other details relating to this project.

It was agreed that INTELCAN should be advised that the Board could not negotiate a contract until it receives the details requested.

Mr. Evans informed the Board that he had made the necessary amendments to the Request for Proposal which would invite bids from quantity surveyors who will evaluate the contract.”³⁹

³⁹ Minutes of the Board Meeting of the Jamaica Civil Aviation Authority held on Wednesday, January 30, 2008.



The Engagement of a Quantity Surveyor for the Evaluation of INTELCAN's Submission

Having regard to the discussions which were recorded in the Minutes of the Board Meeting of the JCAA which was dated February 28, 2008, the OCG became aware of the engagement of a Quantity Surveyor for the evaluation of INTELCAN's submission. A verbatim extract of the above stated Minutes is, *hereunder*, represented:

"Construction of Air Traffic Control Towers

Mr. Evans informed the meeting that he had made the necessary amendments to the Request for Proposal which would invite bids from quantity surveyors who will evaluate the contract. The JCAA should now send the Request for Proposal to the three local Quantity Surveyors-Maurice Stoppi, Berkley & Spence and EQS Jamaica Limited, who should advise the JCAA of the cost of their service and submit proposals for pricing the construction of the control towers. The selection of the favoured quantity surveyor should be based on their Terms of Reference as well as architectural drawings."⁴⁰

The Minutes of the Meeting of the Board of the JCAA held on Wednesday, March 27, 2008, recorded, *inter alia*, as follows:

"Construction of the Air Traffic Control Towers

The meeting recalled that Mr. Evans had made the necessary amendments to the Request for Proposal (RFP) which would invite bids from quantity surveyors who will evaluate the contract to construct the ATC Towers.

⁴⁰ Extracts of Minutes of the Meeting of the Board of the JCAA held on Wednesday, February 28, 2008.



Col. Lewis informed the Board that the RFP was not sent to the surveyors as the Permanent Secretary in the Ministry of Transport and Works had expressed the desire to speak with his Minister and the Canadian High Commission prior to entry into any other negotiations.

The Chairman informed the meeting that the Minister had instructed the Permanent Secretary, in his presence, to write to the Canadian High Commission advising them that previous arrangements with respect to INTELCAN's involvement were not brought to the attention of this new Board.

The Board reiterated that the JCAA should, without delay, forward the RFP to the three local Quantity Surveyors previously agreed being Maurice Stoppi, Berkley and Spence and EQS Jamaica Limited. The selection of the favoured Quantity Surveyor should be based on their Terms of Reference as well as their architectural drawings.”⁴¹

The Minutes of the Board Meeting of the JCAA held on Wednesday, April 24, 2008, stated, *inter alia*, as follow:

“Construction of the Air Traffic Control Towers

The Chairman referred to a letter from the Hon. Minister of Transport and Works addressed to Col. Lewis regarding INTELCAN's involvement in the proposed construction of the Towers.

The Minister sought to obtain information which would allow him to respond to a letter from the Canadian High Commission which gave details of INTELCAN's prior commitment to the construction of the towers and conveyed the anxiety of the

⁴¹ Extracts of Minutes of the Board Meeting of the JCAA held on Wednesday, March 27, 2008



Canadian International Development Agency (CIDA) which is sourcing funds for the project.

Dr. Hales requested that the letter be forwarded to him to make a reply to the Canadian High Commission. He pointed out that no agreement was yet in place with INTELCAN for the construction of the towers.

The Chairman reiterated that Jamaican engineers and quantity surveyors should be involved in this project.

He pointed out that from the three Requests for Proposal sent out, only EQS Jamaica Limited, Quantity Surveyors, had indicated an interest in participating in the project.”⁴²

The Minutes of the Board Meeting of the JCAA held on Thursday, May 29, 2008, stated, *inter alia*, the following:

“Construction of Air Traffic Control Towers

The Chairman recalled that the JCAA should have sent a letter to Permanent Secretary, Dr. Alwin Hales reminding him of his promised [sic] to communicate with the Canadian High Commission regarding INTELCAN’s involvement in the construction of the towers.

Dr. Hales informed the meeting that he had prepared a letter to the to the [sic] Canadian High Commission which was copied to the Chairman of the Board and to the Permanent Secretary of the Ministry of Foreign Affairs. Dr. Hales also reminded the Board that the National Contracts Commission has given permission to the

⁴² Extracts of Minutes of the Board of the Jamaica Civil Aviation Authority held on Wednesday April 24, 2008



JCAA to negotiate a contract with INTELCAN, within certain parameters. This information was conveyed to the Canadian High Commission.

Mr. Stern read a letter which was received from INTELCAN which gave details of its technical and financial preparedness to undertake the project. A copy of this letter was given to all members of the Board.

The Board noted that from three Requests for Proposal which were sent only one, EQS Jamaica Ltd., Quantity Surveyors, had indicated an interesting [sic] participating in the project.

Mr. McPherson, Internal Auditor was invited to the meeting to open the pricing aspect of the bid submitted by EQS Jamaica Limited.

EQS Jamaica Ltd. quoted \$1.2 million dollars excluding G.C.T. for the provision of an estimate and delivery of the final report for the construction of the towers at the Norman Manley and Sangster International airports. The proposal calls for the payment of 35% of the total cost on the approval of the sketch and remainder on the delivery of the Final Report.

The Chairman explained that EQS Jamaica Ltd. would be providing a document with drawings for the JCAA to present to the tender. EQS Jamaica Ltd. will therefore be preparing the sketch of towers and not design.

Following discussions, the Board approved the proposal submitted by EQS Jamaica Ltd. for the completion if [sic] this undertaking.”⁴³

⁴³ Extracts of Minutes of the Board Meeting of the JCAA held on Thursday May 29, 2008.



Based upon the foregoing, the Director of Investigation highlights the following significant observations:

1. The proposal which was submitted by EQS Jamaica Limited was approved during the Meeting of the Board of the JCAA, held on Thursday, May 29, 2008;
2. The proposal was not opened at an official Tender Opening Ceremony;
3. The proposal was not reviewed by the Procurement Committee; and
4. There was no formal/and documented evaluation of the proposal.

The GPPH of May 2001, provides the following stipulations in respect of the opening of tenders/proposals:

“6.1.21 TENDER OPENING

The location and time at which tenders will be opened should be stated. Normally this should be as soon after the time for closing as possible. Tender openings should allow representatives of the tenderers to be present, and may be public. To this end the invitation to tenders should contain an invitation to those who have tendered to be present at the tender opening. The opening committee shall comprise a minimum of three public officers...”⁴⁴

Further, and as it regards the evaluation and comparison of tenders, the GPPH (May 2001) provides as follows:

“6.1.25 EVALUATION AND COMPARISON OF TENDERS

The method of evaluation should be detailed here. The responsiveness of tenders will be determined during the evaluation. The currency in which price comparisons will be made should be stated, where relevant. The contract award criterion shall be the lowest evaluated tender.”⁴⁵

⁴⁴ Section 6.1.21 of the 2001 Handbook on GoJ Public Sector Procurement Procedures.

⁴⁵ Section 6.1.25 of the 2001 Handbook on GoJ Public Sector Procurement Procedures.



The Minutes of the Board Meeting of the JCAA held on Thursday, June 26, 2008, recorded the following:

“Construction of Air Control Towers

...The meeting...recalled that the proposal submitted by EQS Jamaica Ltd, had been approved for preparing a sketch of the towers, providing an estimate for the construction of the towers, and guidance to the JCAA in this project. EQS Jamaica Ltd. had quoted the sum of \$1.2 million excluding GCT for this undertaking with 35% of the total cost being paid on the presentations of the drawings.

Mr. Stern was concerned that the Scope of Works and Terms of Reference were not clearly defined for the EOS Jamaica Ltd. Mr. Evans pointed out that the EOS Jamaica Ltd. would be providing guidance with options. (DI Emphasis)

It was agreed that the drawings prepared by INTELCAN along with the report and sketch prepared by EQS Ltd. should be presented at the next meeting of the Board.”

46

The Minutes of the Meeting of the Board of the JCAA held on Thursday, September 3, 2008, stated, *inter alia*, as follows:

“PROPOSED CONSTRUCTION OF ATC TOWERS

Lt. Col. Derby informed the Board that he had received drawings from EQS Jamaica Limited and a more comprehensive report on the costing for the structures would be submitted by September 10, 2008. He also presented drawings which were done by INTELCAN and suggested that these could be submitted to EQS Jamaica Limited for

⁴⁶ Extracts of Minutes of the Board Meeting of the JCAA, held on Thursday, June 26, 2008.



assessment and justification of the cost the construction of the buildings quoted by INTELCAN. They should also be requested to cost their drawings.

The Chairman argued that, had the Board known that INTELCAN had submitted drawings, then they would have instructed the JCAA to send these drawings directly to EQS for assessment and to provided [sic] guidance on pricing.

Mr. Stern pointed out that the figure of CAD\$19.833 Million included the cost of installing communication and power systems, professional services and civil works. The quotation from INTELCAN for the construction of the buildings only, was CAD\$7.69 Million.

The Chairman expressed the view that the Ministry of Transport and Works and the JCAA are to resume negotiations with INTELCAN in light of the strong relationship between the Government of Canada and Jamaica.

The meeting agreed that the EQS Jamaica Limited should provide the JCAA with the guidance on the costing of the structure prior to the resumption of talks with INTELCAN. The JCAA should endeavour to compare the cost of the construction component only. The other elements of the project should not be considered in the assessment done by EQS Jamaica Limited.

Following discussions, the Board agreed on the following:

- (a) The JCAA should write the EQS Jamaica Limited accepting their drawings.*
- (b) EQS Jamaica Limited should be required to provide a costing for their drawings of the structure for towers.*



(c) *ESQ [sic] Jamaica Limited should be requested to provide guidance on the pricing of the drawings of the structure submitted by INTELCAN.*⁴⁷

Based upon the foregoing, it was found that the the JCAA's Legal Counsel, Mrs. Marva Gordon-Simmonds, by way of a letter dated September 5, 2008, to EQS Jamaica Limited, confirmed the acceptance of the revised schematic plans. The letter stated as follows:

"Reference is made to recent briefing meetings and actions taken since August 14, 2008 and write to confirm that the revised schematic plans submitted via electronic mail on September 1, 2008 have proven acceptable as mentioned in our brief electronic mail of September 3, 2008.

Accordingly please take this formal confirmation that Sketch Design has been delivered and accepted as of September 3, 2008.

This means that we anticipate receiving the Quantities and Estimate(s) at earliest.

We do appreciate your efforts to date and hope that an early conclusion is in sight.

Per the Contract please present your original Invoice for the Initial Payment.

*Furthermore we formally propose August 18, 2008 as the Commencement Date this being taken as the business day upon which EQS received the final "Scope of Services".*⁴⁸

The Minutes of the Board Meeting of the JCAA, held on Thursday September 25, 2008, stated as follows:

"Proposed Construction of ATC Towers

⁴⁷ Extracts of Minutes of the Board of the Jamaica Civil Aviation Authority held on Thursday September 3, 2008.

⁴⁸ Letter dated September 5, 2008 from Mrs. Marva Gordon Simmonds, JCAA's General Counsel, to EQS Jamaica Limited.



Mr. Evan informed the meeting that EQS Jamaica Limited had submitted a document which outlines the methodology used to determine the cost of the construction of the towers. He explained that is [sic] was difficult to compare the cost submitted by EQS Jamaica Limited with those previously submitted by INTELCAN as there are marked differences with respect to the dimension used for the Tower cab and other structures and services provided by INTELCAN.

It was however noted that the EQS Jamaica Limited had calculated the cost of the project to be \$15 Million (Canadian) as compared to 16million put forward by INTELCAN. (DI Emphasis)

The Chairman informed the Board that the Ministry of Transport and Works was anxious to get this project started and thus the JCAA should resume negotiations with INTELCAN.

Lt. Col. Derby suggested that Mr. Evans armed with this vital information from EQS Jamaica Limited should be allowed to lead the negotiations between the JCAA and INTELCAN. When an agreement is reached with INTELCAN on the pricing of the project, the JCAA could commence arrangements for the financing of this venture.

The meeting however supported the Chairman's suggestion that the JCAA should without delay make arrangements to have funds in place for the project.

In this regard the meeting suggested that the following options for the financing of the venture be considered:

1. A loan should be sought for the Commercial banks with the JCAA depositing funds to hypothecate the loan.
2. The JCAA could have the loan guaranteed by the Government of Jamaica.



The Board also made the following recommendations:

- 1. That local engineers or consultants must be contracted to supervise the project on behalf of the JCAA.*
- 2. That a Board member with expertise in certain areas should be involved in negotiations with INTELCAN, if required.*
- 3. Recommendation should be obtained from the Ministry of Transport and Works as to the Financial Institutions chosen for the financing of the project.”⁴⁹*

Based upon the foregoing, the price difference between INTELCAN’s proposed cost and the estimate provided by EQS Jamaica Ltd. based on its assessment was One Million Canadian Dollars. It was however suggested that the JCAA and INTELCAN continue to negotiate the contract. Further it was suggested that the JCAA commence the sourcing of funding for the project.

On October 21, 2008, the JCAA wrote to Mr. George Ata, Chief Executive Officer, INTELCAN, in relation to the “...*Procurement and Commissioning of Control Towers at NMIA and SIA*”. The letter stated, *inter alia*, as follows:

*“Further to the discussions held between the Jamaica Civil Aviation Authority (JCAA) and INTELCAN and the meeting held in Kingston Jamaica on Friday, October 10, 2008, the **JCAA confirms its intention to enter into a contract with INTELCAN to design, construct, supply and install related equipment, commission and deliver under warranty, two Air Traffic Control Towers located at Sangster and Norman Manley International Airports.***

⁴⁹ Extracts of Minutes of the Board Meeting of the JCAA held on Thursday, September 25, 2008.



Based on the timeline which was discussed during our meeting on October 10, the JCAA is aiming at signing this contract towards the middle of December, 2008.⁵⁰

(DI Emphasis)

⁵⁰ Letter dated October 21, 2008, which was addressed to Mr. George Ata, Chief Executive Officer, INTELCAN, from the JCAA.



The Engagement of EOS Jamaica Limited as Project Manager and Client Advisor for the Project

The Minutes of the Board Meeting of the JCAA, held on Thursday, October 30, 2008, stated as follows:

“Proposed Construction of ATC Towers

Mr. Evans reported that he had a meeting with representatives from INTELCAN and the JCAA to discuss contractual arrangements for the project. INTELCAN recognized the need for the involvement of local sub-contractors, engineers and consultants on this project.

He cited the need for the involvement of a local firm of Quantity Surveyors for this venture. Consideration was given to the involvement of EOS Jamaica Limited which could be appointed as Quantity Surveyor for the project. However, Mr. Evans recognized the need to adhere to the Government Procurement Guidelines. A meeting is to be convened with the Authority’s Legal Officer who will be writing to the Contractor General with regard to the JCAA choosing a sole source option for this venture considering they are already familiar with the project and were the only of three QS firms invited to bid for a precursor project that had indicated they had the capacity to undertake the project. (DI Emphasis)

Mr. Stern reported that he held a meeting with representatives from INTELCAN on October 10, 2008 and had subsequently given them a Letter of Intent which indicated the Authority’s desire to continue discussion with the company with a view to having contractual agreement reached by mid December 2008. Two meetings were held with the in-house stakeholders during October 2008 and the location of the towers considered.



The Chairman urged the JCAA to arrange realistic times for the commencement, duration and completion of the project...”⁵¹

By way of a letter dated November 7, 2008, the JCAA informed Dr. Alwin Hales, Permanent Secretary in the Ministry of Transport and Works as follows:

“Re: Construction of Control Towers

The Jamaica Civil Aviation Authority (JCAA) has been developing plans to construct two New Air Traffic Control Towers to be built at the Sangster and Norman Manley International Airports.

The JCAA now seeks to engage the services of a Client Advisor initially to guide and assist the Authority in the negotiating process, with a view of signing a contract to construct and equip these towers.

Previously the JCAA invited tenders for the provision of services to assess and evaluate the proposal received from INTELCAN. Only one company expressed an interest and the contract was awarded to this company, EQS Jamaica Limited (EQSJ). EQSJ has performed satisfactorily and based on its work, the Authority intends to proceed...

This project is of a very technical nature, involving the specialized discipline of aviation and requires that those involved be suitably qualified and experienced. We feel that the circumstances of the project are such as to require sole source procurement for the following reasons.

1. The Time Constraints

⁵¹ Extracts of Minutes of the Meeting of the Board of the JCAA, held on Thursday, October 30, 2008.



The contractor has already been identified and was procured on a sole source basis approved by the NCC. They will need to start final stage design work within the next two months.

In order to ensure that JCAA obtains the appropriate designs, further work re-defining the Owners Requirements and incorporating these into their preliminary designs must be carried out immediately

If the Client Advisor role is to be tendered Terms of Reference and tender documents must be drafted and a selected list of tenderers which will require approval by the NCC must be drawn up. This approach as well as the time for tendering and NCC approvals will take several weeks. The total minimum time required by selective tendering is likely to be at least two months hence the earliest date for the Client Adviser to be in place would be early January. This time line may be further extended by the Christmas break.

2. Familiarity with the Project

Even supposing that a tender is accepted after two months the selected consultant will have to familiarise itself with the project and establish relationships with client organisation and existing facilities. The additional time taken and further resources and hence costs demanded from JCAA as well as the consultant for this procurement path must also be taken into account

- 3. EQSJ can have a proposal with JCAA within four working days. If we can receive Approval of Sole Source Procurement by NCC within two weeks, this would allow EQSJ to take charge of the design build process by end November and allow timely and expert execution of the project.*



4. *We believe that the use of Sole Source Procurement may be justified within the rules of the NCC as follows:*

Under the Government of Jamaica's POLICY ON PUBLIC PROCUREMENT. The following statement is made; "That recognizing the need for flexibility in the application of procurement modalities, although competitive tender is the primary mode, the use of limited tender (shopping) and direct contracting through negotiation or sole-source processes, with due consideration to the nature and circumstance of the procurement is permitted."

At 2.1.3.4 "Sole Source or Direct Contracting" in Section 2 of the Handbook the following procedure is outlined...

"Sole Source or direct contracting is a form of limited tendering where only one contractor is invited to participate.

Use of this method may be justified when procurement is of a "sensitive" nature, when the procuring entity receives an unsolicited proposal that it considers to be meritorious, in the case of follow-on procurement, when there is unusual and compelling urgency. Industrial mobilisation, where there is need for highly specialized expert services, pursuant to external agency agreement or treaties, or where it is otherwise in the public interest".

5. *We believe that a Sole Source contractor, EQSJ Limited, can be justified for the following reasons:*

EQSJ is familiar with the project having won, at selective tender and with NCC approval, the contract for the sketch design and estimates for the towers. EQSJ is familiar with the procedures and requirements of JCAA. We feel that the Client Advisor commission is a "follow on" commission.



The only way in which a Client Advisor can be engaged in time to carry out the preliminary work before hard design must start is through sole source procurement

As mentioned earlier, aviation is a highly specialized field and is governed by rigid international standards (International Civil Aviation Organization- ICAO) to which we must adhere to maintain our Category 1 status. EQSJ and its associated companies bring all the required specialist expert services to the table. Their in-house facilities include project management and they have been using the same construction management software as INTELCAN. EQSJ satisfies the “highly specialized expert services” criteria.

...

The JCAA is now seeking your assistance as the Permanent Secretary of the Ministry of Transport and Works to obtain permission from the National Contracts Commission to engage EQSJ Limited, on the sole source procurement basis, to provide client advisory services. These services include, but are not limited to: negotiation towards developing of contract, design revision, with clarification of Owner’s Requirements (including equipment selection, equipment selection, [sic] construction monitoring, testing (particularly the radio equipment), determination of training requirements, certification of payments, and proper and timely closing of the contract with the contractors.”⁵²

The Director of Investigation reiterates the following significant points which were noted in the aforementioned letter:

1. The JCAA requested that the Permanent Secretary of the Ministry of Transportation and Works approve EQS Jamaica Limited as the Client Advisor for the Project, due to time constraints and EQS Jamaica Limited’s familiarity with the Project.

⁵² Letter dated November 7, 2008 from the JCAA to Dr. Alwin Hales, Permanent Secretary, Ministry of Transport and Works.



2. The JCAA also expressed a need for the NCC's endorsement for the utilization of the Sole Source or Direct Contracting Methodology. Another justification for this request was that it was a follow-on procurement.

Delay in the Signing of the Contract with INTELCAN Due to the Engagement of EQSJ Limited as the Quantity Surveyor for the Project

The Minutes of the Meeting of the Board of the JCAA held on Friday, January 30, 2009, stated the following:

"Proposed Construction of Air Traffic Control Towers

*...Regarding the matter of EQS Jamaica and the application for sole source approval for them to act as consultants and Project Managers, Mr. Evans advised [sic] a letter of support was sent to the National Contracts Commission (NCC) from the Ministry of Transport and Works. However the information sent by them was inadequate since it did not include the detailed submission from the Authority. The meeting noted that a copy of the Authority's letter is now being sent to NCC and it is hoped that the request will be discussed at its next meeting on Wednesday, February 4, 2009."*⁵³

On February 13, 2009 the NCC wrote to Dr. Alwin Hales, Permanent Secretary in the then Ministry of Transport & Works as it regards the construction of the control towers. The letter stated as follows:

"Please refer to your letter dated 2008 December 22, regarding the captioned matter.

⁵³ Extracts of Minutes of the Board of the Jamaica Civil Aviation Authority held on Friday, January 30, 2009.



*The National Contracts Commission (NCC) considered the matter at its meeting held on **2009 February 04** and requested that the initial contract approval for Intelcan Technosystems Incorporated (INTELCAN) be presented for review at the next meeting of the NCC.*

*Having reviewed the initial contract awarded to INTELCAN at its meeting held on **2009 February 11**, the NCC endorsed the request from the Civil Aviation Authority to utilize the Sole Source Procurement Methodology to engage the services of **EQS Jamaica Limited** to provide client advisory services with respect to the negotiations with INTELCAN in the amount of **Seven Hundred and Sixty Thousand Canadian Dollars (CAN\$760,000.00)**.⁵⁴*

Subsequent to the foregoing letter from the NCC, the following was discussed in the Meeting of the Board of the JCAA, held on Thursday, February 26, 2009:

“NEW ATC TOWERS

The meeting noted that a response was received from the National Contracts Committee [sic] giving approval for the Authority to utilize the Sole Source Procurement Methodology to engage the services of EQS Jamaica Limited in regard to providing client advisory services in respect to the negotiations with INTELCAN. The NCC approved a contract figure of CAN\$760,000.00.

After discussion it was agreed that the Authority should invite EQS to a meeting with a view to confirming fees. Once the fees are agreed, then the Authority would

⁵⁴ Letter dated February 13, 2009 from Ms. Shirley Tyndall, OJ.CD, then Chairman, NCC to Dr. Alwin Hales, Permanent Secretary, Ministry of Transport & Works.



advise Ministry of Transport and Works who would be requested to prepare a Cabinet Submission in this regard.”⁵⁵ (DI Emphasis)

The Minutes of the Meeting of the Board of the JCAA, held on Thursday, March 26, 2009, stated the following:

“NEW ATC TOWERS

Mr. Stern stated that he has had discussions with both EQS Jamaica Limited and INTELCAN regarding various aspects of the project.

He advised that a proposed contract for Client Adviser Services had been received from EQS which is currently being reviewed by the Legal Department.

The Chairman advised that he realized that the matter had gone as far as to be approved by the NCC but that he had not been privy to any of the material or discussions and that it should not proceed until he had been so apprised and provided his comments.

Copies of the proposal for complete Client Adviser Services dated November 24, 2008 from EQS were later presented to the Chairman and members of the Board.

*The Board noted that a rate of 4% was negotiated with EQS to provide the total set of client adviser services set out in EQS’ proposal. The management should determine whether the approval of NCC covers the same set of client adviser services.”*⁵⁶

⁵⁵ Extracts of Minutes of the Meeting of the Board of the JCAA held on Thursday, February 26, 2009.

⁵⁶ Extracts of Minutes of the Meeting of the Board of the JCAA, held on Thursday, March 26, 2009.



The Minutes of the Meeting of the Board of the JCAA held on Thursday, April 16, 2009, the following was stated:

“Construction of Towers

Mr. Stern reported that discussions were underway to prepare a contract with EQS Ja. Ltd. The activity is expected to be executed in two phases at NMIA and SIA to allow for speedier development.

Mr. Stern assured the meeting that the procurement process would be in accordance with the government guidelines... ”⁵⁷

The Minutes of the Meeting of the Board of the JCAA held on Thursday April 30, 2009, stated, *inter alia*, as follows:

“Proposed Construction of Air Traffic Towers

Discussions ensued regarding the contract between the JCAA and EQS Jamaica Ltd. for the provision of Advisory Services for the project. The activity is expected to be executed in two phases at NMIA and SIA to allow for speedier development.

Questions were raised as to the immediate need for the towers. (DI Emphasis)

After discussion, the meeting noted that the Chairman was to raise the matter with the Hon. Minister when they next meet.

Capt. Bogle stated that a re-evaluation of the project should be done and Hon. Minister given the opportunity to make a decision on how to proceed.

⁵⁷ Extracts of Minutes of the Board of the Jamaica Civil Aviation Authority held on Thursday, April 16, 2009



It was then decided that in the meanwhile Lt. Col Derby should ensure that the contract with EQS Jamaica Ltd. be vetted carefully and thereafter the Authority should proceed to have the contract effected in keeping with proper guidelines, based on the Minister's decision to proceed.”⁵⁸

Subsequent to the foregoing, by way of a letter dated May 26, 2009, from the JCAA to the Permanent Secretary in the Ministry of Transport and Works, under the subject, “ **Re: Construction of two Air Traffic Control Towers: Project Management and Client Advisor Services**” stated the following:

“Reference is made to previous communication herein ending with the 13 February 2009 approval by the National Contracts Commission (NCC) to utilize the sole source procurement methodology to engage the services of EQS Jamaica Limited to provide “client advisory services with respect to the negotiations with Intelcan.

After contemplation by the Board of the Authority and negotiations with EQS Jamaica Limited (EQSJ) we now enclose the draft form of contract which the Authority is prepared to enter with EQSJ for the project management and client adviser services.

Also enclosed is the actual proposal supplied by EQS Jamaica Limited as the basis on which the NCC approval was sought.

The Attorney General's Department has provided comments in respect to a close version of said draft form contract, which comment should have been taken into account in the development of the enclosed version.

The main deliverables under this contract with EQSJ would be:

⁵⁸ Extracts of Minutes of the Meeting of the Board of the JCAA , held on Thursday, April 30, 2009.



1. *The review of the design and other preparatory matters including geo-technical studies and stakeholder meetings,*
2. *Development and finalization of the “Employers Requirements” for the two towers,*
3. *Negotiations with the intended construction contractor (Intelcan) towards the signing of the EPC contract to design, build, equip and commission the two Air Traffic Control Towers,*
4. *Approval of the Final Design for each tower,*
5. *Management and supervision of the entire project including quality control, regular inspection and reporting, payment certification, approval for hand-over after commissioning.*

We seek the Ministry’s guidance and approval and that of the Sector Committee and NCC as well as the Cabinet, as required by the Procurement Guidelines, to enter into this contract with EQS Jamaica Limited for these services.

We are mindful that the National Works Agency (NWA) has not yet confirmed in writing the effectiveness of the Scope of Services included in Appendix 1. However we trust that you will seek that as necessary, since we had referred a part of the matter to Mr. Lionel Brown, NWA.

We look forward to your earliest advice and direction in this matter and refer to telephone discussions with your Director, Corporate Planning and Performance monitoring from whom we had earlier sought assistance.”⁵⁹

⁵⁹ Letter dated May 26, 2009, from the JCAA to the Permanent Secretary, Ministry of Transport and Works, under the subject, “Construction of two Air Traffic Control Towers: Project Management and Client Advisor Services”.



Further, by way of a letter dated June 2, 2009, which was addressed to the Hon. Shirley Tyndall, OJ., CD, Chairman, NCC from Mr. Patrick Stern, Acting Director General, JCAA, the following request was made:

RE: Proposed Contract for Construction [of] Two Traffic Control Towers: Project Management and Client Advisory Services Contract

Please be referred to our previous communications regarding the captioned subject and in particular to your letter to us dated February 13, 2009 in which you formally gave us the approval for the Client Advisory Services Contract limited to the sum of \$760,000.00 Canadian Dollars.

Acting on the instructions of our Board and its Chairman, we added the project management services to the client advisory services, resulting in the contract sum being changed from the figure stated above to the amount of 4% of the total contract price. The estimated contract price is CAN \$20,000,000.00 and the 4% is therefore Canadian \$800,000.00 or approximately JA\$64,824,000.00 which exceeds the limit of our Board's authority to contract without Cabinet approval.

In the circumstances, we submit herewith for your approval, the drafted contract which incorporates the project management services and the client advisory services. We will seek the approval of the Cabinet subsequently.”⁶⁰

The Minutes of the Meeting of the Finance Committee of the JCAA held on Wednesday, June 17, 2009, recorded as follows:

“Construction of Towers

⁶⁰ Letter dated June 2, 2009, which was addressed to the Hon Shirley Tyndall, OJ, CD, Chairman, NCC, from Mr. Patrick Stern, Acting Director General, JCAA.



Lt. Col. Derby reported that the contract with EQS Ja. Ltd. was at the NCC for approval for further submission to Cabinet.

Mr. Stern noted that it was the Board Chairman's view that as the initial request to contract EOS Ja. Ltd. as a Client Advisor was already approved by the NCC, the request for change the service [sic] that of Client Advisory and Project Manager should not have been submitted.

Mr. Stern advised however that the NCC had requested that the draft contract with EQS Ja. Ltd. be forwarded to them for review.

Mr. Stern stated that in the interest of time and for the commencement of the construction of the towers, EOS Ja. Ltd. had indicated that provided they were given a letter of intent and an advance payment they had no problem to start the discussions with Intelcan, pending the finalization of the contract.

It was noted that with the absence of a contract the Authority could not make an advance payment. (DI Emphasis)

Mr. Stern stated that EQS Ja. Ltd. had indicated that they would need to have further liaison with their colleagues regarding the commencement of discussions with Intelcan on the basis of a letter of intent only, considering that a cost would be incurred to bring in experts from Canada.

Lt. Col. Derby noted that at an earlier meeting with Intelcan, the Canadian commercial company regarding the provision of similar services as that of EQS Ja. Ltd. it was stated that the process to prepare a proposed contract would be 18 months.



He added that in comparison with the timeline given by the Canadian counterpart then, the time now being proposed is not unduly lengthy.

Lt. Col. Derby stated it would be unwise to issue a letter of intent pending the approval from the NCC. (DI Emphasis)

*Mr. Stern stated that efforts would continue to get a response from the NCC.”*⁶¹

The Minutes of the Meeting of the Board of the JCAA, held on Thursday June 25, 2009, stated as follows:

“Construction of ATC Towers

Mr. Stern advised that he had received a verbal approval from the National Contracts Commission regarding the approval for the JCAA to enter into contract with EQS Jamaica Limited in the amount of US\$800,000.00.

*Upon receipt of the formal letter a letter of intent is to be issued to EQS.”*⁶²

Subsequent to the foregoing, Ms. Shirley Tyndall, Chairman, NCC, by way of a letter dated June 26, 2009, which was addressed to Dr. Alwin Hales, Permanent Secretary, then Ministry of Transport and Works indicated as follows:

***“Re: The Proposed Contract for Construction of Two Traffic Control Towers-
Project Management and Client Advisory Services Contract***

Please refer to your letter dated 2009 June 09, regarding the captioned matter.

⁶¹ Extracts of Minutes of the Finance Committee of the JCAA, held on Wednesday, June 17, 2009.

⁶² Extracts of Minutes of the Meeting of the Board of the JCAA, held on Thursday June 25, 2009.



*The National Contracts Commission (NCC) considered the matter at its meeting held on **2009 June 17** and requested that a representative from the Civil Aviation Authority attend the next meeting of the NCC to provide clarification on the contract figures outlined in the submission.*

The matter was again considered at the NCC's meeting held on 2009 June 24 which included a presentation by Messrs. Patrick Stern and Monty Kandicore.

Having reviewed the matter, the NCC endorsed the request from the Civil Aviation Authority to add the Project Management Services to the Client Advisory Services, previously approved by the NCC to EQS Jamaica Limited as follows into single contract for Client Advisory Services and Project Management Services.

Original Contract Amount for Client Advisory Services only - CAN \$760,000.00

New Contract for the Project Management and Client Advisory Services -CAN \$800,000.00

Estimated contract sum for Project Contract - CAN \$20, 000,000.00

The new advisory contract is 4% of the preliminary estimate of the construction of the two towers.⁶³ (DI Emphasis)

Based upon the foregoing, the NCC endorsed the request from the Civil Aviation Authority to add the Project Management Services to the Client Advisory Services, previously approved by the NCC to EQS Jamaica Limited with a revised amount of CAD\$800,000.00.

⁶³ Letter dated June 26, 2009, from Ms, Shirley Tyndall, Chairman, NCC, which was addressed to Dr. Alwin Hales, Permanent Secretary, then Ministry of Transport and Works.



The Minutes of the Meeting of the Finance Committee of the JCAA, held on Wednesday, July 23, 2009, recorded as follows:

“Construction of Towers

Mr. Stern reported that the approval from the National Contracts Commission (NCC) was received concerning the draft contract with EQS Ja. Ltd.

The Authority now awaits the response from the Cabinet regarding the submission of the draft contract.

Mr. Stern continued that subsequent to a verbal notification to EQS Ja. Ltd., a meeting was held with the working group concerning the locations of the towers at SIA and NMIA.

He advised that as per request, a letter of intent confirming the preparation of a contract was issued to Intelcan. A copy of the letter was also forwarded to the Board Chairman.

He advised also that the concerned parties agreed that should the contract and geotechnical analysis not delivered within four months, the cost incurred for the geotechnical analysis would be reimbursed to the Contractor.

Mr. Stern stated he expected a response regarding the commencement of the job within the next two days.”⁶⁴

⁶⁴ Extracts of Minutes of the Finance Committee of the Jamaica Civil Aviation Authority, held on Wednesday, July 23, 2009.



The Minutes of the Board Meeting of the JCAA held on Thursday, August 27, 2009, stated the following:

“PROPOSED CONSTRUCTION OF ATC TOWER(S)”

Mr. Stern reported that a projected work schedule was prepared and submitted to the JCAA by EQS Ja. Limited.

Mr. Stern advised that EQS Ja. Ltd. was unhappy with the proposed date for the signing of the contract now projected for November 2009 and not end September 2009.

It was further noted that information with respect to the soil analysis was required to be inserted in the contract, as this information would determine the foundation of the tower construction.

Arrangement is to be made to conduct soil analysis activities at the proposed sites at NMIA and SIA.

The meeting noted that Cabinet Submission with respect to the proposed contract with Intelcan was scheduled for September 7, 2009. Follow-up would continue with the Ministry of Transport in this regard.”⁶⁵

The Minutes of the Board Meeting of the JCAA held on Thursday, September 24, 2009, the following was stated:

“PROPOSED CONSTRUCTION OF ATC TOWER(S)”

⁶⁵ Extracts of Minutes of the Board of the Jamaica Civil Aviation Authority held on Thursday, August 27, 2009.



Lt. Col. Derby advised of the meeting which was held at the Cabinet Office on Monday September 21, 2009 at which time discussion was held regarding the proposed construction of the ATC Tower(s) in particular, the engagement of EQS Jamaica Limited as Client Adviser and Project Manager for the design/building contract.

The Permanent Secretary advised that by the end of the day (September 24) a Cabinet Note should be received confirming the appointment of EQS Jamaica Limited. The Authority will be advised once received.”⁶⁶

The Minutes of the Meeting of the Finance Sub-Committee held on Monday, October 26, 2009, recorded as follows:

“Construction of ATC Towers

Mr. Stern reported that Cabinet has approved the contract between the JCAA and EQS Ja. Ltd. to provide client advisory and project management services.”⁶⁷

Based upon the foregoing, EQS Jamaica Limited received the approval of the NCC, as well as the Cabinet, to execute a contract with the JCAA for the Project Management and Client advisory services in relation to the ATC Towers to be constructed by INTEL CAN at the NMIA and SIA.

The Minutes of the Board Meeting of the JCAA held on Thursday, October 29, 2009, stated the following:

“PROPOSED CONSTRUCTION OF ATC TOWER(S)”

⁶⁶ Extracts of Minutes of the Board Meeting of the JCAA held on Thursday, September 24, 2009.

⁶⁷ Minutes of the Meeting of the Finance Sub-Committee held on Monday, October 26, 2009.



Mr. Stern advised that Cabinet Note dated September 1, 2009 was received confirming the appointment of EQS Jamaica Limited as Client Advisor and Project Manager. The Authority is in the process of drafting contract between EQS Jamaica Limited and the JCAA. A similar submission to Cabinet is to be prepared for INTELSCAN in due course.

The Chairman stated that EQS is to guide the Authority to negotiate with INTELSCAN and reiterated that no contract is to be finalized until vetted by the Board.”⁶⁸

The Minutes of the Board Meeting of the Finance Sub-Committee of the JCAA held on Thursday, November 19, 2009, stated the following:

“Construction of ATC Tower(s)

Mr. Stern reported that a meeting was held with EQS Ja. Ltd. on November 5, 2009 as part of the planning and implementation process to review the target schedule as well as the way forward.

He reported that the draft contract (with EQS Ja. Ltd) was sent to the Board Chairman for review and comments.

He noted that ground-breaking for the project was anticipated before the end of the next financial year.

Mr. Stern advised that EOS Ja. Ltd. was working with Intelcan in preparing their contract, with the view to signing by January 15, 2010.

⁶⁸ Extracts of Minutes of the Board Meeting of the JCAA held on Thursday, October 29, 2009.



The meeting noted that the proposed construction time would be 18 months commencing in Montego Bay. Works at NMIA would commence 6 months later.⁶⁹ (DI Emphasis)

The Director of Investigation notes that by way of a letter dated November 20, 2009, Mr. YP Seaton, Chairman of the JCAA, wrote to the then Acting Director General of said Agency, Lt. Col. Oscar Derby, stating the following:

Re: Contract between JCAA and EOS Jamaica Limited

I refer to the above-mentioned matter and return herewith Contract dated November 2009.

*Please be informed that said contract is in order and you may execute same accordingly.*⁷⁰

The foregoing letter was an indication that the contract between EQS Jamaica Limited and the JCAA was approved by the Chairman of the Board of the JCAA and an order was given by the Chairman to execute the contract with EQS Jamaica Limited, for the provision of Project Management and Client Advisory Services to the JCAA regarding its impending contract with INTELSCAN.

The Minutes of the Board Meeting of the JCAA held on Thursday, November 26, 2009, recorded as follows:

“PROPOSED CONSTRUCTION OF ATC TOWER(S)”

⁶⁹ Extracts of Minutes of the Finance-Sub Committee Meeting of the JCAA held on Thursday, November 19, 2009.

⁷⁰ Letter dated November 20, 2009, from YP Seaton Chairman of the JCAA to then Acting Director General, JCAA Lt. Col. Oscar Derby.



Mr. Stern advised that EQS Jamaica Limited Client Advisor and Project Manager attended a meeting at the Authority on November 11, 2009. The meeting noted that the contract was sent to the Chairman for review who advised that it can be signed by the Authority.

General Counsel advised that she had not been informed of this and would need to review the contract with a view to having the contract signed by the Director General.

A copy of the schedule prepared by EQS is to be sent to the Chairman today.

The Board was also advised that EQS is also working with INTELCAN in preparing their contract with a view to having it signed by January 15. A copy of the draft contract is to be sent to the Board for comments.”⁷¹

Subsequent to the foregoing meeting, a contract dated December 17, 2009 was entered into between EQS Jamaica Limited and the JCAA, for the provision of Project Management and Client Advisory Services. The contract related to the design, construction, equipping and commissioning of Air Traffic Control Towers at the NMIA and SIA. The referenced contract was signed by Lt. Col. Oscar Derby, Director General, JCAA, in the presence of Mrs. Marva Gordon-Simmonds and Mr. Allen Cochran, CEO, EQS Jamaica Limited, in the presence of Mr. Trevor Paine.

The Minutes of the Meeting of the Board of the JCAA held on Wednesday, January 13, 2010, stated the following:

“STANDING ORDER SUSPENDED

⁷¹ Extracts of Minutes of the Meeting of the Board of the JCAA held on Thursday, November 26, 2009.



Mr. Evans expressed his concerns about the inordinately long time between the Director General's undertaking to sign the EQS contract and the actual time that it was signed.

Capt. Bogle stated that he requested a Business Case on the project for some time and has not received one. He wanted to know the reason for this project since the Authority would be spending so much money on a project that will not be an Asset of the Authority.

Mr. Evans stated that the Chairman has signed off on the project and therefore that should be sufficient.

Capt. Bogle stated that the full Board had not been given the opportunity to give its final views on the project before signing off.

Lt. Col. Derby stated he gave the undertaking to sign the contract but the General Counsel had indicated that she had not seen the document and that prohibited him from signing the contract prior to clarifications being made and that it was his understanding that he would sign, once it has been reviewed by the General Counsel.

He further stated that he was not furnished with a complete report on the project to update himself on the status negotiations up to that point. Lt. Col. Derby emphatically stated that his responsibility as Director General was to ensure that the Authority's interest is covered at all times.

Chairman Seaton then stated that Director General gave the Board his undertaking and if he was unsure of the contents of the contract he should not have given his undertaking.



In response, Lt. Col. Derby stated that he should have come back to the Chairman when he noted the discrepancy in the contract and apologized for his actions and emphatically stated that there was no disrespect towards the Chairman and the Board by not signing on the date promised.

Chairman stated that this issue is a Government to Government matter and that is how the JCAA should proceed.

Capt. Bogle stated that how could the Board have signed off on the Tower project without a Business Case which would inform how the funds will be recovered. He proposed that in the interest of transparency a Sub-Committee should be formed to do a complete evaluation or [sic] the project in order to ascertain how to proceed.

Lt. Col. Derby stated that he is of the firm view that these issues can still be looked at. He advised that his commitment to this project has be [sic] call [sic] to question by Mr. Evans who stated his strong objection accusing that he was undermining the project. The Director General reiterated that his duty is to protect the assets and finances of the organization and Government.

Capt. Bogle stated that he is not in objection to the project but thinks that a detailed study on how expenditure would be recovered was required.

Chairman Seaton stated that he was of the view that the project could be funded internally.

Lt. Col. Derby stated that he did advise the Board that if the passenger fees is not implemented, the JCAA could not proceed with the project as based on projections,



if the Authority were to proceed without the added income, by 2013 the JCAA could be bankrupted.

The Chairman then directed that an urgent reminder is to be sent to the Minister regarding having the matter taken to Cabinet...

Mr. Stern advised that documentation outlining sources of financing was previously presented to the Board. He suggested that the Economic Fees could be adjusted. However the Director General advised that this could not be done based on the responses received from the industry representatives.

Mr. Evans stated that further discussion should be held at separate meeting. The Board agreed on a motion by Mr. Evans and seconded by Capt. Bogle.

Capt. Bogle asked that the Board be provided with a list of capital expenditure to be undertaken over the next 5 years.

Further discussion was deferred to the meeting to be convened.”⁷²(DI Emphasis)

The Director of Investigation notes that there was some amount of dissatisfaction by the Board as it regards the process which led to the signing of the contract. Capt. Bogle expressed his dissatisfaction that the project was signed off on without the scrutiny of the Board members and without a ‘Business Case’. He was also concerned about the manner in which the project would be funded and how the funds would be recovered.

⁷² Extracts of Minutes of the Board Meeting of the JCAA held on Thursday, January 13, 2010.



Tender Report Recommending INTELSCAN as the Contractor for the Project

The Director of Investigation found that EQS Jamaica Limited prepared a “*TENDER REPORT ON THE CONTRACTOR’S PROPOSAL DATED MARCH 5, 2010*”. The Report detailed, *inter alia*, the following:

*“The Sector Committee of the National Contracts Commission at the National Works Agency is requested to approve the award of a contract for the Design, Construction and Equipping of Air Traffic Control Towers at Sangster and Norman Manley International Airports to **Intelcan Technosystems Inc.** of Canada for the sum of **CDN\$19,999,974.00** and with a Contract Period of 539 Days.*

The contract is to be financed under the surety of the Jamaica Civil Aviation Authority and shall be funded from internal resources and external loan. Loan financing will not exceed fifty percent of the contract sum.

The contract is for the Design, Construction and Equipping of Air Traffic Control Towers at Sangster and Norman Manley International Airports. The towers are both approximately 35m in height and provide unobstructed views as far as is possible. The towers include the following accommodation:

Upper Tower Cab –Level 8 Five controller positions

Access Level Cab-Level 7 Balcony, Equipment rooms

Service Level Cab –Level 6 Accommodation for off-duty controllers

Support Shaft: Levels 3, 4 and 5 Support, elevator, stairs

Tower Base Building Level 2 offices, Ops. Room, Mechanical room

Tower Base Building Level 1 Security, Washrooms, Generator, Mech.

Background



In 2007 Jamaica Civil Aviation Authority (JCAA) received a proposal from a Canadian Contractor to design and construct new control towers at Sangster (SIA) and Norman Manley International (NMIA) Airports.

On 19th April 2007 JCAA applied to the National Contracts Commission for permission to utilize the sole source procurement methodology.

The National Contracts Commission granted authority on 25th April 2007 to JCAA to negotiate a contract for the design and construction of the two control towers at a cost not exceeding CDN\$20,000,000.00.

NCC required the JCAAA [sic] to report to the National Works Agency Sector Committee when satisfactory negotiations had been concluded.

This Tender Report is the report required by NCC.

Involvement of EQS Jamaica Limited

EQS Jamaica Limited, in association with Planning & Stantec Ltd., was awarded a contract to provide sketch designs and estimates for the civil works for the construction of towers at SIA and NMIA. EQS JL submitted estimates in September 2008. The estimates were as follows:

For SIA US\$7,306,768.00

For NMIA US\$7,577,472.00

The above figures do not include any Air Traffic Control or Meteorological Equipment.

The above figures do not include GCT.



In November 2008 EQS Jamaica Limited (EQSJ) was requested by JCAA to submit a proposal to act as its Client Adviser and Project Manager to represent it in formulating a contract for the design and construction of new control towers at Sangster (SIA) and Norman Manley International Airports (NMIA). This proposal was accepted and EQSJ commenced work in July 2009.

EQSJ liaised with JCAA and Intelcan Technosystems Inc. (Intelcan) which had submitted the original proposal in 2007 and formulated the Proposal Documents which comprised the following:

The Conditions of Contract

The Employer's Requirements

The Contractor's Proposal

The documents were completed and approved by JCAA in November 2009.

The Conditions of Contract are based on the FIDIC Conditions of Contract for EPC/Turnkey Projects modified by particular Conditions of Contract. This form of contract places the entire responsibility for design, construction and operational performance of the finished facility on the Contractor.

The EQSJ team included experts in aviation architecture, air traffic control, structural, civil, mechanical and electrical engineering and quantity surveying.

Contractor's Proposals Received

Intelcan Proposal 1

The documents referred to in 2.3 above were sent to Intelcan on 17th November 2009 and they submitted their First Revised Proposal based on the Proposal Documents on 24th December 2009.



The proposal amounted to CDN \$23,009,703.00.

The documents were distributed by EQSJ to its specialists. There were no significant objections to the contractor's technical submission but errors in the price build-up included in his Annex A were pointed out to the Contractor.

These anomalies were corrected and negotiations as to the price which was felt to be too high with reference to the Tender Estimates (see 2.1 above) and based on direct knowledge of similar works being carried out in the region.

Intelcan Proposal 2

On 20th January Intelcan submitted a second Revised Contractor's proposal. The price remained the same but the errors pointed out had been corrected and there were some minor revisions.

This Proposal was discussed and negotiations were led by EQSJ during the week of 25th January 2010. The discussions focused on the structural elements of the civil works to the towers. In particular the piling and towers structure were felt to be uneconomical and their designs not the most appropriate for the Jamaican construction market.

These discussions led to the Contractor submitting a further Contractor's Proposal

Intelcan Proposal 3

On 1st February the Contractor submitted a further proposal. This proposal reduced the price to CAN 21,000,000.00 provided JCAA agreed to the following:

a price escalation clause to be inserted

contract to be signed within 8 weeks

costs of site relocation at NMIA to be covered by JCAA



EQSJ and JCAA felt that the price was still too high and, based on their knowledge of building costs for similar structures in the region and on the Tender Estimates at 2.1 above the Contractor was pressed to look again at his price.

Intelcan Proposal 4

The Final Contractor's Proposal was received on 18th February 2010. The price was CAD 19,999,974.00 and all the requirements of the Employer were included.

Meetings with the Intelcan and JCAA during the week of 15th March 2010 were convened to discuss minor discrepancies and to correct the Contractor's proposal where necessary. This resulted in agreement on the Contractor's Best and Final Offer.

Following these meetings EQSJ compiled a technical and commercial report on the Best and Final Offer. This was submitted with the Contractor's Proposal on 18th March to JCAA.

The Proposal and the report were discussed by the JCAA Board at a meeting on 25th October 2010. The JCAA Board gave its approval and instructed JCAA to proceed to NCC and Cabinet Approval.

General Completeness of Proposal 4

Because the sole source procurement process involves direct interaction with the proposer errors and inconsistencies in the Contractor's Proposal have been eliminated by close scrutiny by EQSJ and JCAA.

We believe the Contractor's Proposal, as currently presented to the National Contracts Commission is complete and will deliver the requirements of the JCAA.

The Design for the towers is a little in advance of Schematic Design Phase in terms of the Civil Works. We believe this is the correct stage which allows the contractor



to give a fixed price whilst allowing for the further tailoring of the design to comply with the Employer's Requirements in detail.

The Design for the Air Traffic Control and Meteorological Systems is much more advanced but the Contractor acknowledges that, when procurement of these equipment packages becomes due, the design may be revised and equipment will be updated where advantageous.

Arithmetic Check

The various build-ups to the Tender price have been checked and corrected. There are no arithmetic errors in the Contractor's Proposal.

Tender Comparison

*A Tender Comparison showing the Tender Estimate matched against the tender but excluding the costs of the Air Traffic Control or Meteorological Equipment is given at **Appendix A**. The overall Tendered Amount is 9.75% higher than the Tender Estimate.*

*A Tender Comparison showing the Tender Estimate adjusted to include the costs of the Air Traffic Control and Meteorological Equipment matched against the tender is given at **Appendix B**. The overall Tendered Amount is 7.97% higher than the Tender Estimate.*

US Inflation figures between September 2008 and January 2010 show no significant increase or decrease.

There is an underestimate included in the Tender Estimate for the Stand-by Generator. These items were priced at US\$38,200 each whereas they should have been sized to cover full load and are duplex. The figure should have been nearer US\$300,000.00.



Based on the above we believe that the Contractor's Proposal is acceptable as regards price.

Recommendation

*We recommend that the tender of **Intelcan Technosystems Inc.** with a tender price of **CND 19, 999,974.00** (excluding GCT) and with a contract period of **539 calendar days** be accepted.”⁷³*

Based upon the foregoing, INTELCAN submitted four proposals to the JCAA before the parties settled on a contract price. The final proposed cost of CAD\$19, 999,974.00 (excluding GCT) was “9.75% higher than the Tender Estimate”. This was, however, within the allowable margin of 15%.

⁷³Tender Report on the Contractor's proposal dated March 5, 2010, which was prepared by EQS Jamaica Limited.



The Absence of Procurement Committee Minutes in Relation to the Construction of the Towers

The OCG, in an attempt to ascertain whether the referenced procurement was reviewed by the Procurement Committee, requested the Procurement Committee minutes of the JCAA for the period under review.

By way of a Requisition dated February 23, 2015, the OCG requested that the JCAA

“...provide a copy of the Procurement Committee Minutes for the JCAA for the period January 2005 to February 2014, during which discussions were held as it regards the construction of the Air Traffic Control Towers at the Sangster and Norman Manley International Airports”.⁷⁴

The JCAA in response to the OCG’s Requisition stated as follows:

“All the Minutes of the Procurement Sub-Committee of the JCAA for the period January 2005 to February 2014 during which discussions were held as it regards the construction of the Air Traffic Control Towers at SIA and NMIA are enclosed in a package labelled Appendix 4.”⁷⁵

The Director of Investigation notes that Appendix 4 which was referenced in Mr. Williams-Singh’s above response only contained a copy of the *“MINUTES OF PROCUREMENT COMMITTEE MEETING HELD ON WEDNESDAY, FEBRUARY 12, 2014”* **which made no mention of the construction of the Air Traffic Control Towers at the SIA and NMIA.**

Section 1020 of the November 2008 GPPH states, *inter alia*, as follows:

“ 3. Procurement Committees

...

⁷⁴ OCG requisition dated February 23, 2015, to Mr. Nari William-Singh, Director General (Acting), JCAA)

⁷⁵ Mr. Nari Williams-Singh, Director General, JCAA, response to the OCG’s Requisition dated March 31, 2015.



The Procurement Committee is mandated to:

- *Review recommendations for award within the threshold set by the Head of the Entity*
- *Ensure compliance with relevant policies, guidelines and procedures;*
- *Review evaluations done by evaluation committees;*
- *Facilitate response to contractor inquiries;*
- *Maintain proper record of Committee meetings, including records of the procurement; and*
- *Ensure compliance with reporting obligations.*

Procurement Committee meetings should be convened pursuant to the needs of the entity. Proper minutes must be recorded and maintained for each meeting.”⁷⁶

The JCAA made the following disclaimer in respect of their response to the OCG’s requisition:

“We acknowledge that there are some historical documents which are indicated but not yet retrieved and we continue to search our digital records even while we send this formal response and please be advised that if and when any new material is found same will be expeditiously provided to you.

At this time there is no additional information which I believe could prove useful to this Investigation nor is there any further statement in regard to this investigation which I am desirous of placing on record.”⁷⁷

⁷⁶ Section 1020 November 2008 GPPH

⁷⁷ Mr. Nari Williams-Singh, Director General, JCAA , response to the OCG’s Requisition dated March 31, 2015.



Having regard to the foregoing statement made by the JCAA, the Director of Investigation notes that, to date, its Office has not been furnished with any further documents relating to the Minutes of the Procurement Committee meeting for the referenced period by the JCAA.



Deliberations Prior to the Signing of the Contract with INTELCAN

There was some amount of delay in the signing of the contract between the JCAA and INTELCAN. This was due to the engagement of EQS Jamaica Limited by the JCAA to provide Client Advisory and Project Management Services. As was mentioned previously, on December 17, 2009, the JCAA signed a contract with EQS Jamaica Limited for the provision of Client Advisory and Project Management Services for the Project to be executed by INTELCAN.

Highlighted, hereunder, are deliberations which took place prior to the signing of the contract with INTELCAN:

By way of letter dated February 2, 2009, Ms. Marva Gordon Simmonds, General Counsel, JCAA, wrote to INTELCAN to inform of the following:

“RE: ATC TOWERS CONTRACT

Please be advised that the Authority will not be pursuing the negotiations of the contractual terms and conditions any further, while we await the appointment of a Consultant with the appropriate level of expertise and experience in such matters.

The highly technical nature of the project as well as the need for sound design specifications coupled with necessary continuous project management demands this position, which is fully endorsed by our Board, as indicated in its January 30, 2009 meeting.

This office shall keep the abeyance then those items negotiated by Gordon Simmonds/Goyette until such appointment has been effected.



This confirms that, at this time, no material will be sent to the Attorney General for review as we had up to last week indicated would be the next step.”⁷⁸

The Director of Investigation also notes that there were proposed changes to the Project which would have affected the cost of the Project. This was highlighted in the Minutes of the Meeting of the Board of the JCAA held on Thursday, June 25, 2009, where it was stated as follows:

“Construction of ATC Towers

...

With respect to INTELCAN, Mr. Stern advised that the operators at the Sangster International Airport have shifted the site for which the tower is to be located. As a result, the cost for construction would have increased based on the fact that the structure will now be erected on unprepared lands to which utilities are not now provided.”⁷⁹

By way of a letter dated July 20, 2009, from Mr. Patrick Stern, Acting Director General of the JCAA to Mr. George Ata, Chief Executive Officer, INTELCAN, under the subject ***“RE: Letter of Intent for Turn-Key Contract for the Design and Construction of Control Towers at Norman Manley International and Sangster International Airports”*** the following was stated:

“Reference is made to the discussions held between the Jamaica Civil Aviation Authority (JCAA) and Intelcan at the meeting held in Kingston Jamaica on Tuesday, July 14, 2009; and further to letter dated October 21, 2008. This serves to reconfirm that the JCAA intends [sic] to enter into a fixed price contract with Intelcan to design, construct, supply and install related equipment, commission and deliver under warranty, two Air Traffic Control Towers located at Sangster and Norman Manley International Airports.

⁷⁸ Letter dated February 2, 2009, from Ms. Marva Gordon Simmonds General Counsel JCAA to INTELCAN.

⁷⁹ Extracts of Minutes of the Meeting of the Board of the JCAA held on Thursday June 25, 2009.



1. *Before signing a contract with Intelcan the JCAA requires:*
 - (a) *The Contract Price to be revised to take into account:*
 - (i) *The revised piling and foundation design for both sites, copies of which we will also need.*
 - (ii) *Intelcan to recheck the sight lines and hence Tower Heights based on the revised site locations and determine if there is a need to vary the Tower Heights from what Intelcan proposed and any cost implications thereof.*
 - (iii) *The cost of the site works and any variations to the Electricity service (power) and other services.*
 - (b) *The Terms and Conditions of the Contract to be agreed.*
 - (c) *Soil boring and tests to be completed with a report for Intelcan to use in arriving at the foundation design including piling requirements.*

In this regard, the JCCA [sic] notes that the cost of the soil boring and test will be included in the contract price.

On this basis, the JCAA will reimburse the cost of these investigations if there is a failure to agree on a contract within 120 days of the date of this letter. This is based on the JCAA agreement with Intelcan on the Scope and Cost of these investigations, and further subject to all Government of Jamaica policies and guidelines being met.

2. *We would ask that Intelcan immediately enter into negotiations with the NCC approved soils sub-contractor to obtain the cost and timing for this work which will allow Intelcan to quickly finalise foundation design, specifications and cost needed to finalise Intelcan's contract with us.*⁸⁰

⁸⁰ Letter dated July 20, 2009 from Mr. Patrick Stern, Acting Director General of the JCAA to Mr. George Ata, Chief Executive Officer, INTELKAN.



Further, there was a meeting with the JCAA, INTELCAN and EQS Jamaica Limited which was held on March 18, 2010. The individuals present were Mr. YP Seaton, Chairman, JCAA, Mr. Robert Evans, Deputy Chairman, JCAA, Mr. Milton Daley, Board Director, JCAA, Mr. Patrick Stern, Deputy Director General for Administration and Services, JCAA, Monty Kandekore, Legal Officer, JCAA, Dawn Pearce, Quantity Surveyor, EQS Jamaica Limited, Allan Cochran, EQS Jamaica Limited, Trevor Paine, EQS Jamaica Limited, Bernard Goyette, INTELCAN and John Dalrymple, INTELCAN. The minutes of the meeting stated as follows:

“The meeting was called to order at 11:00 a.m. by Mr. Patrick Stern, Deputy Director General Administration and Services. Mr. Stern stated that the meeting was convened in order to have INTELCAN present the last and final offer of the tender report, Mr. Goyette interjected to say best and final offer. Mr. Stern went on to state that EQS would also present their recommendations.

Mr. Cochran said that he has produced nine copies, after protracted negotiations, for the board members of JCAA. He said that the EQS report is available with the final offer and the prime objective is for the board to approve what is recommended in the report. Mr. Cochran stated that two letters were submitted, one of them is a letter of submission the other one concerns methods of payment which they would prefer, whether payment under normal conditions or whether by letter of credit but they were unable to reach a compromise on this and it is up to the client which way to go. He said that there is no problem with using letter of credit, but knows it would just be more difficult for the client to arrange that.

Mr. Evans told Mr. Cochran that it is going to be impossible to go through the report in any detail and he will probably have to walk them through the report, but he would like to ask a question. Mr. Seaton interjected to say that he is not here for this morning, he said that he is just there to get a copy and then the Director



General will submit it to him at the board meeting next week and all the decisions will be taken then, after it is brought in a formal way at the board meeting on Thursday.

Mr. Evans said that he had a price and a list of employer requirements and he wanted to know from Mr. Allen if the price was reflective of all the employee requirements. Mr. Allen said that it was included in the price. Mr. Evans stated that he had a document with employer requirements and one with price and he just wanted to confirm that the price is for all employee requirements. Mr. Seaton stated that's what they employed EOS to do, to act on our behalf and give us a comprehensive report and give a price that includes every thing.

Mr. Seaton asked Mr. Cochran if he had a good deliberation with INTELCAN and if he felt that they come with the best price. Mr. Cochran replied yes and stated that in the last few months they have negotiated and arrived at the best price with all the requirements. (DI Emphasis)

Mr. Seaton asked Col. Derby when he will be leaving, and Col. Derby stated that Monday afternoon of next week, Mr. Seaton enquired if Col. Derby would be attending the board meeting, Col. Derby replied that he would be teleconferenced to the meeting. Mr. Seaton told him to make sure that the documents are brought to the board meeting and the items should be put on that agenda and then the deliberations can be done.

Mr. Seaton departed and there being no other matters to discuss, the meeting was adjourned at 11:07 a.m.”⁸¹

⁸¹ Extracts of Minutes of Meeting with INTELCAN and EQS Jamaica Limited held on March 18, 2010.



Based upon the foregoing, the Director of Investigation highlights that EQS Jamaica Ltd. in their capacity as Project Managers and Client Advisors indicated that they negotiated the best price with INTELCAN.

The Minutes of the Board Meeting of the JCAA held on Wednesday, March 24, 2010, recorded the following:

“PROPOSED CONSTRUCTION OF ATC TOWER(S)”

The Chairman expressed concern that the documents presented by EQS Jamaica Limited bore the logo of the JCAA and has not been submitted under their signature. This he found unacceptable.

Mr. Evans advised that having the client logo included was standard in the consulting industry.

The Chairman noted his comment but still requested that the document contain the signature of the Consultant officially forwarding the document to the Authority.

The Chairman reiterated that he would rather see a report coming from the EQS showing that they are fully responsible for the submission of this report.

Mr. Evans agreed to the idea of having a signature placed on the document.

Mr. Stern advised that the documents were received on March 18th and was sent to the Board for their consideration so that the company may receive advice and permission to proceed with the next phase of the procurement process.



After approval is received from the Board the next phase would be presentation to the Sector Committee and thereafter send it to the NCC and then to Cabinet for approval.

Mr. Stern highlighted that the Authority was two to three months behind schedule.

Mr. Evans stated that in the meanwhile the contractor would need to follow up the submission of the drawings to the KSAC for authorization. This is to be pursued.

Mr. Stern then advised that the details of the financing were still awaited prior to any documentation being sent to the Sector Committee. It was reiterated that this information must be sent to the Board prior to being sent to any other body.

Mr. Stern advised that the document is being revised.

The Chairman stated that responsibility for the oversight of the project is squarely in the lap of our consultants EOS. (DI Emphasis)

In addressing a statement regarding his involvement in the company, Mr. Evans stated that he has no direct involvement with EQS Jamaica Limited and his only involvement in the project in his capacity as advisor representing the Board on the committee reviewing the project.

*After lengthy discussion, it was agreed that Round Robin should be sent to the Board once the document is ready. **The Legal Department will be required to ensure that the document is reviewed prior to the Board's approval.*** (DI Emphasis)

Mr. Ho Sang raised the question of how the cost of building the tower will be recovered.



Mr. Stern advised that the financing document will address this question.”⁸²

The Minutes of the Meeting of the Finance Sub-Committee Board of the JCAA held on Friday, May 21, 2010, recorded the following:

“Construction of ATC Tower(s)

Mr. Stern reported that a letter was received from the National Contracts Commission (NCC) advising that they had endorsed the recommendation to award the contract to Intelcan for the design, construction and equipping of Control Towers at Norman Manley and Sangster Airports.

He stated that the letter also advised that work should commence without delay.

The meeting noted that further to the contract sum of CDN\$19,999,974, infrastructure works which would include sewer, electricity and water to the site were deemed as associated and additional costs.

Captain Bogle reiterated his request for a Business Plan for the construction of the Towers. He noted that the Business Plan could identify and confirm all proposed costs and assist in the negotiation exercise with the Airports regarding future rental/lease arrangements. (DI Emphasis)

Mr. Stern was again asked to provide the Capital Budget to Captain Bogle, showing itemized allocation, a breakdown of individual expenses and proposed recovery measures.”⁸³

⁸² Extracts of Minutes of the Meeting of the Board of the JCAA held on Wednesday, March 24, 2010.

⁸³ Extracts of Minutes of the Meeting of the Finance Sub-Committee Board of the JCAA held on Friday, May 21, 2010.



Having regard to the foregoing, it is being reiterated that the National Contracts Commission (NCC) endorsed the recommendation to award the contract to INTELCAN for the design, construction and equipping of Control Towers at the Norman Manley and Sangster International Airports. **It was also outlined that the contract was in the amount of CDN\$19,999,974.00 and that infrastructure works, inclusive of sewer, electricity and water to the site were considered to be associated and additional costs.**

It is also being reiterated that by way of a letter dated July 25, 2007, the NCC advised that the contract should not exceed \$20,000,000.00 Canadian Dollars.

On May 3, 2010 EQS Jamaica Limited submitted a ‘Supplementary Tender Report on the Contractor’s Proposal’, dated March 5, 2010, as required by the National Works Agency Sector Committee of the NCC, for the design and construction of the Air Traffic Control Towers.

Subsequent to the meeting of the Finance Sub-Committee of the JCAA Board, the NCC on May 10, 2010, received a Transmittal Form for INTELCAN. The Form detailed the following:

“Name of Procuring Entity: Jamaica Civil Aviation Authority

Name of Contract: Air Traffic Control Towers at Norman Manley & Sangster Airports

NCC Category: Building Construction

Location and Description of Contract Activity: Design construction and equipping of control towers at Norman Manley and Sangster International Airports in Kingston and Montego Bay.

Pre-qualification: No

Post-qualification: No

Tender Period: Nov 17 2009 to Feb 18 2010

Tender Validity Expiry Date: Jul 4 2010

Contract Duration: 77 weeks



Proposed Start Date: June 30 2010

Procurement Method: Sole Source

...

Comments: NCC endorsed JCAA's request for sole source procurement at its meeting held 2007 July 18.

Amount: CDN\$19,999,974.00

Comparable Estimate: Amount \$18,984,308.26

Prepared By: Allan Cochran EQS Ja. Ltd.

Consultant's Name, Function & Role: Allan Cochran-EQS Ja. Ltd. Proj. Manager & Client Advisor

Client Agency/Ministry Recommendation: Intelcan Techno Systems Inc. CDN \$19,999,974.00

Is contractor on NCC Register No

...

Contractor's Workload: Number of Contracts: 5 Value of Outstanding Work: \$19,408,000 USD

Nature of Funding and Source 65% internal funds from cash flow; 35% loan financing

...

Date Submission was considered [by the Sector Committee]: APRIL 30, 2010."

The foregoing form was signed by Patrick Stern on "2010.5.4"

On May 13, 2010 the NCC wrote to Dr. Alwin Hales, then Permanent Secretary in the Ministry of Transport & Works stating as follows:

"Re: Jamaica Civil Aviation Authority (JCAA) - The Design, Construction and Equipping of Control Towers at Norman Manley and Sangster Airports



*Please refer to the submission dated 2010 April 28 made by the **Ministry of Transport and Works** to the Sector Committee at the **National Works Agency** on 2010 May 10 regarding the contract award relating to the above project.*

*The National Contracts Commission having considered the matter at its meeting on 2010 May 12 has endorsed the recommendation of the Sector Committee to award the contract to **Intelcan Techno Systems Inc.** in the sum of **Nineteen Million, Nine Hundred and Ninety –nine Thousand, Nine Hundred and Seventy-four Canadian Dollars (CDN\$19,999,974.00).***

The Commission recommends that based on the initial request for Sole Source procurement and the justification provided, the work should commence immediately as failure to commence the contract will result in withdrawal of the approval of the Commission.

Please submit the contract for the approval of Cabinet.”⁸⁴ (DI Emphasis)

On June 16, 2010, the JCAA wrote to Dr. Alwin Hales, then Permanent Secretary, Ministry of Transport and Works advising as follows:

“Re: 276/MTW -30/2010- Design, Construction and Equipping of Control Towers at Norman Manley and Sangster International Airports.

Below is the additional information requested for the captioned submission to enable placement of the matter on the agenda of the Infrastructure Subcommittee:

Background

⁸⁴ Letter dated May 13, 2010, to Dr. Alwin Hales, then Permanent Secretary in the Ministry of Transport and Works.



In May 2006 Jamaica Civil Aviation Authority (JCAA) received a proposal from Canadian Contractor Intelcan Technosystems Inc. (Intelcan) to design and construct control towers at Sangster and Norman Manley International Airports.

In April 2007 JCAA applied and received permission from the National Contracts Commission to utilize sole source procurement methodology. The approval was granted in July 2007 in an amount not exceeding Twenty Million Canadian Dollars.

Justification

The Current towers have been in operation since the 1950's and have long passed their useful life it [sic] terms of form and capacity. Additionally the development of both airports with modern facilities has rendered the present towers inadequate for visual and effective control of the maneuvering areas. The project also provides an opportunity for modernizing the present amenities for staff and equipment, including redundancy for equipment at every level which is a critical safety/security feature for modern Air Traffic Control.

The advantage of construction of both towers by the same entity is the efficiency gains and cost saving from having a single entity conduct design, construction and equipage using the same team and construction equipment operating in a parallel mode.

Intelcan Proposal

In May 2006 Intelcan provided a proposal to the then Minister of Transport and Works. The proposal was analyzed by technical experts at the JCAA who made



request for changes to Air Traffic Control components as well as building facilities. This proposal forms the basis for the final submission.

Sole Source Procurement

The Canadian Government through the Canadian Commercial Corporation (CCC) has recommended Intelcan due to their expertise in “turn key” projects of this nature. The JCAA also received proposals of interest from two other companies which were deemed unsuitable for the needs of the JCAA and hence were not pursued.

Tender Validity Period

Intelcan has provided a tender validity period that ends July 4, 2010.

External Loan

The JCAA proposes to finance this project by utilizing 65% internal funds and 35% loan financing externally. (DI Emphasis)

The Financial Plan of the Authority incorporates a loan of US\$7M to part finance the construction and equipage of the Towers at NMIA and Sangster international airports. The terms of the loan as planned are:

- *Principal* - *US \$7,000,000.00*
- *Commencement date* - *January 31, 2011*
- *Duration* - *36 months*
- *Interest rate*- *‘US 12-month LIBOR+2.5%=3.5%*
- *Moratorium* - *3 months*



The intention is to request tender for the provision of financing. The interested contenders include:

- *Scotiabank*
- *National Commercial Bank*
- *First Caribbean International Bank*
- *First Global Bank*
- *Guardian Asset Management*
- *Capital and Credit Holdings*

LIBOR-based Loan

LIBOR-based loan was chosen because [sic] the relatively low cost. The fact that the Authority earns foreign currency qualifies it for such facility. As LIBOR is variable, we will have to manage the interest rate risk by seeking to control the plus factor. We may also have to provide some form of “securitization” in which portion of the earnings is deposited with the financier to ensure priority payment of loan installments.

Intelcan Profile

Extensive due diligence have been conducted on Intelcan including their experience in similar civil works as well as resume’s of the staff assigned to the Jamaica project. Both sets of information are attached.”⁸⁵

⁸⁵ Letter dated June 16, 2010, from the JCAA to Dr. Alwin Hales, then Permanent Secretary, the Ministry of Transport and Works.



The Minutes of the meeting of the Finance Committee of the JCAA held on Thursday, June 17, 2010, recorded as follows:

“Construction of ATC Tower(s)

...

The meeting noted that the proposed contract for the construction had received the Sector Committee’s recommendation, which would be forwarded to National Contracts Commission (NCC) for review prior to Cabinet submission for final approval.”⁸⁶

The Minutes of the Meeting of the Board of the JCAA held on Thursday, June 24, 2010, recorded, *inter alia*, as follows:

“Proposed Construction of ATC Tower(s)

In response to the Chairman’s query regarding ‘cost for services’ that were not included in the cost for the tower project, Lt. Col. Derby clarified that infrastructure costs such as electricity, sewerage and water were excluded from the contract and Financing Proposal.

Lt. Col. Derby added that these utilities were deemed to be basic to the contract and should have been included as the matter was previously raised by him in a meeting with EOS Jamaican Ltd. (EOSJ).

Mr. Stern stated that the infrastructure costs could be estimated at J\$10 Million and he was presently in dialogue with EOSJ to finalize this matter.

⁸⁶ Minutes of the meeting of the Board of the Finance Committee of the JCAA held on Thursday, June 17, 2010.



Mr. Stern confirmed that infrastructure matters at the Montego Bay site were addressed and are to be finalized.

Mr. Stern is to therefore coordinate with EOSJ and address the issue of identifying and finalizing in writing, the source, in terms of sewer and utilities at the NMIA location.

In the matter of location at NMIA, Mr. Stern reported that the site location was not yet confirmed.

The Chairman stated that this update was alarming and queried the reason the Authority had proceeded to contract, when the location was not identified and agreed on.

The meeting noted that the contract stipulates that any cost associated with the change of the site location would be absorbed by the Authority.

Mr. Stern is to finalize the tower location at NMIA and/or address the clause in proposed contract regarding the JCAA absorbing associated cost due to a change of site.

In the interim, Mr. Stern is to provide information regarding the projected cost due to change of site location. (DI Emphasis)

Mr. Stern is also to submit to the Board, a copy of the Proposal for the financing of the Project, for review and approval.



The meeting noted that the proposed contract for construction received the Sector Committee's recommendation, and is to be forwarded to the National Contracts Commission (NCC) for review prior to Cabinet submission on Monday, June 28, 2010 for final approval. ”⁸⁷

By way of a letter dated July 6, 2010, which was sent on behalf of the Permanent Secretary, Ministry of Transport and Works, Ms. Denniesa Hinds, Acting Policy Officer wrote to Lt. Col. Oscar Derby informing him of the following:

“Re: Design, Construction and Equipping of Control Towers at Norman Manley and Sangster International Airports

This is to advise that Cabinet by way of Decision No.25/10 dated June 28, 2010 gave approval for the award of a contract to Intelcan Technosystems Inc. for the design, construction and equipping of two new control towers; one each at the Sangster International Airport and Norman Manley International Airport at a cost of Nineteen Million, Nine Hundred and Ninety –nine Thousand, Nine Hundred and Seventy-four Canadian Dollars (CDN\$19,999,974.00).”⁸⁸

Subsequently, a Meeting of the Finance Committee of the Board of the JCAA was held on Thursday, July 22, 2010. The minutes recorded the following:

“Construction of ATC Tower(s)

⁸⁷ Extracts of Minutes of the Meeting of the Board of the JCAA held on Thursday, June 24, 2010.

⁸⁸ Letter dated July 6, 2010, which was sent on behalf of the Permanent Secretary, Ministry of Transport and Works, Ms. Denniesa Hinds, Acting Policy Officer, to Lt. Col. Oscar Derby.



Mr. Stern reported that Cabinet approved the award of contract for design, construction and equipping of control towers at Norman Manley and Sangster International airports.

He noted that the Board Chairman advised that the Ministry of Transport and Works (MTW would like to have the contract signed off by Wednesday, July 28, 2010. As a consequence, a copy of the contract was requested from EOS Jamaica Ltd. (ESQJ) [sic] by Friday, July 23, 2010 for further forward to the Board Chairman for review.

In the matter relating to the NMLA site, Mr. Stern advised that a visit was scheduled for July, 23, 2010. He noted that as the site proximity had not changed, there would be no need to repeat the soil analysis activity.

Mr. Stern reported that a meeting was held with the National Commercial Bank (NCB) regarding financing options. The proposal received would be forwarded to the Board Chairman.

The meeting noted that as NCB's proposal required a 100% security, there would be no risk to NCB and hence the Authority should negotiate minimal administrative fee and a lower spread.

Ms. Barrett stated that efforts would be made to review other expressed interest, for the purpose of comparison and in keeping with the Procurement Guideline.”⁸⁹

Subsequent to the foregoing meeting, the Director of Investigation found that the contract for the proposed towers was signed on July 29, 2010, between the JCAA and INTELCAN. We highlight,

⁸⁹ Extracts of Minutes of the Meeting of the Finance Committee of the Board of the Jamaica Civil Aviation Authority held on Thursday, July 22, 2010.



hereunder, the following information contained in the contract document which is deemed significant:

Conditions	Data
Employer's name and address	The Jamaica Civil Aviation Authority 4 Winchester Road Kingston 10 Jamaica
Employer's Representative's name and address	EQS Jamaica Limited 9, Leinster Road Kingston 5 Jamaica
Time for Completion	Sangster International - 483 Days Norman Manley International -539 Days
Defects Notification Period	365 days for each section as listed below
Electronic Transmission Systems	The following electronic transmission systems shall be valid if acknowledged by recipient and confirmed in writing within 5 working days: Email Facsimile
Governing Law	Jamaica
Ruling Language	English
Language for Communications	English
Time for access to the Site	14 days after Commencement Date
Employers Representative's Duties and Authority	Variations resulting in an increase of Contract Price shall require the approval of the Employer.
Performance Security	The performance security will be in the form of a demand guarantee in the amount of 10 percent of the Original Contract Amount in Foreign Currency.
Subcontractors	The Contractor shall give notice of appointment, commencement of work and commencement of work on site of all subcontractors
Normal working hours	Normal working hours are to be as follows: Monday to Friday from 07:00 hours to 17:00 hours.
Delay damages for the Works	CAD 10,000.00 per day for each tower.
Maximum amount of delay damages	8% of the Accepted Contract Amount.
Provisional Sums	10%
Adjustments for Changes in Cost	There will be no adjustment for rises and falls in the cost of Labour, Goods and other inputs to the Works.
Total advance payment	10% Percentage of the Accepted Contract Amount payable in one instalment in the currencies and proportion in which Accepted Contract Amount is payable.
Repayment amortization rate of advance payment	Repayment shall commence from the first interim Payment which is more than 90 days after the date on which the Advance payment was made. The Advance payment shall be recovered in eight equal monthly instalments.
Percentage of Retention	10% of the total amounts described in Clause 14.3 (a) and (b).
Limit of Retention Money	5% of the Accepted Contract Amount excluding GCT
Plant and Materials	Plant and Materials for payment when delivered to the Site
Currencies of Payment	The Currency of payment shall be the Canadian Dollar (CAD)



Maximum total liability of the Contractor to the Contracting Agency	The accepted Contract Amount
Periods for Submission of Insurance: (a) evidence of insurance (b) relevant policies	14 Days after the Commencement Date 28 Days after the commencement Date
Maximum amount of deductibles for insurance of the Employer's risks	CAD 100,000.00
Minimum amount of third party insurance	The amount of CAD 2 million with no limit on the number of occurrences
The DB shall be comprised of	Three members

The following deliberations of the JCAA Board were had following the signing of the contract:

“PROPOSED CONSTRUCTION OF ATC TOWER(S)”

...

Mr. Stern then advised that there is no change in the location at the NMIA and further stated that at a meeting last week with the NMIA, it was agreed that the location will remain as decided earlier.

Mr. Stern further advised that a letter was written to NMIA to obtain confirmation and agreement on all matters discussed.

Lt. Col. Derby mentioned that the input of the Flight Safety Division would have to be received in regard to the site locations. Mr. Stern advised that the Flight Safety Department has been advised however they have not responded to correspondence sent to them.

It was also stated the input the KSAC and the Fire Department has to be sought in regard to the feasibility of the location.

The Chairman stated that it is the responsibility of the Advisors, EQS Jamaica to ensure that these entities are advised.



Capt. Bogle then enquired about the financing aspect of the project. Mr. Stern advised that 65-35% funding was proposed to Cabinet and that the Authority has communicated with NCB and BNS requesting the funding proposals.

Chairman Seaton tabled a copy of a letter received from NCB outlining the terms and conditions of their financing offer. Copies of the letter were given to Members of the Board for perusal.

The Chairman then stated that to be prudent, even though the Authority might be able to fund the project, it is wise to make provisions for a line of credit.

Capt. Bogle stated that his concern is with the total cost of the contract as towers build [sic] elsewhere (e.g. Miami) are built at lower costs.

The Chairman stated that he would have expected that Capt. Bogle would have brought this matter to the Board before now.

Lt. Col Derby stated that Capt. Bogle has in fact brought this matter to the Board.

The majority of the Board reiterated that it was the first time they have heard the concern about pricing, the Chairman stated that what he can recall from Capt. Bogle is that there is no business case and concerns regarding the necessity for the construction of the towers.

Capt. Bogle stated that at the very first meeting of this Board he told the meeting of his experience on the previous Board which requested a breakdown of the cost and INTELCAN's refusal to provide this breakdown as a result the project was put on hold.



Mr. Evans stated that to compare the price might be unwise since the type of building which takes into account the unique factor such as location, type of building and climate would make an impact on the pricing.

After discussion, the Chairman stated that the Quantity Surveyor and other Advisors would have guided the Authority in this regard.

Mr. Stern advised that EQS has in fact advised that the proposal was adequate. He also stated that he did not know whether the tower in Miami included the cost for an administration building and equipment which were included in the INTELCAN arrangement.”⁹⁰

Based upon the foregoing meeting Minutes, the Director of Investigation notes that although the contract had already been signed between INTELCAN and the JCAA, discussions were still ongoing as it regards the cost for the construction of the towers. Instructively, Capt. Bogle indicated that his concern related to the total cost of the contract and compared this cost to the construction of towers elsewhere, for example, Miami. In respect of the concerns raised by Capt. Bogle and the comments by Board Members that they had not been raised previously, the records of previous meetings of the Board of the JCAA clearly indicate that the concerns had always been outlined by Capt. Bogle. The Director of Investigation also notes that Capt. Bogle had in fact indicated in several meetings that the cost proposed by INTELCAN was too high.

In point of fact, during the course of the meeting of December 20, 2007, at which Mr. Y.P. Seaton was the Chairman, it was recorded that “*Capt. Bogle recalled his dissatisfaction with the choice of INTELCAN as the sole tender [for] the project.*” The Minutes of the meeting which was held on May 29, 2007, recorded that “*Capt. Bogle expressed the view that an approach should be made to the company to have the cost of this project further reduced to US\$12-14 Million as recommended*

⁹⁰ Extracts of Minutes of the Meeting of the Board of the JCAA, held on Thursday, July 29, 2010.



by aviation experts.” The Director of Investigation, however, notes that Lt. Col. Oscar Derby was the only other Board member who was present at both the May 29, 2007 and the July 29, 2010 Board meeting of the JCAA. The Minutes of the meeting of April 25, 2007 also indicated that “Captain Bogle expressed the view that an approach should be made to the company to have the cost further reduced to US\$12 million as recommended by experts.”

The Minutes of the Finance Committee of the Board of the JCAA held on Thursday, August 19, 2010, recorded as follows:

“Construction of ATC Tower(s)

Mr. Stern reported that Agreement between EQS. Ja. (Project Manager) and Intelcan (Contractors) was signed on July 29, 2010.

He advised that as per a visit on July 23, 2010, the siting at the NMIA is now confirmed. *A Memorandum of Understanding in this regard is to be prepared and signed by all concerned parties.*

Mr. Stern confirmed that operations at Air Jamaica will not be disrupted.

He added that provisions were made to incorporate the Meteorology Service in the design and development of the towers being constructed at NMIA and SIA.

Mr. Stern also advised that meetings were scheduled with EQS Ja and Intelcan, August 24-25, 2010 at the JCAA’s office. Mr. Evans would also attend.”⁹¹

⁹¹ Extracts of Minutes of the Finance Committee of the Board of the JCAA held on Thursday, August 19, 2010.



The Director of Investigation also notes the following email correspondence which was dated July 22, 2010, at 05:03:01, from Allan Cochran CEO, EQS Jamaica Limited, to Mr. Patrick Stern, stated, *inter alia*, as follows:

“Patrick,

The actions required of the Contractor before formation of contract can take place are as I understand it, as follows:

Registration as an overseas company with the Companies Office of Jamaica Registration with Income Tax, National Housing, National Insurance, Health , Education and GCT. Submission to the Client of TCC Certificate...

Registration as a Grade 1 Civil Engineering and Grade 1 Building Construction. Intelcan should have no problem in obtaining these registrations and, as John Wright has stated, this is not a barrier to the signing of the contract. We can insert a proviso that the registrations shall be obtained within six weeks.

The changing of the sites can be dealt with as a variation under contract.

I assume that the contract will be signed by the Director General and witnessed by the Minister. This is the normal procedure.

We are in the process of producing copies for signing...⁹²

The Director of Investigation notes that in the foregoing email, EQS Jamaica Ltd. was proposing that the contract be signed and, thereafter, the matter concerning the sites could be addressed as a variation under the contract.

⁹² E-mail correspondence dated July 22, 2010, from Allen Cochran CEO, EQS Jamaica Limited, to Mr. Patrick Stern.



Proposal for ‘Gift Giving’ at the Signing of the Contract between INTELCAN and the JCAA

Having regard to an email dated May 13, 2010, sent by Mr. Bernard Goyette of INTELCAN to Mrs. Marva Gordon-Simmonds, Legal Counsel, JCAA, the Director of Investigation found that plans were being made for the presentation of a gift during the signing of the contract between INTELCAN and the JCAA. The referenced email stated, *inter alia*, the following:

“As discussed before, I would appreciate if you could provide me with a list of the present 2010 administrators/key personnel at JCAA, including the members of the board.

...

As explained, these names would be for inclusion in a gift Intelcan wishes to give JCAA at contract signature.

Make sure your name appears!! Monty, Noel, Patrick, all from directors up.

I believe it would be appropriate to name the people at Aerotel as well...”⁹³

Further to the foregoing email, Mrs. Gordon-Simmonds responded to Mr. Goyette by way of an email dated May 14, 2010, at 14:55. The email which was also copied to Ms. Nicole Robinson, Mr. Patrick Stern, Lt. Col. Oscar Derby and Mr. Noel Ellis and stated, *inter alia*, the following:

“... Since we spoke yesterday, I have passed your message on to our Information Manager, Ms. Nicole Robinson and noted that she did send an e-mail message to you.

⁹³ Email dated May 13, 2010, from Mr. Bernard Goyette of Intelcan to Mrs. Marva Gordon-Simmonds



I myself am of the opinion that preparation of gifts for ‘contract signing’ is a quite pre-emptive gesture since the matter has not yet gone before the National Contracts Committee [sic], and must be approved by the Cabinet of the the Government of Jamaica.

So whilst I appreciate the gesture, my involvement in other such activities, has seen any momentous or souvenirs coming well after contract signing and commencement. That would surely be in order in this case as well since the intended agreement would if approved and consummated, see the parties working very closely together.

*Ms. Robinson will however explore the matter further and certainly provide you with such information and guidance as will inform our way forward.*⁹⁴ (DI Emphasis)

The Director of Investigation also notes the content of an email which was sent from email address “old23256@gmail.com” to Mrs. Marva Gordon-Simmonds which was dated May 14, 2010, at 3:06 p.m., which also highlighted that the presentation of a gift would not have been appropriate during the contract signing. The email stated as follows:

*“I don’t know how appropriate it is for us to be facilitating this gift giving. I would rather not be included. Such gift giving should be spontaneous and based on business cards exchanged. Any planned gift should be to the Authority and not to individuals.”*⁹⁵

⁹⁴ Email from Mrs. Marva Gordon-Simmonds to Mr. Goyette which was dated May 14, 2010, at 14:55, and copied to the Ms. Nicole Robinson, Mr. Patrick Stern, Lt. Col. Oscar Derby, Mr. Noel Ellis.

⁹⁵ Email correspondence from old23256@gmail.com to Mrs. Marva Gordon-Simmonds, which was dated May 14, 2010.



In the foregoing regard, the Director of Investigation highlights Sub-Section S-1040 of the November 2008 Handbook of Public Sector Procurement Procedures, under the heading **“UNETHICAL CONDUCT”**, which states that:

“All involved in GOJ procurement process must comply with the GOJ Code of Conduct for Civil Servants outlined in the Staff Orders.

No individual shall use his authority or office for personal gain. Personal gain includes accepting or requesting anything of material value from bidders, prospective bidders or suppliers for the individual, his or her spouse, parents, children or other close relatives, or for other persons from whom the individual might gain direct or indirect benefit of the gift.

An individual shall seek to maintain and enhance the reputation of the GOJ by:

- *Maintaining the highest standards of honesty and integrity in all relationships both inside and outside the Procuring Entity in which he works;*
...
- *Complying both with the letter and the spirit of the Laws of the GOJ, accepted professional ethics and Contractual obligations;*
- *Conflict of interest- An individual shall declare any personal interest that may affect or might reasonably be deemed by others to affect impartiality in any matter relevant to their duties;*
...
- **Competition- All bidders, suppliers, contractors and consultants shall be treated with fairness and impartiality, and avoid any business arrangement that might prevent the effective operation of fair competition;**
- **Business gifts- No business gifts will be accepted from current or potential GOJ suppliers;**



- *Hospitality- An individual shall avoid any business hospitality that would be viewed by others as having an influence in making a government business decision as a result of accepting that hospitality.*
- ...
- *Accepting or requesting money, travel , meals, entertainment, gifts, favours, discounts or any other material value from bidders or prospective bidders, suppliers, contractors or consultants;*⁹⁶ (DI Emphasis)

⁹⁶ Sub-Section S-1040 of the November 2008 Handbook of Public Sector Procurement Procedures, under the heading **“UNETHICAL CONDUCT”**.



INTELCAN's Registration with the NCC

A review of the NCC files as well as certain emails which were sent amongst JCAA officials, INTELCAN and the NCC, revealed that INTELCAN was not registered with the NCC as at the date of the signing of the contract. We highlight hereunder the following deliberations which occurred prior to the signing of the contract in relation to INTELCAN's registration with the NCC.

On March 24, 2010, an email correspondence bearing the subject line "*Jamaica CAA Control Towers-Requirements before a Contract may be Entered into Bernard*" was sent by Mr. Allen Cochran to Mr. Bernard Goyette and Mr. John Dalrymple. The email which was also copied to Mr. Noel Ellis, Mr. Patrick Stern, Mr. Monty Kandekore, Mrs. Marva Gordon-Simmonds, Mrs. Louise Fletcher-Weller, Mr. Winston Riley and Ms. Dawn Pearce and stated, *inter alia*, as follows:

"I have contacted the National Contracts Commission concerning Registration of Contractors and Tax Compliance certificates and offer the following information:

"The Foreign Contractor should be registered before the award of the contract, that is, before the actual signing of the contract and therefore the NCC's endorsement of the recommendation for the award of a contract may be given prior to the registration of such a Contractor"

"Tax Compliance Requirement for Foreign Contractors also states that "Where the contract will require the performance of any part of the works or service in Jamaica, the foreign contractor will be required to obtain a valid Tax Compliance Certificate to be eligible for award."

There is also a requirement for the foreign contractor to prove that it is tax compliant in its country of origin. "The procuring entity...is advised to ensure that the Foreign Contractor is tax compliant in its home country."



Although you do not require these items until an award has been authorised by Cabinet we suggest that you take steps to obtain your Registration (In the Building Construction Category, Grade 1) and a Tax Compliance Certificate. You should also be ready to prove that you are tax compliant in Canada.⁹⁷ (DI Emphasis)

The Director of Investigation notes that an email dated July 19, 2010, from Mrs Marva Gordon-Simmonds to email addresses: 'legal@jcaa.gov.jm', 'lfletcher@planning-endeco.com'; 'Allen Cochran'. The email was also copied to 'Bernard Goyette; 'Patrick Stern'; 'olderby@cwjamaica.blackberry.net'; 'jcivav@jcaa.gov.jm; 'Jason McPherson' bearing the subject line: "Re Contract signing for towers". The email stated as follows:

"Dear Folks:

Results of current research accords with my past experience:

After Cabinet approval and prior to signing, comes the Award of the Contract which per the Procurement Guidelines, cannot be done until all necessities such as Registration, TCC acquisition etc required under said guidelines are accomplished. It was noted that the OCG/NCC examines dates closely as well.

The entity with which these shall be contracted ought to have all its ducks in row and when all those are met, then comes signing.

⁹⁷ E-mail correspondence dated March 24, 2010 from Mr. Allen Cochran to Mr. Bernard Goyette and Mr. John Dalrymple, which was copied to Mr. Noel Ellis, Mr. Patrick Stern, Mr. Monty Kandekore, Mrs. Marva Gordon-Simmonds, Mrs. Louise Fletcher-Weller, Mr. Winston Riley and Ms. Dawn Pearce.



In the climate we have with our country now and to ensure we cover all the bases, it is best to follow the Procurement Guidelines slavishly.⁹⁸ (DI Emphasis)

Sub-Section No.:S2080 of the November 2008 GPPH, stipulates the following regarding NCC registration:

“... Registration of foreign bidders should not be a requirement for bidding from the onset under Open Tendering procedures. However, the successful bidder will have to be registered before the award of contract.”⁹⁹ (DI Emphasis)

By way of an email correspondence dated July 21, 2010, Mr. Bernard Goyette informed Mrs. Marva Gordon Simmonds as follows:

“We have the following information from our legal counsel in Jamaica who contacted Mr. John Wright of the NWA (National Works Agency) who is also the Chairman of the NCC Sector Committee.

I believe this man speaks from a high [sic] level of authority and the quality of his endorsement is not to be taken lightly.

What Mr. Wright is saying is that we would be allowed to sign the contract if we demonstrate that we made the application for registration with NCC. We would not need to have in hand the certificate of registration itself. From the proof that the application was made, then the Letter of Award could be issued and we could sign the contract.

*Can you please comment.”*¹⁰⁰ (DI Emphasis)

⁹⁸ Email dated July 19, 2010 from Mrs Marva Gordon Simmonds to ‘legal@jcaa.gov.jm’, ‘lfletcher@planning-endeco.com’; ‘Allen Cochran’ and copied to ‘Bernard Goyette; ‘Patrick Stern’; ‘olderby@cwjamaica.blackberry.net’; ‘jcivav@jcaa.gov.jm; ‘Jason McPherson’.

⁹⁹ Sub-Section No.:S2080 of the November 2008 GPPH.



The Director of Investigation also notes that by way of an email dated July 21, 2010, from Mrs. Janet Morrison to the email address ‘legal @ jcaa.gov.jm’, the following was indicated:

“... You may recall that we act for Intelcan Techno systems Inc., the Contractor to build the air traffic towers.

With reference to your email of July 19, 2010 to our client and all parties advising that prior to signing and pursuant to Procurement Guidelines “all necessary” registrations are required for the signing of the above contract, please refer us to the specific procurement guideline on which you rely.

We have on file a copy of JCAA letter dated August 2, 2007 to our client that confirms that NCC has given its permission for JCAA to contract directly with Intelcan. Further, on the website of the OCG, the proposed contract between JCAA and our client is listed as endorsed by the NCC during May 2010 for award. As you know Cabinet has also approved the contract and such endorsement and approval made no stipulation for Intelcan to be registered by the NCC. It is therefore our view, and we are anxious to get your position on this, that NCC registration is not required for Intelcan to enter into the contract. In fact, in discussion with the OCG today, that department advised that awards of a foreign tender are not expressly stated in the procurement guidelines as requiring registration, but the relevant agency or relevant Minister may make such a stipulation as a condition for the award. (DI Emphasis)

We noted as well that Volume 1 clause 5 of the proposed contract contemplates that the contract may be signed and subsequently come into full force and effect on the

¹⁰⁰ Email dated July 21, 2010 from Mr. Bernard Goyette to Mrs. Marva Gordon Simmonds ‘legal@jcaa.gov.jm’.



condition that all requisite and relevant government permits, licenses, approvals and certificates are obtained within 90 days of the contract.

As you know the proposed signing of the contract is scheduled for tomorrow so your urgent response is sought in this matter.”¹⁰¹

The Director of Investigation reiterates that the NCC’s endorsement was for the contract to be awarded to INTEL CAN. It did not indicate that INTEL CAN was not required to be registered with the NCC or that the contract was already awarded. Further, the Cabinet’s approval of the contract does not mean that the contractor is exempt from being registered with the NCC.

By way of an advisory the website of the OCG outlined the following provision:

“Contracts Endorsed by the National Contracts Commission (NCC)

...

Disclaimer: It is important to note that the contracts which are included in this list are not necessarily an indication of the actual contracts which have been subsequently awarded. Contracts are typically awarded by the relevant contracting Public Body or Government agency following after endorsement by the NCC or by the Cabinet.”¹⁰²

By way of an email dated July 21, 2010, from Mr. Patrick Stern to ‘Bernard Goyette’; ‘Marva Gordon-Simmonds’; ‘Ifletcher@planning-endeco.com’, and ‘Allen Cochran’ and copied to ‘olderby@cwjamaica.blackberry.net’; ‘Annmarie Toomer-Gayle’, ‘Jason McPherson’, ‘Georges Ata’, ‘John Dalrymple’, ‘Rob Scrivens’ and ‘Paulina Yee’ the following was stated:

¹⁰¹ Email dated July 21, 2010, from Mrs. Janet Morrison to ‘legal @jcaa.gov.jm’,

¹⁰² <http://www.ocg.gov.jm/ocg/view/ncc-endorsements>.



“...I have been informed by the Chairman of the Board of the Jamaica Civil Aviation Authority, that the Honourable Minister of Transport and Works has indicated that he wishes to sign this contract after making his contribution in Parliament, in the Sectoral Debate. The HM will be making his contribution on Tuesday July, 27, 2010 at 2:00 pm. We therefore need to ensure that whatever the perceived difficulties are, that these are removed in time to facilitate this happening. I expect that the signing will be on Wednesday, July 22, 2010. I will seek further particulars on this and get back to you.”¹⁰³ (DI Emphasis)

Further, by way of an email dated July 21, 2010, Mrs. Marva Gordon Simmonds replied to Mrs. Janet Morrison’s email dated July 21, 2010. The email correspondence was also copied to Bernard Goyette, Patrick Stern, ‘old23256@gmail.com’; ‘jcivav@jcaa.gov.jm’; and Allen Cochran and stated as follows:

“Dear Janet:

My office is heavily swamped so apologies for the delay in getting back to you.

However, I was not aware that a signing had been proposed for tomorrow and in fact just now received communication that signing is being proposed for next week!

Be that as it may, I am certain that we will put shoulders to the wheel so that the signing can take place at earliest.

With that in mind, I would advise that we have no issues with your advice to your Client that they are in good standing to sign, but it [is] to be confirmed to us by our Advisers that all the requirements of the Procurement (and Contracting) Guidelines have been met.

¹⁰³ Email dated July 21, 2010 from Mr. Patrick Stern to ‘Bernard Goyette’; ‘Marva Gordon-Simmonds’; ‘Ifletcher@planning-endeco.com’, and ‘Allen Cochran’ and copied to ‘olderby@cwjamaica.blackberry.net’; ‘Annmarie Toomer-Gayle’, ‘Jason McPherson’, ‘Georges Ata’, ‘John Dalrymple’, ‘Rob Scrivens’ and ‘Paulina Yee’.



I should point out that the registration under contemplation (as I understand it), is with the Companies Office, not with the NCC.

Further, the JCAA has been acting in other matter [sic] on the basis that foreign companies contracting with GOJ agencies are required to be registered in Jamaica.

I will make every effort to call you in the morning, to discuss this further, if necessary”¹⁰⁴

The Director of Investigation also notes the following email correspondence which was dated July 22, 2010, 05:03:01 from Mr. Allen Cochran, CEO, EQS Jamaica Limited to Mr. Patrick Stern, Acting Director General of JCAA, which stated, *inter alia*, as follows:

“Patrick,

The actions required of the Contractor before formation of contract can take place are, as I understand it, as follows:

Registration as an overseas company with the Companies Office of Jamaica
Registration with Income Tax, National Housing, National Insurance, Health,
Education and GCT. Submission to the Client of TCC Certificate...

Registration as a Grade 1 Civil Engineering and Grade 1 Building Construction.
Intelcan should have no problem in obtaining these registrations and, as John
Wright has stated, this is not a barrier to the signing of the contract. We can insert
a proviso that the registration shall be obtained within six weeks.

¹⁰⁴ An email dated July 21, 2010, from Mrs. Marva Gordon Simmonds to Ms. Janet Morrison and copied to ‘Bernard Goyette’, ‘Patrick Stern’, ‘old23256@gmail.com’; jcivav@jcaa.gov.jm; and ‘Allen Cochran’.



The changing of the sites can be dealt with as a variation under the contract.

I assume that the contract will be signed by the Director General and witnessed by the Minister. This is the normal procedure.

We are in the process of producing copies for signing...¹⁰⁵

In response to the abovementioned email, Mr. Patrick Stern by way of an email dated July 22, 2010, replied to Mr. Allan Cochran; Mr. Noel Ellis, Mrs. Marva Gordon-Simmonds and Mr. Bernard Goyette. The email was also copied to Mrs. Louise Fletcher-Weller, Mr. Winston Riley, Ms. Dawn Pearce and Ms. Nina Evans and stated as follows:

“Thanks for the information. I have to rely on your advice as to what the normal process and procedures are. What I know is that we must find appropriate ways to overcome whatever the perceived obstacles are, in order to ensure that the signing takes place as scheduled.

*The Chairman has advised that he will be the one signing; I imagine that this is in addition to the Director General. He has asked me to have a copy of the contract delivered to him now so that he can peruse it. Is it possible to get it this morning?”*¹⁰⁶

Mrs. Marva Gordon-Simmonds, in an email dated July 22, 2010, at 11:27 a.m. also replied to Mr. Bernard Goyette’s email of July 21, 2010, at 11:04 a.m. The email stated as follows:

“Dear Bernard:

¹⁰⁵ Email dated July 22, 2010, 05:03:01 from Mr. Allen Cochran, CEO, EQS Jamaica Limited to Mr. Patrick Stern, Acting Director General.

¹⁰⁶ Email dated July 22, 2010, 8:12 a.m., from Mr. Patrick Stern to Mr. Allan Cochran; Mr. Noel Ellis, Mrs. Marva Gordon-Simmonds and Mr. Bernard Goyette and copied to Mrs. Louise Fletcher-Weller, Mr. Winston Riley, Ms. Dawn Pearce and Ms. Nina Evans



I have not answered you directly before but I expect you have been receiving my email responses. We should do all to keep this matter moving, and surely you have time to get the TCC in time... but as I repeat, we have to keep the bases covered.

In any event my professional responsibility is to the Authority.

(Please note that we were apparently speaking about different ‘registrations’ as explained in prior e-mail copied to you.)”

By way of a letter dated August 20, 2013, that was sent to the OCG by the NCC with the subject line “***Re Status of Intelcan’s NCC Registration Application***”, the following information regarding the registration of INTELKAN was furnished:

“... ”

Please be advised that Intelcan Technologies Inc. submitted an application for registration in the following categories and grades on 2012 August 23:

<i>Category</i>	<i>Grade Applied For</i>
<i>Building Construction</i>	<i>Grade 1</i>
<i>Civil Engineering</i>	<i>Grade 1</i>

Based on an initial assessment carried out by the OCG TSD/NCC Secretariat, Intelcan Technologies was recommended for registration at the Grade 3 level for both categories with a calculated score of 2.6 points each. In considering the application at our meeting held on November 14, 2012, the NCC deferred approval of the application and requested the Secretariat obtain better particulars for the area within which the company was failing to meet the requirement for Grade 1 registration. The NCC was advised that this was mainly in relation to value of work



done/project information and directed the Secretariat, in accordance with the operational procedures, to process the application as an overseas applicant rather than as a new local contractor.

Intelcan Technologies was contacted by the Secretariat and asked to either accept the grade as per the evaluation result or to submit further and better information with respect to projects as only one of the three projects submitted met the requirement of being completed within the last ten (10) years.

On November 27, 2012 the company submitted a Certificate of Incorporation, under the Canada Business Corporation Act which indicated a date of incorporation of December 23, 1980. This information was inputted in the Contractor Management System by the Secretariat and a revised evaluation result of 2.3points was calculated for both categories.

The application for registration was subsequently presented to the NCC for consideration at its meeting held on 2012 November 28. At this meeting the revised calculated score of 2.3 along with the recommendation for the contractor to be registered at the Grade 2 level in both categories, having taken into consideration the date of incorporation, was noted. The application for registration was again deferred by the NCC and the Secretariat was requested to obtain from the contractor further information pertaining to project experience.

Contact was made with Intelcan Technologies Inc. by the Secretariat on December 3, 2012 for the requested information and to date, the information has not been provided. (DI Emphasis)

As at August 20, 2013, Intelcan Technologies Inc. is not registered with the NCC, however based on the company's current application with the NCC it is eligible for



registration at the Grade 2 level in Building Construction and Civil Engineering Works.

*It is hoped that the Office of the Contractor General will find the information presented adequate for its present purposes.*¹⁰⁷

According to the 'National Contracts Commission Category and Grade Limits' stipulations (July 2003) the following requirements are stipulated for building construction and civil engineering¹⁰⁸:

National Contracts Commission

CATEGORY AND GRADE LIMITS

July 2003

CATEGORIES		Grade	Monetary Limit of Grade (J\$M)
1	Building Construction The construction, alteration, renovation and repair of buildings or structures which are fabricated of wood, steel, concrete or other suitable materials or combination of materials, which are designed to support, shelter or enclose persons, animals or other property.	1	150.00
		2	75.00
		3	24.00
		4	12.00
2	Civil Engineering The construction, erection, alteration, renovation, extension and repair of infrastructure and public utility works but excluding categories listed herein.	1	150.00
		2	75.00
		3	24.00
		4	12.00

Having regard to the type and value of works which were to be executed at the NMIA and SIA Air Traffic Towers, INTELSCAN was required to be registered with the NCC as a Grade 1 Contractor in the referenced categories. Of note, the value of the contract was in excess of J\$150M.

¹⁰⁷ Letter dated August 20, 2013 from Mr. Raymond McIntyre, Chairman, NCC, to the Mr. Dirk Harrison, Contractor General with subject line "Re: Status of Intelcan's NCC Registration Application".

¹⁰⁸ Extract of National Contracts Commission Category and Grade Limits' stipulations (July 2003)-
<http://www.ncc.gov.jm/ncc/documents/2003categorylist.pdf> Date accessed: March 17, 2017.



The JCAA, in signing the contract with INTELCAN on July 29, 2010, despite the fact that the company was not registered with the NCC, acted in breach of the provisions of the GPPH November 2008. **The provisions of the GPPH clearly stipulate that an overseas contractor should be registered with the NCC before the contract is awarded.**

Approximately one (1) month after the contract was signed, the NCC by way of a letter dated September 1, 2010, acknowledged receipt of an application from INTELCAN. Based upon the foregoing, though incorrect, the purported advice from Mr. John Wright of the NWA (National Works Agency) who was also the then Chairman of NCC Sector Committee was not followed.

Mr. Wright was alleged to have indicated that the signing of the contract would be allowed if INTELCAN was able to demonstrate that an application for registration with the NCC was made and they would not need to have in hand, the certificate of registration itself, as once there was proof that the application was made, then the Letter of Award could be issued and the contract could be signed.

The Director of Investigation observed that though Mrs. Marva Gordon-Simmonds highlighted the need to adhere to the GOJ guidelines, Mr. Patrick Stern stated that he had been informed by the Chairman of the Board of the JCAA, that the then Honourable Minister of Transport and Works, Mr. Robert Pickersgill, had indicated that he wished to sign this contract after making his contribution in Parliament, in Sectoral Debate on Tuesday, July, 27, 2010, at 2:00 pm. He further indicated that there was a need to ensure that the “*perceived difficulties*” be removed in time to facilitate the signing of the contract. In the foregoing regard, it is noted that this alleged directive said to have emanated from the Minister may have been the influencing factor in JCAA’s decision to sign the contract with INTELCAN despite the fact that they were not registered with the NCC, as required by the GPPH.

It is noteworthy to highlight that INTELCAN was first registered as a Grade One (1) contractor with the NCC on November 18, 2013. Importantly also and reflected, hereunder, is an extract of the



response dated October 14, 2014, from Mr. Nari Williams-Singh concerning substantial completion of the project:

“The Project for the design and construction of Air Traffic Control Towers at the Norman Manley International Airport (NMIA), Kingston (the “NMIA ATC Tower Project”) was substantially completed on June 30, 2014... The Project for the design and construction of Air Traffic Control Towers at the Sangster International Airport (SIA), Montego Bay was substantially completed on September 5, 2014...”¹⁰⁹

Having regard to the foregoing, the Director of Investigation also highlights that the delays in the registration of INTEL CAN as a Grade 1 Contractor was due to deficiencies in the documentation submitted by INTEL CAN in support of their application.

¹⁰⁹ Response to the OCG’s Requisition from Mr. Nari Williams-Singh’s, Director General JCAA, dated October 14, 2014. Response# 1



The Alleged Involvement of the Canadian High Commission in the Construction of the Control Towers

The following executive summary was supplied by the JCAA regarding the alleged involvement of the Canadian High Commission in the construction of the Towers:

“JCAA Board Consideration

The Minutes of the Board of the Jamaican Civil Aviation Authority reflect that there was some involvement by the Canadian High Commission. In particular the following Minutes already included at Appendix 1 contain information on this involvement: (1) January 31, 2007, (2) December 20, 2007, (3) August 29, 2007, (4) March 27, 2008 and (5) May 29, 2008. Topics for discussion included:

MINUTES OF JANUARY 31, 2007

The matter was raised under Item 4.0.30 “Construction of Air Traffic Control Towers”. Col. Lewis informed the Board that the Canadian High Commission had intervened on behalf of INTELCAN and Raytheon. He also informed the Board that the High Commissioner had met with the representatives of the Ministry of Housing, Transport, Water and Works and the JCAA and expressed disappointment that INTELCAN had not yet been awarded the contract, as the company had made the assumption that the project would be awarded to them. It was expressed that the High Commissioner was satisfied with the explanation given by the JCAA as to the delay in the award. It was noted that INTELCAN would approach the Canadian Government for assistance in securing the award of contract. It was indicated that the Authority should immediately write to INTELCAN making reference to the meeting with the Canadian High Commission and give them a time frame within which their submission should be made.

MINUTES OF AUGUST 29, 2007



The matter was raised under Item 4.0.1 “Construction of Air Traffic Control Towers”. The Meeting noted the Canadian High Commission’s concern with the delay in finalizing the contract with INTELCAN. Col. Lewis pointed out however, that INTELCAN had been advised that negotiations would be delayed owing to the aftermath of hurricane “Dean” and the circumstances associated with the upcoming General Elections.

MINUTES OF DECEMBER 20, 2007

The matter was raised under Item 4.0.23 “Construction of Air Traffic Control Towers”. Following announcement that [National] Contracts Commission has given its permission for INTELCAN for construction, Member Bogle recalled his concern his dissatisfaction with the choice of INTELCAN as the sole tender or [sic] the project. It was suggested that Mr. Evans, being a Structural Engineer, be allowed to sit on a Procurement Committee which would evaluate the contract services of a local, qualified Quantity Surveyor will also be required to advise the JCAA on the cost of the project. Member Dr. Hales recalled that the JCAA and the Ministry of Transport and Works had voiced various concerns during their initial negotiations with INTELCAN. However, the JCAA’s decision to utilize the sole sourcing method for the project was influenced by the intervention of the Canadian High Commission on INTELCAN’s behalf. The meeting pondered whether the JCAA could be challenged by INTELCAN for infringing on its Intellectual Property Rights, with respect to the design of the building, should they fail to be awarded the contract. To this end, it was agreed that the Ministry of Transport and Works should be requested to write to the Canadian High commission regarding Intellectual Property Rights held by INTELCAN in the design of the building.

MINUTES OF MARCH 27, 2008

The matter was raised under Item 5.0.13 “Construction of Air Traffic Control Towers”. The meeting recalled that Mr. Evans had made the necessary amendments



to the Request for Proposal (RFP) which would invite bids from quantity surveyors who will evaluate the contract to construct the ATC Towers. Col. Lewis informed the Board that the RFP was not sent to the surveyors as the Permanent Secretary in the Ministry of Transport and Works had expressed the desire to speak with his Minister and the Canadian High Commission prior to entry into any other negotiations. The Chairman informed the meeting that the Minister had instructed the Permanent Secretary, in his presence, to write to the Canadian High Commission advising them that previous arrangements with respect to INTELCAN's involvement were not brought to the attention of this new Board.

MINUTES OF MAY 29, 2008

The matter was raised under Item 5.0.27 "Construction of Air Traffic Control Towers". Dr. Hales informed the meeting that he had prepared a letter to the Canadian High Commission which was copied to the Chairman of the Board and to the Permanent Secretary of the Ministry of Foreign Affairs. Dr. Hales also reminded the Board of the National Contract Commission has given permission to the JCAA to negotiate a contract with INTELCAN, within certain parameters. This information was conveyed to the Canadian High Commission.

Intelcan/CIDA Proposal

It is apparent that Intelcan included information on the involvement of the Canadian High Commission in its Proposal entitled "INTELCAN ATC Towers for SIA and NMIA Airports –Jamaica- Executive Summary" and further identified in a footer as "May 2006 P-1987-06 Proposal" (the "Intelcan Proposal"). The complete Executive Summary was found and is included in this Appendix 9 as Executive Summary to Intelcan Proposal. It describes "Canadian Support" at Paragraph 1.4 through the Canadian High Commission, and at Paragraph 1.5 "Project Financing" including supporting through Export Development Canada [sic] for insurance and the Canadian International Development Agency (CIDA) for training.



Paragraph 1.4-Canadian Support found in the Intelcan Proposal makes reference to “...the full support of the Canadian High Commission in Kingston, the Canadian government, through the Canadian International Development Agency (CIDA) is now studying Intelcan’s application for a grant which will support the implementation of the projects for the construction of the control towers in Montego Bay and Kingston”. This suggests that at least in the proposal stage there was consideration given by the proposer Intelcan that the Canadian High Commission supported the ATC Towers Project in respect of “Training”

- as part of the Design, Construction, Equipping, and Commissioning of the Air Traffic Control Towers at Norman Manley International Airport and the Sangster International Airport.*

Training support by CIDA was not included in the final Contract.

Paragraph 1.5 Project Financing of the Intelcan Proposal intimated that “the government of Canada has indicated full support of Intelcan’s total proposal” and proceeded to discuss possible input from the Export Development Canada [sic] for insurance; and the Canadian International Development Agency in training and technology transfer.

Canadian Commercial Corporation

In the letter dated February 21, 2007, the Canadian Commercial Corporation (CCC), included in this Appendix 9, a crown corporation of the Government of Canada, wrote to the Jamaica Civil Aviation Authority to introduce itself and to describe how it “supports Canadian exporters in their efforts to enter into and successfully complete contracts for the supply of goods and services with international organizations.” The organization described itself as a “federal crown corporation wholly –owned by the Government of Canada” and also as “Canada’s international contracting agency”. CCC was willing to take on the role as “prime contractor”, providing Jamaica with a guarantee from the Government of Canada.



As articulated by the Authority's (Lewis) letter to the National Contracts Commission (Tyndall) dated April 19, 2007, included in this Appendix 9, "in assessing the ATC Towers Project, the Authority took into account the participation of CCC and the Canadian Government, and the financing to be provided".

In the eventual structure of the transaction, the JCAA received no support from the named Canadian entities.¹¹⁰

The Director of Investigation notes, importantly, that though support from the Canadian entities was used as a justification to enter into direct negotiations with INTELCAN for the construction of the towers, the OCG was advised by the JCAA on May 25, 2018, of the following:

"The Canadian Government did not provide support to the JCAA neither directly nor through the Canadian High Commissioner in Kingston and/or the Canadian International Development Agency (CIDA), and/or the Canadian Commercial Corporation (CCC), in relation to the execution of the contract to design and construct the Air Traffic Control Towers at the Norman Manley International Airport (NMIA) and the Sangster International Airport (SIA)."¹¹¹ (DI Emphasis)

¹¹⁰ Mr. Nari Williams- Singh's March 31, 2015, response to the OCG's Requisition. Appendix 9 (Executive Summary)

¹¹¹ Mr. Nari Williams-Singh's May 25, 2018 response to the Integrity Commission's requisition dated May 11, 2018, response no. 3



Comprehensive Summary of the Total Time Overrun of the Projects

Based on documents reviewed, the procurement planning for the projects commenced in 2005/2006, with the subsequent signing of the contract on July 29, 2010. The project was slated to be completed on January 16, 2012 for the NMIA Towers and February 27, 2012, for SIA Towers.

Further, information received by the OCG during its monitoring of the projects indicated that the revised completion date was January 23, 2014 for the NMIA Towers and March 14, 2014 for the SIA Towers. Based upon the fact that the project completion was delayed for approximately two (2) years, the then OCG sought to uncover the reasons for the lengthy delay in the completion of the project.

In this regard, the then OCG by way of a Requisition dated September 12, 2014, requested that the JCAA provide a comprehensive summary of the Total Time Overrun of the project. In its response dated October 14, 2014, the JCAA provided the following information:

“SUMMARY OF THE TOTAL TIME OVERRUN

The time overruns on the project is summarized as follows:

NMIA Tower

<i>Contract Start Date</i>	<i>October 28th 2010</i>
<i>Original Time for completion</i>	<i>483 days</i>
<i>Contract Completion Date</i>	<i>January 16th 2012</i>
<i>Extension of Time for Completion</i>	<i>326 days (Employer delays)</i>
	<i>370 days (Contractor/neutral delays)</i>
<i>Revised completion date</i>	<i>January 23rd 2014</i>
<i>Actual completion date</i>	<i>June 30th 2014</i>



SIA Tower

<i>Contract Start Date</i>	<i>October 28th 2010</i>
<i>Time for completion</i>	<i>539 days</i>
<i>Contract Completion Date</i>	<i>February 27th 2012</i>
<i>Extension of Time for Completion</i>	<i>326 days (Employer delays)</i> <i>462 days (Contractor/neutral delays)</i>
<i>Revised completion date</i>	<i>March 14th 2014</i>
<i>Actual completion date</i>	<i>September 05th 2014</i>

DELAY CLAIMS

The following is a summary of the claims submitted by the Contractor for the delays to the completion of the works and our response to the same...

1. Delays due to Site Definition and Relocation and demolition of the Ground Handlers Building

Contractor's Claim

Site Definition and Relocation:

As regards the original schedule the earlier delays are known by both parties, principally delays in the design process attributed to an inability to finalize the building site boundaries. These delays were brought to the attention of the EQS and JCAA in letters dated January 31 and March 31 of 2011 respectively which pushed the contract completion dates out by 4 months. Subsequent events resulted in further delays to the design and execution of the project; additional studies of Storm Surge risk and the pile testing requirement which necessitated the mobilization of foreign expertise and the evaluation of test results



SIA Site Reclamation:

In addition to the above since those dates the site was handed over to JCAA by MBJ was found to be 85% swamp, resulting in further lost time to redefine the site further to west at its current configuration. Even with the relocation to the West the effects are still impacting Intelcan as we have had to arrange to have a section of the swamp reclaimed by engineered fill representing 15% of the site which Intelcan had not factored in the original contract and believes should be a variation.

Demolition of Ground Handlers Building;

The demolition of the ground handlers building was hampered by delays in access to the site and clearance of the previous user. Also it should be noted that selective building materials were requested after the fact to be recovered by the current user for use elsewhere which complicated and extended the demolition period at additional cost to Intelcan.

Response

- The start date for the project was October 28th 2010 and the original completion dates were January 16th 2012 for NMIA Tower and February 27th 2012 for the SIA Tower.*
- There was an initial delay at the SIA site due to the relocation of the tower. The MBJ and the Airports Authority finally agreed on a site in March 2010 and additional site investigations were required before final design works could be completed. The site was handed over to the Contractor in July 2011. However, the Contractor was further delayed due to redesigns necessary because of the location of the swamp on the site.*
- Works eventually commenced on site in November 2011.*



- *The start of the tower at the NMIA was also delayed due to lack of a suitable site. The site that was finally identified housed the Air Jamaica Air Handlers. The NMIA had to construct alternative accommodation for these persons. The site was only vacated by the NMIA in November 2011. The existing building had to be demolished before construction works could commence on the site.*

The impact of the delay to the time for completion at the NMIA can be detailed as follows:

<i>Delay in the handover of the site</i>	<i>292 days</i>
<i>Delay due to demolition of the existing buildings</i>	<i><u>34 days</u></i>
	<i>326 days</i>
<i>Delay due to relocation</i>	<i>161 days concurrent with above</i>

As this delay was due to the Employer, the Contractor was entitled to an extension of the time for completion of 326 days. As the progress at SIA was linked to progress at SIA [sic], a similar extension of time was awarded for the SIA tower.

2. Piling Issues:

Contractor's Claim

Despite Geotechnical Investigations around the relocated NMIA site, testing could not be carried out under the Ground handling workshop. As designed the piles could not be driven to designed embedment depths due to the sub strata being denser than implied by adjacent testing and test piles. This necessitated additional design work, the addition of 14 additional Steel H piles. These issues coupled with difficulties in dewatering during pile cap installation resulted in 62 days of unanticipated delays.



At SIA site geotechnical testing established calcareous gravel formation 5 to 10m below grade, which proved in actuality to be a homogeneous material that despite recommended predrilling resulted in driven piles not penetrating to design parameters for lateral stability. This resulted in additional exploration, design and ultimately the addition of 28 additional Steel “H” for requisite lateral stability. These issues contributed 90 days of unanticipated delays.

Response

Intelcan is wholly responsible for the design and installation of the piles. The subsurface characteristics are fairly consistent at both Norman Manley Airport and the Sangster International Airport. The geotechnical investigations reveal little difference in the subsurface conditions of the initial site compared to the actual sites and so there is no claim for differing site conditions. The delays were as a result of errors in the piling design as completed by both his local and foreign designers and a failure to review and correct the designs in a timely manner.

3. Local Professional Engineering Responsiveness:

Contractor’s Claim

Throughout the process of responding to design challenges and Engineering Change Orders. Intelcan has been somewhat dismayed at the timely response of various local consultants engaged in the Project which have resulted in processes taking longer than anticipated.

Response



The Contractor is fully responsible for this delay as these consultants are in his employ.

4. Change of Primary Contractor:

Contractor's Claim

Early into the process Intelcan made a decision to switch prime Grade A contractor from Stresscon to Tankweld due to complexity of the construction procedures and competency of the contractors. This was done at Intelcan's considerable cost and time for the benefit of the project and ultimately the client.

Response

This delay was concurrent with the piling delay indicated above. In addition, the subcontractor is entirely the responsibility of the Contractor.

5. Complexity of shaft work:

Contractor's Claim

Despite employing a sophisticated formwork system for construction of the structural concrete shaft, the installation methodology has been more time consuming and complex particularly upon reaching the complex upper levels involving cast inserts structural steel and interface of structural shaft to the underside of the prefinished cab interface

Response



Any delay caused by Intelcan's difficulty in erecting their own design is entirely to their own account.

6. Weather related delays:

Contractor's Claim

Construction at both of the sites has been impacted by weather delays, typically due to high winds and/or heavy rains from tropical storms Ernesto, Isaac and Hurricane Sandy resulting in suspension of activities particularly in the critical path of shaft and cab construction. At SIA these delays have resulted in excess of 15 days, at NMLA weather related delays account for in excess of 20 days.

Response

Under the contract, the Contractor is entirely responsible for any weather related delays.

7. Shipping Delay (Hurricane Sandy):

Contractor's Claim

Several critical shipments of Steel structure were delayed due to the impact of Hurricane Sandy on the port of New York resulting in closure and delays by approx. 14 days.

Response

The Contractor is allowed an extension of time for this item but no additional costs.



8. Employer's TCC renewal:

Contractor's Claim

Delays regarding JCAA TCC renewal caused delays related to release of critical materials in Jamaica held up by Customs resulted in 18 days of delays on site claimed by Intelcan's prime contractor.

Response

We had some concerns about this claim as the original Contract and Employer's Requirements gave Intelcan full responsibility for the clearance of materials intended for the works. In our opinion, the risk is Intelcan's if they chose to accept the JCAA's assistance in undertaking the same.

EXTENSION TO THE TIME FOR COMPLETION

The Contractor and the JCAA met between December 2012 and February 2013 to resolve the issue about the Time for Completion. At the end, the following completion dates were agreed:

NMIA January 23rd 2014

SIA March 14th 2014

Based on these agreed completion dates, the delays are summarized as follows:

NMIA Tower

Extension of Time for Completion 326 days (Employer delays)



370 days (contractor/neutral delays)

SIA Tower

Extension of Time for Completion 326 days (Employer delays)

462 days

(Contractor/neutral delays)

There was an understanding that any claim that the Contractor may have due to the Employer delays would be offset against the claims by the Employer for delay damages.

ADDITIONAL DELAYS

It should be noted that the actual completion dates for the projects were June 30th 2014 and September 05th 2014 at the NMIA and SIA respectively. The additional delays were as follows:

NMIA 158 days

SIA 175 days

To date, the Contractor has not given any explanation for the additional delay to the completion of the works nor has he submitted any claims for an extension of time.”¹¹²

Notwithstanding the aforementioned extract and the fact that the delays experienced during this contract were attributed to both the JCAA and the contractor, the Director of Investigation highlights the following significant notes:

¹¹² Letter dated October 14, 2014, by Mr. Nari Williams-Singh, Acting Director General, JCAA, in response to the OCG’s requisition. Appendix 1(e).



1. The delays were as a result of site definition and relocation, in addition to the demolition of the 'Ground Handlers Building';
2. Delays in the design process were attributed to an inability to finalize the building site boundaries. The site at the SIA, which was designated for the tower, was relocated due to the fact that the original site was 85% swamp land;
3. Even though the designated location for the construction of the SIA tower was relocated to the West, the conditions of the land continued to impact the construction by INTELCAN. To this end, the JCAA then arranged to have a section of the swamp reclaimed by 15% engineered fill, which was not contemplated by INTELCAN in the original contract sum;
4. The failure of the local and foreign consultants to review and correct the piling design in a timely manner also impacted the completion of the construction;
5. The decision that was made by INTELCAN to replace Stresscon with Tankweld as the primary contractor due to the complexity of the construction procedures and the competency of the contractors. *"This was done at Intelcan's considerable cost and time for the benefit of the project..."* and ultimately the JCAA;
6. Inclement weather conditions impacted the construction of the towers at the NMIA and SIA. In particular, the construction was affected by high wind and heavy rain associated with tropical storms Ernesto and Isaac and Hurricane Sandy; and
7. The renewal of JCAA's TCC caused delays related to the release of critical materials in Jamaica by the Jamaica Customs which resulted in eighteen (18) days of delays on site.



Cost Variations to the Project

In addition to time overrun, the Director of Investigation also observed that the project encountered significant cost overrun. This finding was based on information received from the JCAA, by way of letter dated October 14, 2014, in response to an OCG Requisition dated September 12, 2014. The referenced response stated, *inter alia*, as follows:

“The total cost variation for the NMIA ATC Tower Project is CAD\$980,773.79.”¹¹³

The total cost variation for the SIA ATC Tower Project is CAD 10,091.94...”¹¹⁴

In support of his response, Mr. Williams-Singh also provided the OCG with a document entitled **“SCHEDULE OF VARIATIONS”**. The referenced document, stated, *inter alia*, as follows:

“VARIATION NO. 001

Variation No. 001 applied to the corrections to the contract documents, and was submitted to the JCAA for approval on 11th April 2011. This variation had no financial effect and no effect on Programme.

VARIATION NO. 002-NMIA

This Variation is for the provision of permanent services and access roads to the ATC Tower sites. The cost for Variation No. 002 was CAD\$923,899.00. Variation No. 002 was approved by the JCAA and the National Contracts Commission (NCC)...

VARIATIONS NO. 003 (S&N)-NMIA & SIA

¹¹³ Based upon the OCG’s calculation of the variation figures provided by Mr. Nari Williams-Singh, the correct total cost variation for the NMIA ATC Tower Project is CAD\$986,607.79.

¹¹⁴ Response to the OCG’s Requisition dated October 14, 2014, from Mr. Nari Williams-Singh, Director General, JCAA.



This Variations No. 003 (S&N) is for the additional cost of geotechnical investigations necessary at both the SIA and NMIA ATC Towers locations due to the changes of sites.

- *Variations No 003 S for SIA amounted to CAD\$10,091.94.*
- *Variation No 003 N for NMIA amounted to CAD\$6,482.79...*

VARIATION NO .004 –NMIA

Variation No. 004 is for the dismantling of the Ground Handlers Workshop at NMIA. The cost of this variation is CAD\$56,226.00... ”¹¹⁵

It was observed that variation No.002 was approved by the NCC. This was confirmed by way of a letter dated August 18, 2011, from Mr. Patrick Stern, Deputy Director, Administration and Services, JCAA, to Mr. Raymond McIntyre, Chairman, National Contracts Commission. The letter stated, *inter alia*, as follows:

“Re: Control Towers at Sangster and Norman Manley International Airports

The Jamaica Civil Aviation Authority entered into a contract with Intelcan Techno Systems Incorporated in the sum of Nineteen Million Nine Hundred and Ninety- nine Thousand Nine Hundred and Seventy-four Canadian Dollars (\$19,999,974.00 CDN) for the Design, Construction and Equipping of Air Traffic Control Towers at Norman Manley and Sangster International Airports on July 29th 2010. This contract was endorsed by the NCC on May 12 2010 and approved by the cabinet by way of decision number 25/10 on June 28th 2010.

¹¹⁵ Response to the OCG’s Requisition dated October 14, 2014, from Mr. Nari Williams-Singh, Director General, JCAA. Appendix 1(c).



We hereby request approval to carry out Additional Works as described in Schedule A below. The Additional Works are to be carried out within the costs stated by way of Variation Orders issued in accordance with the contract between Jamaica Civil Aviation Authority and Intelcan Techno Systems Incorporated.

The Board of the Jamaica Civil Aviation Authority has approved this request.

We attached the following documents:

- *Appendix A – the revised signed proposal from the Contractor*
- *Appendix B- the recommendations of our consultant, EQS Jamaica Limited*
- *Appendix C- a spreadsheet showing the progress and results of negotiations concerning price and scope of works*

Schedule A

1.00	<i>Sangster International Airport</i>	
1.01	<i>Sanitary System</i>	<i>32,642.00</i>
1.02	<i>Water Main</i>	<i>129,624.00</i>
1.03	<i>Electrical</i>	<i>296,118.00</i>
	<i>TOTAL SIA</i>	<i>458,384.00</i>
2.00	<i>Norman Manley International Airport</i>	
2.01	<i>Sanitary System</i>	<i>84,432.00</i>
2.02	<i>Water Main</i>	<i>5,551.00</i>
2.03	<i>Electrical</i>	<i>228,879.00</i>
	<i>TOTAL NMIA</i>	<i>318,862.00</i>
3.0	<i>Engineering Design</i>	



3.01	<i>Civil, Electrical and Mechanical Engineering</i>	<i>*¹¹⁶</i>
3.02	<i>Intelcan Program Management and Construction Supervision</i>	<i>62,473.00</i>
	<i>TOTAL DESIGN & SUPERVISION</i>	<i>146,653.00</i>
	<i>OVERALL TOTAL</i>	<i>923,899.00</i>

We anticipate your positive response to our request. ”¹¹⁷

Additionally, by way of a letter dated October 25, 2011, Dr. Alwin Hales, Permanent Secretary, Ministry of Transport and Works, informed Mr. John Wright, Chairman, Sector Committee, National Works Agency, of the following:

“Re: Award of Variation Contract for the Design and Construction of Air Traffic Control Towers at the Norman Manley International Airport (NMIA) and the Sangster International Airport (SIA)

*Having considered the matter, the Ministry of Transport & Works support the Jamaica Civil Aviation Authority in its approval of a Variation in the amount of **Nine Hundred and Twenty-three Thousand, Eight Hundred and Ninety-nine Canadian Dollars (CAD\$923,899.00)** to the contract with Intelcan Techno Systems Inc. to carry out related works regarding the sanitary systems, water mains and electrical works for the Control Towers at the Sangster International Airport (SIA) and the Norman Manley International Airport (NMIA), along with the required engineering design works.”¹¹⁸*

¹¹⁶ The OCG notes that notwithstanding a total of \$146,653.00 for Design & Supervision, no figure was reflected for Civil Electrical and Mechanical Engineering.

¹¹⁷ By way of a letter dated August 18, 2011, Mr. Patrick Stern, Deputy Director General, Administration and Services JCAA to Mr. Raymond McIntyre Chairman NCC.

¹¹⁸ Letter dated October 25, 2011, Dr. Alwin Hales Permanent Secretary, in the Ministry of Transport and Works to Mr. John Wright Chairman, Sector Committee, National Works Agency.



The NCC by way of a letter dated December 15, 2011, to Mrs. Audrey Sewell, Acting Permanent Secretary, Ministry of Transport and Works stated as follows:

“Re: Variation to the Contract for the Design Construction and Equipping of the Air Traffic Control Towers at the Norman Manley and Sangster International Airports”

Please refer to the submission dated 2011 October 25 made by the Ministry of Transport & Works regarding a contract variation relating to the above project.

The National Contracts Commission (NCC) having considered the matter at its meeting on 2011 December 7 has endorsed the recommendation to vary the existing contract with Intelcan Techno Systems Inc. in the sum of Nine Hundred and Twenty –three Thousand, Eight Hundred and Ninety –nine Ca. Dollars (Ca.\$923,899.00).”¹¹⁹

The foregoing was also communicated to Lt. Col. Oscar Derby, Director General, Jamaica Civil Aviation Authority, by way of a letter dated December 23, 2011, from Ms. Cheryl Williamson on behalf of the Permanent Secretary, Ministry of Transport and Works. The referenced letter which bore the subject line “*Variation to the Contract for the Design Construction and Equipment of the Air Traffic Control Tower at the Norman Manley and Sangster International Airports*”, indicated that the NCC endorsed the recommendation to vary the existing contract with Intelcan Techno Systems Inc. in the sum of Nine Hundred and Twenty –three Thousand, Eight Hundred and Ninety –nine Canadian Dollars (CAD\$923,899.000).

¹¹⁹ Letter dated December 15, 2011 from Mr. Raymond McIntyre, Chairman, NCC, to Mrs. Audrey Sewell, Acting Permanent Secretary, Ministry of Transport and Works.



In relation to Variation No.003S and Variation No.003N, the OCG was provided with the following documents which outlined the approval for the variations¹²⁰:

¹²⁰ The referenced documents were provided to the OCG by the JCAA.



Based upon the foregoing, the cost of the project was increased to CAD\$20,996,673.73 which represents a 4.99% increase in the overall cost of the project.

The following table outlines the overall cost of the referenced project inclusive of variations:

Table 1

Contract and Variation Details	Cost (CAD\$)	
Contracted Project Cost		\$19,999,974.00
Variation No.001	No Cost	
Variation No.002 (NMIA)	\$923,899.00	
Variation No.003S (SIA)	\$10,091.94	
Variation No.003N (NMIA)	\$6,482.79	
Variation No.004N (NMIA)	\$56,226.00	
Variation Total		\$996,699.73
Total Project Cost		\$20,996,673.73

As at May 10, 2017, the JCAA informed the OCG that:

“Intelcan has not been paid in full due to the hold back of CAD \$50,000.00 from the Retention monies pending rectification of the outstanding defects listed...”

...

The Total amount paid to Intelcan to date is Twenty Million Five Hundred and One Thousand Six Hundred and Fifty Two Canadian Dollars and Ninety Seven cents (Can \$20,501,652.97)”



The Completion of the Design and Construction of the Air Traffic Control Towers

The Director of Investigation found that the project for the design and construction of the Air Traffic Control Tower at the Norman Manley International Airport (NMIA), Kingston, was substantially completed on June 30, 2014, whilst the design and construction of the Air Traffic Control Tower at the SIA, Montego Bay, was substantially completed on September 5, 2014.

Under cover of letter dated October 14, 2014, in response to the OCG's requisition of September 12, 2014, Mr. Nari William-Singh, then Acting Director General of the JCAA, submitted two (2) 'Taking Over Certificates' relating to the referenced projects.

The Director of Investigation has represented at Appendix I and II a copy of the 'Taking Over Certificates' which were provided by the JCAA.

A copy of the schedules representing "minor outstanding" and "outstanding" works which were provided by the JCAA on September 12, 2014, are also appended at Appendix III and IV.

As at May 10, 2017, the then OCG received the following updates regarding the Air Traffic Control Towers at the NMIA, Kingston and the SIA, Montego Bay:

- *"The Taking Over Certificate for the NMIA Control Tower was issued effective June 30 2014. The contractual one year defects notification period ended on June 29, 2015 and all outstanding defects were completed in October 2015.*
- *The Taking Over Certificate for the SIA Tower was issued effective September 5, 2014. The contractual one year defects notification period was due to end on September 4 2015; however several issues remain outstanding..."¹²¹*

¹²¹ Mr. Nari Williams-Singh, Director General JCAA, May 10, 2017, response to the OCG's requisition. (Response #1a)



The Director of Investigation has represented at Appendix 4, a copy of the list which contains the outstanding tasks at the SIA, as provided by the JCAA. Based on the list provided, the Director of Investigation notes with interest, that there were twenty-one (21) outstanding tasks at the SIA Air Traffic Control Towers, as at March 3, 2015.

With respect to outstanding tasks, the JCAA provided the following explanations:

“It took some time and extensive collaboration to determine the root cause of a major issue being the electrical one. Based on losses of power which occurred in the latter part of 2014, there was grave concern about the incoming (primary) electrical supply and the attendant power fluctuations. It was considered to be a design/construction defect and this was advised to Intelcan. Intelcan’s position was that the issue rested with the supplier of the Government Electrical Inspectorate. This led to identification of causes outlined in Document entitled REPORT to Mr. Donovan James – Consulting Engineer from Solomon Burchell & Chief Electrical Inspector, Government Electrical Inspectorate (GEI) dated June 15, 2016...”¹²²

The referenced June 15, 2016 Report has been appended at Appendix 5.

In relation to the OCG’s request for certificates of final completion for the Air Traffic Control Towers at the NMIA and the SIA, the JCAA indicated as follows:

*“The contract calls for a single Performance Certificate to be issued stating the date on which Intelcan has completed its obligations under the entire contract. In other words only one Performance Certificate is required after the completion of the complete overall contract, not separate for each tower.
A Performance Certificate will be issued when the issues set out....have been resolved.*

¹²² Mr. Nari Williams-Sigh, Director General JCAA, May 10, 2017, response to the OCG’s requisition. (Response #1c)



[The contract does not call for certificate of final completion, and no contemplation was given to one being issued].”¹²³

The JCAA further indicated that *“The single required Performance Certificate will be issued once the issues at the SLA Tower identified... have been resolved thereby completing the entire contract. The date being pursued for final completion is June 30, 2017.”¹²⁴*

¹²³ Mr. Nari Williams-Sigh, Director General JCAA, May 10, 2017, response to the OCG’s requisition. (Response #1d)

¹²⁴ Mr. Nari Williams-Sigh, Director General JCAA, May 10, 2017, response to the OCG’s requisition. (Response #1e)



Payment Update in Relation to the Contract between the JCAA and EQS Jamaica Limited for the Provision of Project Management and Client Advisory Services

By way of a requisition dated April 13, 2017, the OCG enquired whether all payments were made to EQS Jamaica Limited for Project Management and Client Advisory Services for the Design and Construction of the Air Traffic Control Towers at the SIA and the NMIA. The JCAA, in its response dated May 10, 2017, indicated as follows:

*“All payments to EQS Jamaica Limited have been made for Project Management and Client Advisory Services. **The Total paid is CAD\$1,151,843.60 REPRESENTING CAD\$798,328.27 per contract and variation of CAD\$353,515.33.**”¹²⁵*

To substantiate its response, the JCAA provided a letter dated June 25, 2015, to Mr. Nari Williams-Singh, Director General, JCAA, from Mr. Hassim Fulton, Senior Policy Officer (Acting) for the Permanent Secretary, Ministry of Transport, Works and Housing. The letter stated as follows:

“Re: Cabinet Decision No. 23/15 dated June 15, 2015 –Cabinet Submission 396/MTWH-57/15 (IC-63/15) entitled “Variation to Contract for the Provision of Project Management and Client Advisor Services in Connection with the Design, Construction and Equipping of Air Traffic Control Towers at the Norman Manley International Airport (NMIA) and the Sangster International Airport (SIA)”

*Please be advised that the Cabinet, by way of Decision No. 23/15 dated June 15, 2015, gave approval for the variation in the amount of **Three Hundred and Fifty – Three Thousand, Five Hundred and Fifteen Canadian Dollars and Thirty-three Cents (CAD\$353, 515.33)** of a contract to EQS Jamaica Limited for the provision of*

¹²⁵ JCAA’s Response to the OCG’s Requisition dated May 10, 2017. Response #4



the Project Management and Client Advisor Services in Connection with the Design, Construction and Equipping of Air Traffic Control Towers at the Norman Manley International Airport in Kingston and the Sangster International Airport in Montego Bay.”¹²⁶

The initial contract sum was stated as CAD\$800,000.00, as such the variation in the amount of CAD\$353,515.33 represents an approximately 44% increase in the value of the contract.

¹²⁶ Letter dated May 10, 2017, from Mr. Nari Williams-Singh, Director General JCAA in response to the OCG’s Requisition. (Appendix 4)



CONCLUSIONS

Based upon the responses which were received from the named public officials/officers, both former and present, the following conclusions are presented:

1. The basis upon which the decision was taken to construct the new Control Towers at the Norman Manley International Airport (NMIA), Kingston and Sangster International Airport (SIA), Montego Bay was as a result of the issues encountered by the Air Traffic Controllers at the SIA in early 2005. In relation to the SIA, MJB Airports Limited had constructed a terminal building which was approximately the height of the existing Control Tower. As a result, the visibility from the existing Air Traffic Control Tower was negatively impacted, making it difficult for the Air Traffic Controllers to conduct their daily functions.
2. The procurement process, inclusive of the process for the design and construction of the Air Traffic Control Towers, spanned approximately eight (8) years. This is notwithstanding the JCAA's letter of April 19, 2007, to the NCC, indicating that the design and construction of the Air Traffic Control Towers was projected to be completed over an eighteen (18) month period.
3. Based on documentation received from the JCAA, negotiations and/or consultation with INTELCAN began in January 2006, with members of the JCAA visiting Havana, Cuba, upon the invitation and at the expense of INTELCAN. **A contract was subsequently signed between INTELCAN and the JCAA, on July 29, 2010, for the design and construction of the Air Traffic Control Towers at the NMIA and SIA.**

The new NMIA Control Tower was commissioned on October 20, 2016, and the new Control Tower that was constructed at the SIA was commissioned on February 19, 2018.



4. The JCAA disclosed that the award of the contract to INTELCAN for the construction of the Control Towers emanated from an **unsolicited proposal**. Based on documentation submitted to the OCG by the JCAA, the earliest proposal which was submitted by INTELCAN to the JCAA was dated May 2006. In light of the foregoing, the Director of Investigation concludes that notwithstanding the initial proposal of May 2006, discussions between the Canadian based company and the JCAA commenced **before** the submission of its initial proposal as the visit to Cuba to examine the quality and features of tower(s) which had been constructed by INTELCAN took place on January 26, 2006. In this regard, discussions would have commenced between INTELCAN and the JCAA in relation to the construction of the Air Traffic Control Tower, prior to the visit to Cuba. Consequently, the Director of Investigation concludes that the JCAA was disingenuous when it categorized the proposal received from INTELCAN as an ‘unsolicited proposal’.

The Director of Investigation highlights that in response to the enquiry regarding the date on which INTELCAN first approached the JCAA with its proposal to build the Air Traffic Control Towers, the JCAA indicated that *“There is no clear indication available of the date of which INTELCAN first approached the JCAA with its proposal to build the Control Towers. However, it is evident that this may have taken place sometime between December 2005 and January 2006. This is based on extrapolation from the material produced in response to your requisition/question... as well as paragraph 14.0.3 of Board Minutes of January 31, 2006...”* Therefore, there is uncertainty regarding the initial time and the manner in which the discussions between the JCAA and INTELCAN ensued in relation to the construction of the Air Traffic Control Towers.

It is being highlighted that the GPPH stipulates that the Sole Source procurement methodology could be used if an entity receives *“...an unsolicited proposal that it considers to be meritorious”*¹²⁷ However, based on the circumstances prior to the

¹²⁷ Section 2.1.3.4 of the Handbook of Public Sector Procurement Procedures (May, 2001)



submission of the proposal by INTELCAN to the JCAA, the Director of Investigation concludes that it should not have been categorized as an ‘unsolicited proposal’.

5. INTELCAN’s invitation to travel to Cuba, and the subsequent acceptance thereof, by Officers of the JCAA was found by the Director of Investigation to be unethical and unprincipled. The Director of Investigation is of the opinion that the acceptance of the hospitality from INTELCAN brings into question the integrity of the process and could be viewed as an attempt by INTELCAN to favourably influence the JCAA’s decision.

Of note, subsequent procurement guidelines provided by the Ministry of Finance and the Public Service, from as early as 2008, prohibit such behaviour. Section S-1040 IV of the 2008 GPPH provides, *inter alia*, as follows:

“Examples of Unethical Conduct

... **Accepting** or requesting money, **travel**, **meals**, **entertainment**, **gifts**, favours, discounts or anything of material value from bidders or prospective bidders, suppliers, contractors or consultants;” (DI Emphasis)

6. The Director of Investigation has concluded that the proposed gift giving during the signing of the contract which was advanced by INTELCAN was inappropriate on the basis that it could be construed as an ‘illegal gratuity’, which can be defined as an item of value given to reward a decision after it has been made.

In addition, the Director of Investigation highlights Sub-Section S-1040 **“UNETHICAL CONDUCT”**, of the November 2008 Handbook of Public Sector Procurement Procedures which states, *inter alia*, the following:



- **Competition- All bidders, suppliers contractors and consultants shall be treated with fairness and impartiality, and avoid any business arrangement that might prevent the effective operation of fair competition;**
- **Business gifts- No business gifts will be accepted from current or potential GOJ suppliers;”**

Sub-section 1040 further restricts the acceptance or request of money, travel, meals, entertainment, gifts, favours, discounts or anything of material value from bidders or prospective bidders, suppliers, contractors or consultants.

7. The proposal submitted by INTELCAN for the design and construction of the Air Traffic Control Towers was subjected to numerous revisions as it relates to the structural design and the associated cost prior to the award of the contract. Based on documentation submitted by the JCAA, the final cost for the design and construction of the Air Traffic Control Towers was in the amount of CAD\$20,996,673.73. INTELCAN had initially proposed a cost of CAD\$25,000,000.00. Represented below is a table outlining the number of proposals which were submitted by INTELCAN:

Table Outlining the Number of Proposals Submitted by INTELCAN

Proposals	Date of Proposal	Proposed Amount
Initial Proposal	May 2006	CAD\$25,000.000.00
1 st Revised Proposal	December 24, 2009	CAD\$23,009,703.00
2 st Revised Proposal	January 20, 2010	CAD\$23,009,703.00*
3 st Revised Proposal	February 1, 2010	CAD\$21,000,000.00
4 th Revised Proposal (Final)	February 18, 2010	CAD\$19,999,974.00

***The price remained the same but the errors pointed out had been corrected.**



8. In relation to the design and construction of the Air Traffic Control Towers, the following three (3) proposals were submitted for the consideration of the JCAA during the period May 2006:

Name of Company	Proposal Submission Date	Amount CAD \$	Amount US \$
INTELCAN	May 2006	\$25,000,000.00	*\$22,690,555.28
OMNI Construction Group	May 2, 2006	*\$18,179,370.00	\$16,500,000.00
Rhoden & Young Enterprise Inc.	May 8, 2006	*\$18,231,614.20	\$16,547,418.00

*The amount has been converted to Canadian/United States dollars using the applicable rate (May, 2006) of \$1.10178 Canadian to 1 USD.

9. Of the three (3) proposals which were submitted to the JCAA, the cost proposed by INTELCAN, in the amount of CAD\$25,000,000.00 was the highest.

The proposals submitted by OMNI Constructions and Rhoden & Young Enterprise Inc. were not considered by the JCAA, as they were deemed to be “*unsuitable*”.

The Director of Investigation is of the opinion that the proposals which were submitted by the other mentioned entities ought to have been evaluated by the JCAA, thereby allowing the Government of Jamaica to ensure value for money by comparing and assessing the competitiveness of the offers which were submitted in respect of the procurement opportunity.

10. The basis upon which the submissions of OMNI Construction Group and Rhoden & Young Enterprise Inc. were deemed “*unsuitable*” by the JCAA is unknown. The Director of Investigation has seen no evidence to indicate that the referenced proposals were subject to any evaluation or review process or that the proposals were measured against any established specifications developed by the JCAA. In point of fact, the JCAA disclosed to the then OCG that there is no indication “...that the other proposals were



evaluated”. Further, the JCAA advised the then OCG that “...*there is no indication of the rationale/justification why the other proposals were deemed unsuitable*”.

11. Additionally, having regard to the fact that the JCAA had also received unsolicited proposals from Rhoden & Young Enterprises, Omni Construction Group and INTELCAN, the Director of Investigation is of the view that the JCAA could have and should have utilised a competitive procurement methodology, in keeping with the provisions of the then applicable procurement guidelines.
12. Notwithstanding the justification provided by the JCAA to utilise the Sole Source Procurement Methodology, which emphasised the urgency of the construction of the Air Traffic Control Towers, the JCAA took approximately eight (8) years to ‘substantially complete’ the project. This raises serious questions as to whether the project was handled with the level of seriousness and urgency which it purportedly deserved. It is also important to note that the issue of visibility which were expressed by the Air Traffic Controllers was addressed by the use of cameras.
13. Notwithstanding the concerns which were raised by the JCAA that INTELCAN could bring a challenge in respect of Intellectual Property Rights, the Director of Investigation concludes that the JCAA had the opportunity to conduct a competitive tender process. The visibility issues experienced by Air Traffic Controllers were addressed with the installation of cameras as a temporary solution and as such proper procurement planning and execution could have taken place. In point of fact, several discussions were held in meetings of the Board of Directors regarding issues related to the price which was being proposed by INTELCAN. In this regard, proper comparative estimates and analyses could have been conducted in relation to other options which may have been available in the international market.



14. The award of the contract to INTELCAN for the construction of the Air Traffic Control Towers, was not in compliance with the standards prescribed by Section 4 (1) (a) of the then applicable Contractor General Act, as it was not awarded in a manner which could be deemed as having been impartial and on merit. It is the view of the Director of Investigation that INTELCAN was the ‘preferred bidder’ since the commencement of the procurement process. The Director of Investigation reiterates that though other entities submitted proposals to the JCAA, these proposals were neither considered nor was there any clarification sought in respect of the specifications and offers proposed. The Director of Investigation notes that INTELCAN was afforded the opportunity to submit revised proposals on several occasions.

15. The Director of Investigation concludes that the JCAA breached Section 1020 of the November 2008 GPPH, which required the approval of the Procurement Committee for the award of contracts. This is on the basis that the procurement was not reviewed or discussed by the Procurement Committee and as such there was no Procurement Committee approval for the contract.

The JCAA did not and has not to date provided copies of the Procurement Sub-Committee Minutes to the then OCG or the Director of Investigation, which made reference to any discussions regarding the towers. Notwithstanding the disclaimer which was made by the JCAA that “...*there are some historical documents which are indicated but not yet retrieved and we continue to search our digital records even while we send this formal response and please be advised that if and when any new material is found, same will be expeditiously provided to you.*”

16. The Director of Investigation has determined that the JCAA acted with undue haste in the premature signing of the contract with INTELCAN. This is on the basis that important details concerning the location of the site and infrastructure costs such as electricity,



sewerage and water were not included in the terms of the contract. Further, consideration was also being given for the variation of the contract even before the project actually started and prior to the signing of the contract. **The Director of Investigation considers the actions of the JCAA to be disingenuous, having signed a contract with INTELCAN for a particular cost, seeking the endorsements and approval of the NCC and the Cabinet respectively, whilst being fully aware that the infrastructural amenities and any change in the site location would result in an increase in the contract value.**

17. Based on a review of documents submitted by the JCAA, the Director of Investigation has concluded that the total cost variation was CAD\$996,699.73. Therefore, the total cost of the project inclusive of variations, was CAD\$20,996,673.73 (contract sum of CAD\$19,999,974.00 + variation of CAD\$996,699.73) which represents a 4.99% increase in the overall cost of the project.

The Director of Investigation has concluded, however, in accordance with the JCAA's response dated May 22, 2018, that the contract sum related to the construction of the Air Traffic Control Towers at the NMIA and SIA was initially CAD\$19,999,974.00 and at the conclusion of the project, **the final contract sum paid to INTELCAN was CAD\$20,501,652.97 as at April 27, 2017,** which represents a **2.51%** increase in the contract sum. (DI Emphasis)

18. The JCAA breached the GOJ procurement guidelines by awarding a contract to INTELCAN to construct the Towers on July 29, 2010, despite the fact that the entity was not registered with the NCC as a Grade one (1) contractor.

The JCAA breached Sub-Section No.:S2080 of the November 2008 GPPH by awarding a contract to INTELCAN despite the fact that the entity was not registered with the NCC.



Sub-Section No.:S2080 of the November 2008 GPPH, stipulates the following regarding NCC registration:

“... Registration of foreign bidders should not be a requirement for bidding from the onset under Open Tendering procedures. However, the successful bidder will have to be registered before the award of contract.” (DI Emphasis)

19. Having regard to the type and value of works which were to be executed and the NCC’s requirements, INTELCAN was required to be registered with the NCC as a Grade 1 Contractor in the categories of building construction and civil engineering. It is important to note that INTELCAN only became registered as a Grade 1 contractor in the categories of building construction and civil engineering, on November 18, 2013, approximately three (3) years after the contract was awarded.
20. The Director of Investigation has determined that the project consultants, EQS Jamaica Limited, through its CEO Mr. Allan Cochran, provided inaccurate information regarding the NCC’s registration requirement for INTELCAN to the JCAA. Mr. Cochran advised the JCAA by email correspondence which was dated July 22, 2010, that there was no requirement for INTELCAN to be registered with the NCC prior to the signing of the contract between INTELCAN and the JCAA.
21. It is concluded that the project experienced significant time overruns. The contract was signed on July 29, 2010 and was expected to be completed in 539 Days (to be completed around February 2012) for the Sangster International Airport and 483 days for the Norman Manley International Airport (to be completed around by January 2012). The completion dates were however, revised to March 14, 2014, for the SIA and January 23, 2014, for the NMIA. The delays were partly due to, *inter alia*, the following:



- Inaccurate site definition/location;
- Delays in the design process;
- The replacement of the sub-contractor; and
- Inclement weather conditions.

22. Having regard to the irregularities and breach of procedures uncovered and which have been noted above, it is concluded that the actions of JCAA, as it regards the award of the referenced contract were not in keeping with good corporate governance and the requirements of Section 17 (1) of the Public Bodies Management and Accountability Act, which states that: *“Every director and officer of a public body shall, in the exercise of his power and the performance of his duties-*

(a) act honestly and in good faith in the best interests of the public body; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances including, but not limited to the general knowledge, skill and experience of the director or officer.”

24. With regard to the approval which was sought by the JCAA, from the NCC to utilize the Sole Source procurement methodology in order to negotiate a contract with the Canadian Commercial Corporation (CCC), which allegedly made an offer of assistance with the project regarding the construction of the Air Traffic Control Towers, and the support that would have been received from the Canadian International Development Agency (CIDA), the OCG was advised by the JCAA on May 25, 2018, of the following:

“The Canadian Government did not provide support to the JCAA neither directly nor through the Canadian High Commissioner in Kingston and/or the Canadian



International Development Agency (CIDA), and/or the Canadian Commercial Corporation (CCC), in relation to the execution of the contract to design and construct the Air Traffic Control Towers at the Norman Manley International Airport (NMIA) and the Sangster International Airport (SIA).”¹²⁸

Based on the foregoing, and the contradictory statements offered by the JCAA, the Director of Investigation is of the view that the JCAA may have provided the NCC with misleading information in requesting the National Contracts Commission’s approval to utilize the sole source procurement methodology.

25. As it relates to the revelations made by the JCAA, that Ray Campbell Limited was contracted to prepare a ‘project costing’ for the construction of the new Air Traffic Control Towers, at the SIA and NMIA, but also provided a detailed architectural design, which was outside of the scope of the contract, the Director of Investigation is of the view that compensation on the basis of ‘effort’ is neither indicative of prudent financial management of entrusted public funds nor in keeping with the provisions of the Financial Administration and Audit Act (FAAA).

26. In relation to the engagement of Ray Campbell Limited, by the JCAA, for the preparation of ‘project costing’ regarding the new Air Traffic Control Towers, the Director of Investigation also concludes that the absence of a written contract is a breach of Sub-Section S. 2130 of the GoJ Handbook of Public Sector Procurement Procedures (2008), which mandates, *inter alia*, that in the award and signing of contracts for goods, works and services, provisions should be made to establish the structure and content of contracts for the procurement of same.

¹²⁸ Mr. Nari Williams-Singh’s May 25, 2018 response to the Integrity Commission’s requisition dated May 11, 2018, response no. 3



27. The Director of Investigation is also concerned at the lack of requisite documentation on the part of the JCAA, in relation to the contracts which were awarded for the construction of the new Air Traffic Control Towers. In point of fact, this highlights the lack of transparency and accountability surrounding the processes that were undertaken and represents a breach of Sub-Section S. 2150 of the GoJ Handbook of Public Sector Procurement Procedures (2008).

The referenced section stipulates, *inter alia*, that procurement records should be maintained for a period of ten (10) years. Further, it prescribes the following minimum standards of recorded information:

- *“Brief description of the works, goods or services procured;*
- *Contract price and actual completion cost;*
- *Summary of the evaluation and comparison of quotations and/or tenders; and*
- *Reason(s) for the rejection of any or all quotations/tenders.”*

Based on the foregoing, the Director of Investigation concludes that the JCAA contravened Sub-Section S. 2150 of the GoJ Handbook of Public Sector Procurement Procedures (2008) by its failure to retain critical procurement records.



RECOMMENDATIONS

Section 54 (1) of the Integrity Commission Act mandates that “**On completion of an investigation the Director of Investigation shall prepare and submit to the Commission, through the Executive Director, a report of his findings and recommendations.**” (DI Emphasis)

The Director of Investigation now posits the following Recommendations:

1. It is recommended that the Accounting and Accountable Officers of the JCAA pay keen attention to their responsibilities and obligations when awarding Government contracts. This is of utmost importance to ensure that all contract award processes are closely monitored to prevent any occurrence which may affect the completion of the procurement process. Section 16 (2) of the FAA Act states that:

(2)An accounting officer shall be responsible for the financial administration of the department specified in a designation under subsection (1) and shall be accountable to the Minister for-

- (a) the assessment and collection of, and accounting for, all moneys lawfully receivable by his department;*
- (b) ensuring that the purpose for which an appropriation is approved by Parliament is accomplished;*
- (c) making any payment required to be made in relation to such appropriation;*
- (d) the custody and proper use of all materials, equipment or other public property administered by him;*



(e) the administration of any fund for which he has been assigned responsibility pursuant to section 14 (3);

(f) the discharge of any other financial responsibility assigned to him under this or any other enactment.”

2. The Director of Investigation recommends that Boards of Directors of the JCAA strictly adhere to the provisions of the Corporate Governance Framework which identifies the specific roles and responsibilities of members of the Board of Director and that of the Head of Entity. The Corporate Governance Frame Work recommends that *“There should be a clear separation of the responsibilities at the very top leadership of the Public Body where the Chairperson is responsible for leading the Board in the development of the policies and strategies of the organization, while the Chief Executive Officer is responsible for the day to day management of the Public Body.”*
3. The Director of Investigation respectfully recommends that all Appointees to the Board of Directors of Public Bodies be made aware of their full responsibilities and obligations, and that such serving members fully apprise themselves of the provisions of the Public Bodies Management and Accountability Act (PBMA) and the established guidelines under the Corporate Governance Framework for Public Bodies as well as all other applicable legislations.
4. The Director of Investigation further recommends that the established Procurement Committee of the JCAA, consistently undertake a review of procurement activities, within specified thresholds, to ensure compliance with the standard procurement process as indicated in applicable government procurement guidelines in the award of government contracts.



5. The Director of Investigation strongly recommends that the JCAA ensure that contracts which are awarded by it are awarded in a manner consistent with the GOJ procurement guidelines and, in the application of same, be awarded, varied, renewed or terminated impartially, on merit and in a financially prudent manner.
6. The Director of Investigation is also strongly recommending that the JCAA should plan their procurement activities in accordance with the Procurement Cycle, inclusive of the employment and application of an approved Procurement Plan. In this regard, contracts which are to be awarded should be properly packaged, tendered, evaluated and awarded within a specified timeframe, hence removing the need, *inter alia*, to rush the procurement process.
7. The Director of Investigation also recommends that only suitable and qualified contractors be engaged in accordance with the GPPH by the JCAA prior to the implementation of a contract. It is to be highlighted that INTEL CAN was only registered with the NCC as a Grade 1 Contractor, on November 18, 2013, in the categories of building construction and civil engineering, approximately three (3) years after the contract was awarded.
8. The Director of Investigation also recommends that officers and officials at the JCAA cease and desist, from accepting travel, meals, entertainment, gifts or anything of material value, from bidders or prospective bidders, suppliers, contractors or consultants engaged to undertake contracts.
9. The Director of Investigation strongly recommends that the JCAA ensure that all proposals submitted by contractors and consultants are treated in an unbiased and transparent manner so as to eliminate any perception of favouritism, which could compromise the procurement processes of the GoJ Public Procurement Guidelines and Regulations.



10. Having regard to the mandated requirements for procuring entities to ensure that the GoJ achieves value for money in the procurement of goods, works and services, the Director of Investigation recommends that the JCAA adopts internal control systems and processes that would allow for prudent financial management and competitiveness in the entity's procurement processes.
11. In relation to the payment of \$632,000.00, which was made to Mr. Ray Campbell Ltd. for "*efforts*" concerning actions regarded as being outside of the scope of works of the contract, the Director of Investigation asserts the view that such a payment is neither in keeping with prudent financial management of entrusted public funds nor the provisions of the FAA Act.

Accordingly, it is recommended that this matter be examined by the Auditor General and/or the Ministry of Finance with a view to determining whether surcharge procedures should be applied and/or any other action deemed relevant in the circumstances.

Director of Investigation



APPENDICES

APPENDIX I

DESIGN AND CONSTRUCTION OF CONTROL TOWERS AT NORMAN MANLEY AND SANGSTER INTERNATIONAL AIRPORTS	EQS TOC/001
	Issue 1
FORM OF CONTRACT - FIDIC Conditions of Contract for EPC/Turnkey Projects First Edition 1999	NMIA TOWER

JAMAICA CIVIL AVIATION AUTHORITY TAKING OVER CERTIFICATE

TAKING OVER DATE : June 30 2014

DATE OF ISSUE OF
CERTIFICATE : July 10, 2014

EMPLOYER : Jamaica Civil Aviation Authority

CONTRACTOR : Intelcan Technosystems Inc.

CONTRACT WORKS : Design and Construction of Two Control Towers at Norman Manley
and Sangster International Airports


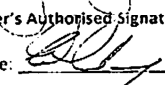



CONTRACTUAL
COMPLETION DATE : January 23, 2014

I, Leroy Lindsay, in my official capacity as the representative of the EMPLOYER hereby certify that INTEL CAN TECHNOSYSTEMS INC. (the CONTRACTOR) has completed the Works, or Section(s) thereof as detailed herein pursuant to the Contract with the Contractor dated July 29, 2010 but with certain *Exceptions* also detailed herein and except for minor outstanding work and defects which will not substantially affect the use of the Works or Section for their intended purpose (either until or whilst this work is being completed and these defects are remedied) which are detailed in the attached *Schedule of Minor Outstanding Works and Defects*.

I further certify that at least one (1) copy of the required as-built drawings, operational manuals, manufacturer's instructions and maintenance manuals have been received except as noted in Item 2(a) of the *Exceptions* to the *Details of Works or Section(s) Covered by this Certificate*.



DESIGN AND CONSTRUCTION OF CONTROL TOWERS AT NORMAN MANLEY AND SANGSTER INTERNATIONAL AIRPORTS	EQS TOC/001
	Issue 1
FORM OF CONTRACT - FIDIC Conditions of Contract for EPC/Turnkey Projects First Edition 1999	NMIA TOWER

DETAILS OF WORKS OR SECTION(S) COVERED BY THIS CERTIFICATE	
<p>DESIGN AND CONSTRUCTION OF THE CONTROL TOWER AT NORMAN MANLEY INTERNATIONAL AIRPORT <u>EXCEPT THE FOLLOWING:</u></p> <ol style="list-style-type: none"> HVAC System to Cab : Remedial HVAC work to the Cab to be complete; For an avoidance of doubt this Item will become subject of a separate Taking Over Certificate as agreed by the Parties to the Contract. Items agreed to be completed post Taking Over: <ol style="list-style-type: none"> As-built drawing for the Towers and the Building Services - These will be provided by July 31 2014; Demonstration and Training for the Operations and Maintenance staff and issuance of Training Certificates. This is to be scheduled by the Employer and should be done once the building is occupied. The integration to the new systems and locations for the subsystems provided by the Employer or the existing systems. These works are ongoing and will be completed by Intelcan when mutually agreed with the Employer as part of the transfer operations. The connection and commissioning of the D-ATIS system which will be completed once the Employer put the relevant connection in place. Agreement between the Employer and the Contractor, about the works that have not been provided including: <ol style="list-style-type: none"> Consoles and wiring to the contingency room; and The supply of a visibility system for the AWOS. <p>Note. - This Item may be subject to a separate Taking Over Certificate.</p> 	
<p>Certificate Originator: Gillian Sharpe EQS Jamaica Limited Project Manager and Employer's Representative</p> <p>EQS Jamaica Limited has assessed the seriousness of the <i>Exceptions to the Details of Works or Section(s) Covered by this Certificate</i> and advises that there are no risks in deferring the items listed therein.</p> <p>Signature: </p>	<p>Date: 10/07 2014</p>
<p>Employer's Authorised Signatory:</p> <p>Signature:  </p> <p>Designation: Director General</p>	<p>Date: 10/07 2014</p>
<p>Contractor's Authorised Signatory: Intelcan Technosystems Inc. hereby acknowledges and expressly agrees with all variations of the Contract and modifications to contract terms represented on this Certificate and that the signature below is authorised for these purposes.</p> <p>Signature:  </p> <p>Designation: PRESIDENT & CEO</p>	<p>Date: 11/07 2014</p>
<p>NB1: THIS CERTIFICATE IS NOT VALID UNLESS SIGNED BY THE AUTHORISED SIGNATORIES OF THE EMPLOYER AND THE CONTRACTOR.</p>	



APPENDIX II

DESIGN AND CONSTRUCTION OF CONTROL TOWERS AT NORMAN MANLEY AND SANGSTER INTERNATIONAL AIRPORTS	EQS TOC/001
	Issue 2
FORM OF CONTRACT - FIDIC Conditions of Contract for EPC/Turnkey Projects First Edition 1999	SIA TOWER

JAMAICA CIVIL AVIATION AUTHORITY

TAKING OVER CERTIFICATE

TAKING OVER DATE : September 5 2014

DATE OF ISSUE OF
CERTIFICATE : September 10 2014

EMPLOYER : Jamaica Civil Aviation Authority

CONTRACTOR : Intelcan Technosystems Inc.

CONTRACT WORKS : Design and Construction of Two Control Towers at Norman Manley
and Sangster International Airports

PART WORKS : Construction of Control Tower at the Sangster International Airport

CONTRACTUAL
COMPLETION DATE : March 14 2014

I, Leroy Lindsay, in my official capacity as the representative of the EMPLOYER hereby certify that INTEL CAN TECHNO SYSTEMS INC. (the CONTRACTOR) has completed the Works, or Section(s) thereof as detailed herein pursuant to the Contract with the Contractor dated July 29, 2010 but with certain *Exceptions* also detailed herein and except for minor outstanding work and defects which will not substantially affect the use of the Works or Section for their intended purpose (either until or whilst this work is being completed and these defects are remedied) which are detailed in the attached *Schedule of Minor Outstanding Works and Defects*.

I further certify that at least one (1) copy of the required as-built drawings, operational manuals, manufacturer's instructions and maintenance manuals have been received except as noted in Item 2(a) of the *Exceptions* to the *Details of Works or Section(s) Covered by this Certificate*.



DESIGN AND CONSTRUCTION OF CONTROL TOWERS AT NORMAN MANLEY AND SANGSTER INTERNATIONAL AIRPORTS	EQS TOC/001
	Issue 2
FORM OF CONTRACT - FIDIC Conditions of Contract for EPC/Turnkey Projects First Edition 1999	SIA TOWER

DETAILS OF WORKS OR SECTION(S) COVERED BY THIS CERTIFICATE	
<p>DESIGN AND CONSTRUCTION OF THE CONTROL TOWER AT SANGSTER INTERNATIONAL AIRPORT <u>EXCEPT THE FOLLOWING:</u></p> <ol style="list-style-type: none"> HVAC System to Cab : Remedial HVAC work to the Cab to be completed <p>For an avoidance of doubt this item will become subject of a separate Taking Over Certificate as agreed by the Parties to the Contract.</p> <ol style="list-style-type: none"> Items agreed to be completed post Taking Over: <ol style="list-style-type: none"> As-built drawing for the Towers and the Building Services - These will be provided by September 30 2014; Demonstration and Training for the Operations and Maintenance staff for the building services and issuance of Training Certificates. This is to be scheduled by the Employer and should be done once the building is occupied. The integration to the new systems and locations for the subsystems provided by the Employer or the existing systems. These works are ongoing and will be completed by Intelcan when mutually agreed with the Employer as part of the transfer operations. The connection and commissioning of the D-ATIS system which will be completed once the Employer put the relevant connection in place. Agreement between the Employer and the Contractor, about the works that have not been provided including the Supply of a visibility system for the AWOS. <p>Note: - this item may be subject to a separate Taking Over Certificate.</p>	
<p>Certificate Originator: Gillian Sharpe EQS Jamaica Limited Project Manager and Employer's Representative</p> <p>EQS Jamaica Limited has assessed the seriousness of the <i>Exceptions</i> to the <i>Details of Works or Section(s) Covered by this Certificate</i> and advises that there are no risks in deferring the items listed therein.</p> <p>Signature: _____</p>	<p>Date: September 10 2014</p>
<p>Employer's Authorised Signatory:</p> <p>Signature: _____</p> <p>Designation: Director General</p>	<p>Date: September 11, 2014</p>
<p>Contractor's Authorised Signatory: Intelcan Technosystems Inc. hereby acknowledges and expressly agrees with all variations of the Contract and modifications to contract terms represented on this Certificate and warrants that signature below is authorised for these purposes.</p> <p>Signature: _____</p> <p>Designation: PRESIDENT & CEO</p>	<p>Date: SEPT 17, 2014</p>

NB1: THIS CERTIFICATE IS NOT VALID UNLESS SIGNED BY THE AUTHORISED SIGNATORIES OF THE EMPLOYER AND THE CONTRACTOR.



APPENDIX III

SCHEDULE OF MINOR OUTSTANDING WORKS AND DEFECTS

Project:

Control Tower – Norman Manley International Airport

Date of Inspection:

June 28, 2014

Location	Snag/Defect	Comments
General	Painting – Final touch up to be complete	Final inspection to be done
	Final clean up to be complete	In Progress
	Weather seats to be installed on all external doors	July 14, 2014
Lobby (102)	Main Door – glass to be installed	Aug 14, 2014
Corridor (101)	Glass to exit door to be replaced	Aug 14, 2014
Staircase	Missing glass panels to be installed.	Aug 14, 2014
	Handrail to be completed	Jul 21, 2014
Contingency Room	Ceilings to be leveled	Jul 14, 2014
Manager's Office	Glass to sidelight to be installed	Aug 14, 2014
Mechanical Building - General	Area between masonry wall and stanchions (where caulked) to be closed off	Jul 14, 2014
Electrical Room (114)	Epoxy Floor to be recomplete	Jul 7, 2014
Mechanical Room (211)	Epoxy Floor – remedial works required	Jul 7, 2014
Closet	Light to be fixed	Jun 27, 2014
Elevator lobby	Light to be fixed	Jun 27, 2014
	Tiling to service level to be completed	
	Remedial works required to ceilings	
Stair Shaft (709)	Air pressurization. Duct needs a grille	Jul 14, 2014
Electical comms chase (208.2)	Light switch cover to be installed	



SCHEDULE OF MINOR OUTSTANDING WORKS AND DEFECTS

Plumbing chase	Dry walls to be painted,	Fire code Shaft wall should be left un painted
	Light switches to be installed	
Stair shaft	Gratings on landings needs brackets and lightening	Jul 14 , 2014
HVAC	Exhaust hoods to condensers – 2 no. replacements to be installed;	Jul 14-21, 2014
	Final testing and commissioning of the HVAC system	Jul 23, 2014
	Final testing and balancing of system	
Fire Suppression System	Fire extinguishers to be installed	To be complete when building is occupied.
		Jul 6 , 2014 (as per Fire brigade)
Fire Detection System	Interconnection of system to the NMIA system to be completed	Method to be coord with NMIA and date finalized
	Fire Hose Reel cabinets to be inspected and fixing of hose reel to cabinet to be rectified if necessary	In Progress
Plumbing systems	Minor leaks to be corrected	
		In Progress
Elevators	Final inspection certificate to be submitted	
	Elevator to be cleaned up and protective coverings removed	
LV Installations	GI inspection certificates to be issued	TBD (coord with GI)
Generator	Genset Speed sensor replacement	TBD Date (Likely Jul 8 , 2014)
IT	Additional outlets to be installed in the dorms	TBD Date
	JCAA to review drawings to ensure adequate outlets are installed	
	Access control – final locations to be agreed with the JCAA	TBD (awaiting direction from JCAA)
	Cameras – final location to be agreed with the JCAA	Installed / Jul 14 , 2014



SCHEDULE OF MINOR OUTSTANDING WORKS AND DEFECTS

Signage	Intelcan is to install signs on bathroom and utility areas. JCAA is to confirm details for other signs	Pending final configuration
Fire stopping	Firestopping to be installed throughout the building	In Progress
Piping Level	Cleaning to external areas at piping level to be complete	Jul 6, 2014
Window washing equipment	Equipment and safety line to be installed	Fall arrest completed
ATC Equipment	Task lights are to be installed at the operator consoles Flight display strips are to be replaced	
External Works		
External Fence	Final portion of fence and gates to be constructed	To be constructed when NMIA works are completed
External Fence	Bond beam to bottom of chainlink to be cast. Fence to be plastered and painted.	
Guard House	Final painting, installation of floor finish, doors, power, lights and toilet fixtures to be done	
Pump House	Final painting to be done. Final testing of fire pumps to be done	
	Door to be installed	
	Epoxy paint to floor to be done	
	Lights to be installed	
	Openings to be sealed	
Fuel Farm	Grouting of base plates to be done Grounding and lightning protection to be completed Lights to be installed	
	Cement board and membrane to roof to be installed	
Roads and	Complete kerb to south of building	To be done after NMIA works are



SCHEDULE OF MINOR OUTSTANDING WORKS AND DEFECTS

pavings		completed
	Complete kerb and side walk near guard booth	To be done when MNIA works are completed
	Install gratings to catchpits	
	Complete kerb near Met office	
	Pluck up door to Met office. Paint wall to Met office and make good	
	Complete painting to external wall	
	Final grading and leveling of roads, install tack coat and asphalt paving and road markings.	
	Install main barrier	
	Install gravel around building	
External Lights	Grout base plates	
	Connect lights, test and commission	
General	Caulk joint between building cladding and external concrete slab	
	Clean up site	
	Complete installation of topsoil and grassing	
	Relocate excess materials to Maintenance Building	
	Install condenser for UPS room	



APPENDIX IV

SCHEDULE OF OUTSTANDING WORKS AND DEFECTS

Project: Control Tower – Sangster International Airport

Date: Sept 5 2014

Location	Snag/Defect	Comments
<u>General</u>	Final Clean up	Final clean up to be completed by Sept 21
<u>ADMIN BUILDING</u>		
Ground Floor		
Lobby (102)	Main Door – glass to be installed	By Sept 30
Corridor (101)	Glass to exit door to be replaced	By Sept 30
Male Bathroom	Replace cracked basin	By Sept 30
<u>MECHANICAL BUILDING</u>		
External	Sunshades to be installed (also on Admin Building)	By Sept 30 to Oct 13
<u>MECHANICAL LEVEL</u>		
Internal	Replace insulation where damaged by condensation	Pending final remedial work
External	Window washing railing system to be commissioned	Demonstration and Testing O/S - TBD
<u>SERVICE LEVEL</u>		
Dorm Rooms	Tel/Data lines to be installed	TBD date
Bathrooms	Vents/HVAC to be rectified	By Sept 30 or earlier
STAIR SHAFT (709)	Pressurization fans to be installed	TBD NOTMAR is working on solution –

Sheet 3 of 5



SCHEDULE OF OUTSTANDING WORKS AND DEFECTS

Project: Control Tower -- Sangster International Airport

Date: Sept 5 2014

		tentative Sept 21
ELECTRICAL PANELS	Enclosing of the electrical panels and transformer in a separate electrical closet.	
SERVICES		
HVAC		
	Final testing and balancing of system	TBD
Fire Suppression System	Fire pump to be installed and hose reels commissioned	To be commissioned
	Fire extinguishers to be installed	TBD date -- Sept 30 or earlier
	Inspection and certificate from the Fire Department	Pending - TBD
LV Installations	GI inspection to be done	TBD BY ST. JAMES TECH.
	Modifications, as requested by the inspector, to be completed	Pending confirm by GI inspector
Generator	Cut off switch is to be installed in electrical room	Materials ordered (Supplied by Atlantic , Kingston) Sept 21 to 30
Access Control	Access controls to the doors to be installed as agreed with the JCAA	TBA. Intelcan team to install -- by Sept 30
Cameras	Monitors to be installed	TBA Intelcan team to install - by Sept 30
Signage	Intelcan to send list and details to JCAA for approval	TBA -- Proposal in progress to be submitted by Sept 12
ATC Equipment	Only four task lights have been installed	Final number pending test
	Flight display strips are to be replaced	TBD date -

Sheet 4 of 5



SCHEDULE OF OUTSTANDING WORKS AND DEFECTS

Project: Control Tower – Sangster International Airport

Date: Sept 5 2014

EXTERNAL WORKS		
	Install signs to transformer enclosure	AWAITING SIGNS TO BE SENT FR. CANADA
General	Joint between building cladding and external concrete slab - detail for sealing joint to be agreed	TBA – Detail to be discussed



APPENDIX V

REPORT

To: Mr. Donovan James – Consulting Engineer

From: Solomon Burchell – Director of Electricity & Chief Electrical Inspector,
Government Electrical Inspectorate (GEI)

Date: June 15, 2016

Subject: Inspection of Electrical Installation associated with Air Traffic Control
Tower, Sangsters International Airport. Montego Bay, St. James .

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Arising from a report that was received from Mr. Donovan James regarding damaged high voltage transformer and surge protective devices at the new control tower, Sangster International Airport, two members of the Government Electrical Inspectorate visited the premises in May 2016. The purpose of the visit was to conduct an electrical inspection of the installation and to see first-hand some of the areas of concern.

The inspection was largely visual, except for a clip-on earth test that was conducted on grounding system of high voltage substation (300 kVA pad-mounted Transformer) that was located on the immediate premises. Below is a summary of the findings and related recommendations necessary for the improvement of the quality of the installation and to guarantee that the related electrical technical standards are observed.

The Substation

The earth resistance reading of the grounding system for the substation was established to be sixty-eight (68) ohms. This is well outside of the five-ohm limit that is permissible. There was some discussion among the parties as to the set of circumstances that led to the damage of the transformer. The general view was that the fast-switching circuit breaker supplying the transformer set up a travelling wave on the relatively long length of cable and this was not sufficiently suppressed at the high voltage transformer due to the high ground resistance. The effect of this was the overstressing of the transformer insulation which resulted in the failure of the transformer.

Appendix 5



The following represents two possible remedial paths, any of which will provide a positive result:

1. Repair/Replace the defective transformer with one of similar specification and replace existing supplying main High Voltage (HV) cable. Install surge suppressing devices on each of the phase conductor of this HV main cable. Re-establish the grounding system for the substation to ensure that earth resistance reading of maximum five (5) ohms is achieved and sustained throughout the life-time of the transformer. By means of cad-welding, welding and/or bronzing, terminate all earth lead to the earth electrodes of the substation's grounding system, as well as to the vertical posts within the substation's fence, and install the required earth tag at each electrode. Bond the base of each lightning arrestor, located inside the HV cable cabinet of the transformer, as well as the main neutral terminal within the low voltage cable cabinet of same transformer, to the substation's grounding system;
2. Design and construct an aerial HV supply line that is capable of supplying either the proposed pad-mounted transformer or a set of pole-mounted transformer adequately sized to supply the Tower. The earth resistance reading for the grounding system for the pole-mounted transformers shall also not exceed five (5) ohms. The construction of this aerial line and related transformer(s) shall be treated as a permanent solution of the situation.

Notwithstanding the aforesaid, any transformer(s) that is to be used to rectify the situation shall be subjected to all the required tests, the results of which shall guarantee the safe operations of that apparatus. Be reminded that acceptable test reports are pre-requisites for certification and/or the issuance of any permit to energize same transformer(s).

The Water Pumping Station

Inspection revealed that there was insufficient clearance between electrical switchgear and panels on the one hand and the motors and water-pump on the other. It was therefore recommended that the electrical panels and switchgear be relocated to a dedicated room adjacent to the pump room. Such a switch-room shall provide adequate space in front of each electrical panel-board with a clearance of thirty-six (36) inches being the minimum acceptable limit. All the panel-boards and electrical enclosures, installed within the same switch-room shall be bonded together in an effective manner that ensures that they remain at the same potential during the process of their operation. The door for this switch-room shall be made of fire-proof material and made to swing outwards only. A lighting fixture and related switch shall



be installed within same room. The grounding system for this switch-room shall be efficiently done, effective and visible during the inspection process.

The Petrol Storage Room

Adequate lighting, an efficient fire detection system and a bund-wall for the petrol storage tank shall be installed within this area. The tank, if metallic, shall also be bonded to a separate earth electrode.

The Generator Room

During the inspection it was observed that there was only one earth lead terminated to the chassis of each of the two (2) generators and also that the exhaust was installed too close to the building and in a position that was too close to the air-condition vent. It was also observed that the entrance door swung inwards. Against this background the following are our recommendations:

1. There shall be installed a grounding system comprising two, minimum size 8-foot, earth electrodes, bonded together and to the chassis of each generator at two (2) separate points;
2. The exhaust pipes of the generators shall be relocated to a point that allows for the exhaust fumes to dissipate into free air and away from any area occupied or traversed by persons operating on the premises. Efforts shall also be made to prevent same fumes from being sucked in by the installed air-conditioning unit(s);
3. The entrance door to all switch-room shall be made of fire-proof material and swing outwards only.

The Main Switch Room

The wiring lacked acceptable colour coding in some instances and the arrangement of the wires in the panels needed was unsightly. The following are our recommendations:

1. Acceptable colour code shall be observed, with all electrical conductors, throughout the entire electrical installation;
2. Conductors installed within electrical distribution panels shall be grouped and strapped in a manner that allow for quick identification of each conductor and also provide a more tidy environment;



3. Circuit breakers installed within each panel-board shall be labeled to clearly indicate to the load (and its location) being supplied through same circuit.

The Lightning Protection System

The Lightning Protection System (LPS) as installed was inadequate and possibly would not provide the anticipated result. It is therefore recommended that a proper and adequate lightning protection system be procured and installed on this building. The system shall cover a protection zone which shall include all the buildings on the premises as well as the car park and substation. The following recommendation shall be observed during the process of design and installation of the required lightning protection system:

1. The protection zone of the Lightning Protection System (LPS) shall encompass all building on the premises as well as the car-park and substation;
2. The number of air terminals shall be as stipulated by the manufacturer or shall be based on the amount required to provide a protection zone that covers all areas as stated in 1 above;
3. The number of earth electrodes and down-conductors within the lightning protection systems shall be determined by the base area or perimeter measurement of the building. However, manufacturer specification supersedes the preceding;
4. Each down-conductor of the lightning protection system shall have a test-point installed within same and at a point not exceeding thirty-six (36) inches from established grade;
5. Each down-conductor shall be afforded protection from direct or indirect contact by mean of a non-conductive medium (PVC conduit) installed around the down-conductor from ground up to a minimum height of one hundred and twenty (120) inches;
6. Each termination of the down-conductor to the earth electrodes of the Lightning Protection System's grounding system and also roof-conductor to air terminals shall be made by cad-welding, brazing, bronzing or as specified by the system's manufacturer;
7. The down-conductors of the LPS shall be without splice, except for the point at which the test-point is to be inserted;
8. The grounding system for the Lightning Protection System (LPS) shall be isolated from the electrical installation's grounding system unless the equivalent earth resistance reading for the LPS's grounding system does not exceed (and sustained) one (1) ohm;
9. Minimum acceptable earth resistance reading for the LPS shall be a maximum of ten (10) ohms. However, please be informed that lower earth resistance readings are synonymous with faster dissipation of lightning charges and therefore a more effective system;



Be informed that the result of our inspection revealed a below standard electrical installation and therefore it is of great importance that all efforts be made to ensure that the necessary improvements are made.

Finally, please free to contact the office of the Chief Electrical Inspector of the Government Electrical Inspectorate for additional information, clarification or on any related matter for which guidance is required.

cc. Paul OConnor – Executive Engineer, GEI

Mr. John Miller – JFM Electrical Limited