



OFFICE OF THE CONTRACTOR GENERAL OF JAMAICA

Special Report of Investigation

Allegations Regarding the Contract Termination and Award Practices at the National Solid Waste Management Authority (NSWMA)

Ministry of Local Government and Community Development

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INTRODUCTION

On 2008 March 25, the Office of the Contractor General (OCG), acting on behalf of the Contractor General, and pursuant to Sections 15 (1) and 16 of the Contractor General Act (1983), initiated an Investigation into the circumstances surrounding the termination and/or award of certain contracts by the National Solid Waste Management Authority (NSWMA), over the period of 2007 September to 2008 March.

Section 15 (1) of the Contractor General 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 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 investigation is warranted”*.

The OCG’s Investigation was initiated following upon the receipt of allegations that contracts were being terminated and replaced, by the NSWMA, without same going through the requisite tendering process, as outlined in the Government of Jamaica (GOJ) Public Sector Procurement Procedures Handbook (GPPH), 2001.

The OCG received several pieces of correspondence, in which numerous allegations were made by different concerned contractors.

The following complaints, *inter alia*, were received by the OCG:

1. The OCG received a letter of complaint, which was dated 2008 January 28, from a group of *“Concerned Island wide Contractors”*. The concerned letter stated, *inter alia*, as follows:

“The management of the Authority had an agreement with the Office of the Contractor General to extend the present contractual system in place until the 31st of March, 2008 when new contracts would be awarded after the public tendering process would have been completed. Instead, Mrs. Joan Gordon-Webley, the Executive Director, has been terminating contractors and replacing them without the requisite tendering process.

On Friday, January 25th 2008, all contractors received a purchase order notice that indicated a period of January 1-March 31 2008 and the contractual sum at the end of the order. However, the month of March was crossed out and initialled [sic] by Mrs. Gordon-Webley. The dates on the purchase orders, as well as the

contractual sums, were made to reflect January 31, 2008 as the final payment date.

We ask that this breach be investigated as soon as possible as contractors are not being terminated due to non-performance but because of political victimization.

There are other irregularities that we would like to be investigated. There has been the recent hiring of Knightsbridge Security Company, who has taken over security services at both the NSWMA offices and at the Riverton Landfill without the legal tendering process and the proper procurement guidelines being observed.

In addition, the Chairman, Mr. Dennis Morgan had commanded the former Corporate Services Director to deliver the previously completed tender documents, containing confidential information on the tender process, the pricing of contracts and individual company documents, to his home. This places him at an unfair advantage which will allow him to tender below the competition

We would be grateful if you would use your good office to ensure that the integrity of a legal process is maintained.”¹

2. A letter to the OCG, which was dated 2008 March 3, from Mr. Keith N. Bishop of Bishop & Fullerton, Attorneys-at-Law, representing Mr. Dean Williams, Managing Director, Sovereign Resources (UK) Limited, indicated, *inter alia*, that “*We believe that our client’s contract with the NSWMA [sic] may have been terminated with impropriety and/or irregularity. What we are sure about is that*

¹ Letter of complaint to the OCG, which was dated 2008 January 28, from “*Concerned Island wide Contractors*”.

the provisions in the Zonal Contract, signed between the parties, relating to termination have been totally ignored by the NSWMA [sic].”²

3. On 2007 October 8, the OCG received an undated document from an anonymous source. The document identified several issues regarding contract award and termination activities at the NSWMA. The relevant issues, *inter alia*, are as follows:

- i. *“Security Contract Services*

Vanguard Security was awarded the contract to provide security services at all the landfills island wide and all the NSWMA regional offices and garages in 2004. The National Contracts Commission extended his contract until March 2008. Yet the Executive Director, Mrs. Joan Gordon-Webley, in December 2007 started replacing Vanguard Security location by location with Knightsman Security operated by Mr. Anton Young, who is one of Bruce Golding’s personal bodyguards. This contract is valued at \$40 million dollars per annum. It was not put out to public tender nor does it have the approval of NCC.”³

- ii. *“Landfill Equipment*

The contract for providing heavy duty equipment for the operation on the Riverton landfill was awarded to Heavy Equipment Consultancy & Maintenance that had the approval of the NCC. However, Mrs. Webley gave the contract to a Fitzroy Chin who had no NCC or TCC. When the procurement officer objected to the breach, Mrs. Webley was livid and put

² Letter which was dated 2008 March 3, from Mr. Keith Bishop of Bishop & Fullerton, Attorneys-at-Law, representing Mr. Dean Williams, Managing Director of Sovereign Resources (UK) Limited.

³ Undated Document submitted to the OCG by an anonymous source.

it in the name of Mr Chin's relative, Alpha Construction without N.C.C. approval. This contract is over \$70 million per annum."⁴

iii. "CONTRACTORS BEING HIRED WITHOUT NCC APPROVAL

Contractors have been terminated in zones 6, 16, 9 and 15 and they have been replaced without N.C.C. approval. The N.C.C. must be notified first about the dismissal of a contractor or termination of a contract and approval for the replacement must be given especially when it exceeds the \$275,000 per month threshold. This has not been happening.

iv. "Roving Teams Issue vs. Sweepers

Fifteen Roving Teams existed islandwide. Each team employed eight (8) persons. They moved around cutting median strips and heavy vegetation. Mrs Webley terminated all of them on the 23rd of January 2008. Now she is telling the public that she intends to use new roving teams to replace the street sweepers. The contractors and workers are working under threat as persons are rounded up and fired without any valid reason.

September 1, 2008, the contractor, Lincoln Williams, (Mechanical Services) was summoned to Mrs. Webley's office for a discussion. He was told that his services were no longer required. While he was at her office at 61 Half Way Tree Road, over 20 police officers were sent to 97 Hagley Park Road to remove his stuff from the truck depot. They thought it was a bomb scare. After exiting the compound, they were told that their boss no longer had the contract. When Mr. Williams reached the 97 Hagley Park Road location, he had to be escorted on the compound with security to

⁴ Undated Document submitted to the OCG by an anonymous source.

*retrieve his things. They observed Mr. Broomfield escorting in the mechanical contractor and his team on to the compound. Mr. Williams was assured that he would be paid for his service and still is yet to be paid.”*⁵

The concerns and allegations which are contained in the foregoing letters of complaint inferred, *inter alia*, (a) impropriety, (b) irregularity, (c) conflicts of interest, and (d) a lack of transparency in the contract award and termination practices at the NSWMA.

These allegations and inferences, *inter alia*, raised several concerns for the OCG, especially in light of the perceived absence of the adherence to the Government contract award principles, which are enshrined in Section 4 (1) of the Contractor General Act.

Section 4 (1) of the Act requires, *inter alia*, that Government of Jamaica contracts must be awarded “*impartially and on merit*” and that the circumstances in which each contract is awarded or as the case may be, terminated, do “*not involve impropriety or irregularity*”.

In addition, the OCG also decided to examine the following additional contracts based upon certain representations which had been made to the OCG and/or the NCC regarding the propriety and merit of the subject contracts. The concerned contracts were awarded to the following companies:

1. Sovereign Resources (UK) Limited;
2. Double Cannon Limited;
3. Incomparable Enterprises Limited;
4. Efficient Haulage and Equipment Company Limited;
5. West Indies Heavy Duty Equipment Limited;

⁵ Document submitted to the OCG by an anonymous source.

6. Vanguard Security Limited;
7. Knightsman Limited.

Having regard to the foregoing, the OCG's Investigation primarily sought to determine whether there was compliance with the provisions of the GPPH (May 2001) and the Contractor General Act (1983) in the termination and/or award of several contracts by the NSWMA, over the period of 2007 September to 2008 March.

TERMS OF REFERENCE

Primary Objectives

The primary aim of the Investigation was to ascertain whether there was compliance with the provisions of the GPPH (May 2001) and the Contractor General Act (1983), *inter alia*, in the termination and/or award of several contracts by the NSWMA, over the period of 2007 September to 2008 March.

Specific Objectives:

The following specific objectives were outlined:

1. To determine the procurement process which was employed by the NSWMA in the procurement of goods, works and services during the period of 2007 September to 2008 March;
2. To determine whether there were breaches of the Government's procurement procedures, on the part of the NSWMA or anyone acting on its behalf, in the execution of any aspect of the agency's contract award and termination practices, during the period 2007 September to 2008 March;
3. To determine whether there was any *prima facie* evidence of a conflict of interest in the award of contracts by the NSWMA;
4. To determine whether the process leading up to the award of contracts by the NSWMA was fair, impartial and transparent;
5. To determine whether there was *prima facie* evidence that would suggest impropriety on the part of any individual or entity which contributed to the award,

non-award and/or termination of any of the contracts by the NSWMA, during the period 2007 September to 2008 March.

METHODOLOGY

A preliminary Requisition/Questionnaire, which was dated 2008 January 31, was sent by the OCG to the Executive Director of the NSWMA, Mrs. Joan Gordon-Webley.

Subsequently, and following upon the formal initiation of an Investigation on 2008 March 26, the OCG met with certain Officers and Officials of the NSWMA, on 2008 April 7, in an effort to, *inter alia*, “...discuss the issues that have been brought out in previous representations to this office.”

Further, a formal Statutory Requisition/Questionnaire was subsequently directed to Mrs. Joan Gordon-Webley.

Where it was deemed necessary, Follow-up Requisitions were directed to Mrs. Gordon-Webley in an effort to clarify certain issues which were identified in her previous declarations and responses. These Follow-up Requisitions were also designed, *inter alia*, to clarify any discrepancy in the information which was supplied by the Respondents.

It is also the case, that in the conduct of the referenced Investigation, an interview was conducted with Mr. Dean Williams, Managing Director, Sovereign Resources (UK) Limited. Mr. Williams has made representation to the OCG regarding the termination of his contract with the NSWMA.

In keeping with the OCG’s standard investigative procedures, Mr. Dean Williams was required to sign a Statement, sworn before a Justice of Peace, upon the completion of the referenced interview.

The Terms of Reference of the OCG’s Investigation were primarily developed in accordance with the provisions which are contained in Section 4 (1) and Section 15 (1) (a) to (d) of the Contractor General Act. Additionally, the OCG was guided by the

recognition of the very important responsibilities which are imposed upon Public Officials and Officers by the GPPH (2001), the Public Bodies Management and Accountability Act, the Financial Administration and Audit Act and the Corruption Prevention Act.

The OCG was also guided by Section 21 of the Contractor General Act, which mandates that a Contractor General shall consider whether he has found, in the course of his Investigation, or upon the conclusion thereof, evidence of a breach of duty, misconduct or criminal offence on the part of an officer or member of a Public Body and, if so, to refer same to the appropriate authority.

The Findings of the OCG's Investigation are premised primarily upon an analysis of the sworn statements and the documents which were provided by the respondents who were requisitioned by the OCG, during the course of the Investigation.

EXAMINATION OF CONTRACTS

Prior to the commencement of its formal Investigation into the circumstances surrounding the termination and/or awarding of contracts by the NSWMA, over the period of 2007 September to 2008 March, the OCG conducted a preliminary enquiry into the allegations, which were made by several concerned contractors.

In this regard, by way of a letter which was dated 2008 January 31, the OCG requested the following information from Mrs. Joan Gordon-Webley:

- "1. A list of the contracts which have been awarded during the period September 1, 2007 to January 31, 2008, and*
- 2. A list of the contracts which have been terminated during the period September 1, 2007 to January 31, 2008."*⁶

The NSWMA submitted several documents to the OCG, with regard to the termination and award of contracts at the NSWMA, for the period 2007 September 1 to 2008 January 31. The referenced documents were submitted to the OCG under the cover of a letter which was dated 2008 February 19. Having reviewed the documents which were submitted, the contracts which were awarded to the companies/entities which are listed below were selected for more detailed scrutiny:

1. ROMAC Maintenance Services;
2. Mr. Lloyd Neil;
3. Downtown Kingston Management District (DKMD);
4. Morgan's Disposal Services/Patricia Morgan (Zone II);
5. Raphael Ragbar;
6. Lennox Dickenson;

⁶ Letter which was dated 2008 January 31, from the OCG to Mrs. Joan Gordon-Webley, Executive Director, NSWMA.

7. Donovan Wilson;
8. Basil Knight;
9. Eastern Environmental Company Limited;

The OCG also decided to examine the following additional contracts based upon, *inter alia*, certain representations which had been made to either the OCG and/or the NCC regarding, *inter alia*, the propriety and merit of the subject contracts. The referenced contracts were awarded to the following companies:

1. Sovereign Resources (UK) Limited;
2. Double Cannon Limited;
3. Incomparable Enterprises Limited;
4. Efficient Haulage and Equipment Company Limited;
5. West Indies Heavy Duty Equipment Limited;
6. Vanguard Security Limited;
7. Knightsman Limited.

Termination of Contract with ROMAC Maintenance Services

The contracts with ROMAC Maintenance Services (now ROMAC Integrated Facilities Services Limited) (hereinafter referred to as ROMAC) were reviewed by the OCG and it was revealed that ROMAC had been a contractor for the NSWMA since 2002.

ROMAC was contracted to provide Janitorial Services as well as the Rental of Plants for the NSWMA's office which is located at 61 Half-Way-Tree Road, Kingston 10, in the Parish of St. Andrew.

The OCG was provided with six (6) contractual agreements which were signed between ROMAC and the NSWMA. The table below presents a list of the contracts.

Contract#	Type of Contract	Date of Contract
1.	Contract for Janitorial Services	2002 October 1
2.	Contract for the Rental of Plants	2002 October 1
3.	Contract for the Rental of Plants.	2002 October 3
4.	Contract for Janitorial Services	2003 March 1
5.	Contract for Janitorial Services	2004
6.	Contract for Janitorial Services	2007

Contract # 1- Janitorial Contract, dated 2002 October 1

Under the terms and conditions of the contract it was indicated that the duty of the janitorial contractor was to clean all areas of the NSWMA's office.⁷

The cost of the initial cleaning was \$51,746.62 plus GCT and, thereafter, \$44,354.25 plus GCT, monthly. The contract also indicated that "*...this CONTRACT will be automatically renewed annually but subject to cancellation by either party giving one (1) month's notice in writing.*"⁸

The Termination Clause of the contract indicated that:

"The Owner may, by not less than thirty (30) days written notice of termination to the Janitorial Business, terminate this contract if the Janitorial Business fails to remedy a failure in the performance of its obligations hereunder, within thirty (30) days of receipt of such notice or within such period as the Owner may have subsequently approved in writing.

*...The Janitorial Business may, by not less than thirty (30) days written notice to the Owner, (such notice to be given after the occurrence of any of the events specified the following), terminate this contract if the Owner is in material breach of its obligations pursuant to this contract and has not remedied the same within fifteen (15) days (or such longer period as the Janitorial Business may have subsequently approved in writing) following receipt by the Owner, the Janitorial Business' notice specifying such breach."*⁹

⁷ Contract between the NSWMA and ROMAC which was dated 2002 October 1.

⁸ Contract between the NSWMA and ROMAC which was dated 2002 October 1.

⁹ Contract between the NSWMA and ROMAC which was dated 2002 October 1.

It should be noted that this contract was signed by Ms. Susanne Goffe, Manager, ROMAC, and a witness. The contract was not signed by any representative of the NSWMA.

Contract #2 - Rental of Plants, dated 2002 October 1

The contract for the rental of plants was signed on 2002 October 1. The contract indicated that *“The owner agrees to let and the hirer agrees to take 31 plants and flowers in pots or otherwise or as from time to time specified and place in the Building.”*¹⁰ The value of this contract was \$7,100.00 plus GCT, per month.

The Termination Clause of the contract indicated that *“This agreement shall be terminated at the option of either the OWNER OR HIRER, PROVIDED that any termination of the Agreement during any monthly period of hire shall be deemed to take effect at the expiry of such monthly period and not before.”*¹¹

The contract also indicated that *“...the Contract will begin the 5th day of October 2002”*¹²

This contract was signed by a representative of ROMAC on 2002 October 1 and by a representative of the NSWMA on 2002 November 27.

Contract #3 - Rental of Plants, dated 2002 October 3

This contract provided for the rental of plants and is dated 2002 October 3. The contract indicated that *“The owner agrees to let and the hirer agrees to take 30 plants and flowers in pots or otherwise or as from time to time specified and place in the Building.”*

¹⁰ Contract between the NSWMA and ROMAC which was dated 2002 October 1

¹¹ Contract between the NSWMA and ROMAC which was dated 2002 October 1

¹² Contract between the NSWMA and ROMAC which was dated 2002 October 1

The stipulated contract sum was in the amount of “...*Six Thousand, Seven Hundred and Sixty Dollars plus G.C.T. payable monthly...*”. It must be noted that a commencement date was not indicated on the contract.

This contract was only signed by Ms. Susanne Goffe, Manager, ROMAC, and a witness and was not signed by any representative of the NSWMA.

Contract #4 - Janitorial Services, dated 2003 March 1

This contract was signed between the NSWMA and ROMAC on 2003 March 1, for janitorial services. It was indicated that this was a twelve (12) month contract which “...*shall be renewed on the same terms and conditions set out herein at the end of the initial twelve (12) month period by the Authority providing the Contractor with notice of its intention to do so.*” The cost of the initial cleaning was in the sum of \$58,746.62 and the monthly cost, thereafter, was in the sum of \$44,354.25.¹³

The Termination Clause of the agreement provided, *inter alia*, that “*This Agreement may be terminated at any time by either party providing (30) days notice in writing to the other party of their intention to terminate this Agreement.*”

This contract was signed by both parties.

Contract #5 - Janitorial Services, dated 2004

In her sworn response to the OCG’s Requisition, Mrs. Joan Gordon-Webley provided the OCG with a copy of a contract, which was signed in 2004, between the NSWMA and ROMAC for the provision of janitorial services. This contract was similar in construct to the previous contract which was entered into in 2003 March.

¹³ Contract between the NSWMA and ROMAC, which was dated 2003 March 1.

It must be noted that the specific date of the contract was not indicated on the contract nor was it signed by a representative of the NSWMA. The only signatories of the contract were Ms. Susanne Goffe, Manager, ROMAC, and a witness.

Contract #6 - Janitorial Contract, dated 2007

Mrs. Joan Gordon-Webley, in her sworn response to the OCG, which was dated 2009 July 8, advised the OCG that, in 2007 there was another janitorial contract between the NSWMA and ROMAC. This contract was similar to the previous contracts which had been executed.

The specific date of the contract was not indicated, as only the year of the contract was indicated. The contract was not signed by a representative of the NSWMA. The OCG observed that the only signatories to the contract were Ms. Susanne Goffe, Manager, ROMAC, and a witness.

In a letter which was dated 2007 December 6, from Mrs. Joan Gordon-Webley, Executive Director, NSWMA, to Ms. Susanne Goffe, Managing Director, ROMAC it was stated, *inter alia*, that “...the Agreement entered into on 1st March, 2003 between the National Solid Waste Management Authority (NSWMA) and ROMAC Maintenance Services for the Rental of Plants at 61 Half Way Tree Road, Kingston 10, will be terminated with effect from January 6, 2008...”¹⁴

The OCG also found that another letter, which was dated 2007 December 6, from Mrs. Joan Gordon-Webley to Ms. Susanne Goffe, indicated that “...the Agreement entered into on 1st March, 2003 between the National Solid Waste Management Authority

¹⁴ 2007 Contract between the NSWMA and ROMAC Maintenance Services

(NSWMA) and ROMAC Maintenance Services for Janitorial Services at 61 Half Way Tree Road, Kingston 10, will be terminated with effect from January 6, 2008.”¹⁵

The OCG, in its Requisition to Mrs. Joan Gordon-Webley, which was dated 2009 June 3, requested that Mrs. Joan Gordon-Webley “...*detail the exact circumstances which necessitated and/or informed the NSWMA’s decision to terminate the respective contracts...*”¹⁶

In her sworn response to the OCG’s Requisition, which was dated 2009 July 8, Mrs. Joan Gordon-Webley indicated that “*Romac Maintenance Services provided NSWMA with janitorial services and office plants. The contract was terminated as a cost savings [sic] measure. Janitorial services are now being provided by the NSWMA’s ancillary staff and office plants are supplied by the NSWMA’s Parks and Gardens Division...*”¹⁷

Interestingly, the OCG found that, although the Termination Clause in the contract stated that the contract can be terminated at anytime, providing that thirty (30) days notice be given, the NSWMA did not provide a reason for the termination of these contracts in its letters of termination which were dated 2007 December 6.

It is instructive to note that by way of a letter, which was dated 2009 September 15, Livingston, Alexander and Levy, Attorneys-at-Law, wrote to the OCG on behalf of Mrs. Joan Gordon-Webley, “...*to correct typographical errors in the Statutory Declaration of Joan Gordon-Webley.*”,¹⁸ which was dated 2009 July 8, and to provide “... *a Supplemental Statutory Declaration.*”¹⁹

¹⁵ Letter which was dated 2007 December 6, to Ms. Susanne Goffe, from Mrs. Joan Gordon-Webley

¹⁶ OCG Requisition to Mrs. Joan Gordon-Webley, which was dated 2009 June 3. Question # 2

¹⁷ Response to the OCG’s requisition from Mrs. Joan Gordon-Webley, which was dated 2009 June 3.

¹⁸ Letter which was dated September 15, 2009 from Livingston, Alexander and Levy, Attorneys-at-Law.

¹⁹ Letter which was dated September 15, 2009 from Livingston, Alexander and Levy, Attorneys-at-Law.

In the referenced “*Supplemental Statutory Declaration*” which was dated 2009 September 9, the following information, with regard to ROMAC, was provided:

“...I stated that the formal agreement between Romac Maintenance Services and the NSWMA, for 12 months, ended on the 28th February, 2004 and in paragraph 7(a)(i) of the Statutory Declaration I stated that the date of expiration of the formal agreement between Romac Maintenance Services and the NSWMA was the 28th February, 2004. In addition, at paragraph 6(a) of the Statutory Declaration I exhibited two agreements, purporting to be the formal agreements between Romac Maintenance Services and the NSWMA, however the said agreements were not signed by the NSWMA. Further investigations have uncovered the formal agreement signed by Romac Maintenance Services and the NSWMA and I now exhibit the same hereto marked “A” for identification. The agreement, exhibited hereto, does not state the day and month of the making of the same and is merely dated 2004. Schedule 2 of the agreement provides that the period of the contract is six (6) months. As a result of the fact that the agreement was not fully dated, I am unable to say the exact date of expiration of the same and can merely say that the agreement expired, by effluence of time, six months after the commencement of the contract.”²⁰

Termination of Contract with Mr. Lloyd Neil - Public Cleansing Contractor

The OCG was provided with three (3) contracts which were signed by the NSWMA and Mr. Lloyd Neil. The OCG found that Mr. Neil was contracted to the North Eastern Parks and Markets Limited (NEPM) since 1995 March 15, “...for the purpose of improving and maintaining the sanitaty [sic] condition and physical appearance of the Public

²⁰ Sworn Response to the OCG from Mrs. Joan Gordon-Webley, which was dated 2009 September 9.

Throughfares, Parks and Markets of the parishes of St. Ann, St. Mary, St. Thomas, and Portland.”²¹

Based upon the documentary evidence that was provided to the OCG, the OCG also found that on 2005 December 1, a contractual agreement was entered into by Mr. Lloyd Neil and the NSWMA, for the collection of garbage within the NSWMA’s “wasteshed” areas. It must also be noted that another contract was entered into by the NSWMA and Mr. Lloyd Neil on 2006 June 1.

The Termination Clause of the 2006 June 1 contract indicated that:

“Either party may end this Agreement by serving not less than one (1) week Notice.

NEPM may end this Agreement, if:

- 9.1 The Contractor without reasonable cause fails to proceed diligently with the Works or wholly suspends the carrying out of the Works when called upon by NEPM to do so;*
- 9.2 The Contractor, in the opinion of NEPM has engaged in corrupt or fraudulent practices in completing or in the execution of the Works specified in the annexed schedule;*
- 9.3 The Contractor acts against the best interest of NEPM while carrying out the duties more particularly described in the Schedule annexed hereto;*
- 9.4 The Contractor fails to comply with or is in breach of the provisions of the National Solid Waste Management Act, 2001 or its subsequent regulations;*
- 9.5 Notwithstanding the above, NEPM may terminate or suspend the Contract for convenience.”²²*

²¹ Contract which was dated 1995 March 15, between the NSWMA and Mr. Lloyd Neil

²² Contractual agreement between Mr. Lloyd Neil and the NSWMA which was dated 2005 December 1

Mrs. Joan Gordon-Webley, in her sworn response to the OCG, which was dated 2009 July 8, provided the OCG with another contract which was entered into between Mr. Lloyd Neil and the NSWMA, and which was dated 2006 June 1. The scope of works for the referenced contract was as follows:

1. *“To collect solid waste and transport said Waste to nearest disposal site.*
2. *The Contractor shall be provided with Instructions from the Authority on where his services will be required.*
3. *The Contractor will be required to provide his own supervision to ensure compliance with the Authority’s Instructions.*
4. *To employ three (3) sidemen to collect solid waste as schedule dictates.*
5. *The contractor shall work for a minimum of eight (8) hours per day.”*²³

The contract amount was \$79,813.67, fortnightly.²⁴ The contract period was one (1) month and the Termination Clause of this contract was similar to that of the 2005 December 1 contract.

By way of a letter which was dated 2008 January 29, the NSWMA terminated the services of Mr. Lloyd Neil, effective 2008 February 16. The referenced letter stated, *inter alia*, the following:

“You are to be advised that the Management of the National Solid Waste Management Authority (NSWMA) is currently concluding a restructuring of its Public Cleansing operations.

*As a consequence of this exercise, regrettably, your services will no longer be required. Therefore, your Public Cleansing Contract with NEPM Waste Management Limited will be terminated, effective **February 16th, 2008**...”*²⁵

²³Contractual agreement between Mr. Lloyd Neil and the NSWMA, which was dated 2006 June 1.

²⁴Contractual agreement between Mr. Lloyd Neil and the NSWMA, which was dated 2006 June 1.

The OCG, in its Requisition to Mrs. Joan Gordon-Webley, which was dated 2009 June 3, requested that Mrs. Joan Gordon-Webley “...detail the exact circumstances which necessitated and/or informed the NSWMA’s decision to terminate the respective contracts.”²⁶

In her sworn response to the OCG’s Requisition, which was dated 2009 July 8, Mrs. Joan Gordon-Webley indicated as follows:

- i. *“Lloyd Neil was contracted to sweep streets, place garbage in bags and collect the same. Upon review of his work it became apparent that the streets were not being swept regularly. In addition, in many instances when the streets were swept, the garbage was simply swept into piles and not placed in bags. Consequently, when the wind blew, the work of the sweepers would be completely eradicated. The routine failure to place the garbage in bags also meant that, whereas Lloyd Neil was always paid for collection, there was routinely no collection of garbage taking place...”*
- ii. *Further, NSWMA noted a trend that when contracts include the sweeping [sic] streets, placing the garbage in bags and collection of the same, it becomes more difficult to track whether the work was in fact done. The NSWMA has observed that when contracts are split between sweeping streets and bagging garbage, on the one hand, and the collection of garbage, on the other hand, if the streets are not swept and the garbage is not placed in bags, the person contracted to collect the garbage typically complains to the NSWMA. For this reason a decision was taken by the NSWMA not to include all jobs in one contract.”²⁷*

²⁵Letter which was dated 2008 February 16, from the NSWMA to Mr. Lloyd Neil.

²⁶OCG’s Requisition to Mrs. Joan Gordon-Webley, which was dated 2009 June 3.

²⁷Letter from Mrs. Joan Gordon-Webley, which was dated 2009 July 9, in Response to the OCG’s Requisition.

It is instructive to note that by way of a letter, which was dated 2002 March 14, the NSWMA informed Mr. Lloyd Neil that:

“...your Tax Compliance Certificate has been expired since 30th September 2001.

In keeping with the government’s tax requirements, it is mandatory that you supply this office with a valid TCC within the next fifteen days.

Failure to comply, will result in the withholding of twenty percent of all future payments to you.”²⁸

Further, by way of another letter, which was dated 2006 July 18, the NSWMA informed Mr. Lloyd Neil as follows:

“I refer to our various letters to you requesting that you provide us with a valid Tax Compliance Certificate.

It has become mandatory that you immediately provide this company with a valid TCC as it is required for payment to be made on Tuesday, August 22, 2006.

Please note that if the TCC is not forthcoming, NEPM Waste Management Limited will have to explore other option [sic] to have the job done. We also encourage you to get registered with the National Contracts Commission.”²⁹

Importantly, it should be noted that the practice of withholding payments for work which was already carried out by a contractor, is contrary to the then Ministry of Finance and Planning policy. In point of fact, Circular No.13, from the then Ministry of Finance and Planning, which was dated 2001 September 14, states that “Contractors are not required

²⁸ Letter which was dated 2002 March 14, to Mr. Lloyd Neil from Mr. Audley McLean, NSWMA.

²⁹ Letter, which was dated 2006 July 18, from the NSWMA to Mr. Lloyd Neil.

to provide a valid Tax Compliance Certificate in order to receive payment for work satisfactorily performed under contract.”

The OCG also observed that, although Mrs. Gordon-Webley indicated that the contract was terminated because of non-performance on the part of Mr. Neil’s company, this was not communicated in the letter of termination. Interestingly, the letter of termination indicated that the contract was terminated because the NSWMA was restructuring its Public Cleansing operations.

Essentially, there were conflicting accounts as to the reason for the termination of the services which were provided by Mr. Neil.

However, it must be noted that the 2006 June 1 contract indicated, *inter alia*, that “... *NEPM may terminate or suspend the Contract for convenience.*”

The Termination of Contract with Downtown Kingston Management District (DKMD)

The OCG, in its Requisition, which was dated 2009 June 3, requested that Mrs. Joan Gordon-Webley “...*detail the exact circumstances which necessitated and/or informed the NSWMA’s decision to terminate the respective contracts.*”³⁰

In her sworn response to the OCG’s Requisition, which was dated 2009 July 8, Mrs. Joan Gordon-Webley indicated that “*Downtown Kingston Management District (DKMD) failed to provide valid TCC/NCC since January, 2007.*”³¹

Mrs. Gordon-Webley’s assertion was supported by several pieces of correspondence between the NSWMA and Downtown Kingston Management District (hereinafter

³⁰ OCG’s Requisition to Mrs. Joan Gordon-Webley, which was dated 2009 June 3.

³¹ Response to the OCG’s Requisition from Mrs. Joan Gordon-Webley, which was dated 2009 July 9.

referred to as DKMD), which were submitted to the OCG as documentary evidence. The OCG was also in possession of certain other correspondence which had been provided to it by the NSWMA. Particulars of the referenced correspondence are detailed hereafter.

By way of a letter, which was captioned “*Registration with the National Contracts Commission (NCC)*”, and which was dated 2006 October 27, Mr. Laurence Heffes, Chairman of DKMD, informed the NSWMA, *inter alia*, that:

“We write in regard to the subject. Every effort is being made to obtain same. The outstanding documentation required is our Tax Compliance Certificate-TCC. In order to submit application for the TCC, our Audited Accounts need to be brought up-to-date. Some of the documentation sent to the Accountant sometime ago, cannot be located, and as such we are working with a new Accountant to recreate the records in order to file our accounts and obtain the TCC. We hope to have this filed by the end of November (within the next 4-5 weeks)...”

The OCG also found that by way of a letter, which was dated 2007 January 20, the NSWMA informed Mr. Laurence Heffes, Chairman of DKMD, that “*In reviewing our records, it was revealed that you have not submitted your Tax Compliance Certificate (TCC) and your National Contracts Commission Registration. Could you kindly inform this office, as soon as possible, of your compliance status with regards [sic] to the foregoing...*”³²

Further, by way of a letter, which was dated 2007 February 20, Mr. Laurence Heffes, Chairman, DKMD, requested an extension of time in which to submit his TCC and NCC to the NSWMA.

³² Letter which was dated 2007 January 20 from Mr. Laurence Heffes to NSWMA.

In the said letter, Mr. Heffes stated that *“Our meeting of January 16, 2007 refers. We speak specifically to the fact that DKMD has not been paid an increase in sweeping rates for over three (3) years, notwithstanding the fact, that ALL OTHER CONTRACTORS been [sic] given an increase. We have been promised a review of our payments, in comparison to what other sweepers are being paid. This is crucial in order for us to regularize our operation including bringing our statutory payments up-to-date in order to meet all the NCC requirements.*

*We are requesting an extension of thirty (30) days, from the date of your response to our request, to allow us to obtain the required Tax Compliance Certificate-TCC, necessary for us to register with The National Contracts Commission.”*³³

In response to the foregoing letter, Mr. W.G. Charley Grant, Acting Regional Operations Manager, MPM Waste Management Limited, by way of a letter which was dated 2007 February 26, informed Mr. Laurence Heffes that *“Reference is made to correspondence dated February 20, 2007 in which you requested a thirty (30) day extension to allow you to obtain your National Contracts Commission and Tax Compliance Certification.*

*Please be advised that the Finance Director has approved a **twenty (20) days** extension on the time within which you should submit these documents, starting Friday, February 23, 2007. Failing this, we cannot continue to make payments to you.”*³⁴

In response to the 2007 February 26 letter from Mr. W.G. Charley Grant, Mr. Laurence Heffes sent another letter to Mr. W.G. Charley Grant, which was dated 2007 March 28. In the referenced 2007 March 28 letter, Mr. Heffes stated that:

³³ Letter which dated 2007 February 20 to Mr. Laurence Heffes from the NSWMA.

³⁴ Letter which was dated 2007 February 26, from Mr. W.G. Charley Grant to Mr. Laurence Heffes.

“Reference is made to your letter of February 26th, 2007, where you advised that a twenty (20) day extension was approved versus our thirty (30) days request in regards to our obtaining the necessary TCC and NCC compliances.

Please note that the time requested is to begin from the date we receive from you the necessary information to correct the injustice that has been slapped on the DKMD and its workers.

The injustice is referred to in our letter of February 20th, 2007, THAT IS THAT WE HAVE BEEN PAID THE SAME FOR THE PAST FOUR (4) YEARS, NO INCREASES. WHEN ALL OTHER ZONES HAVE BEEN GIVEN INCREASES. WE HAVE BEEN ESPECIALLY AT THIS TIME, SUBSIDISING THE DISPOSABLES.

We humbly ask that you suspend the requirements of NCC and TCC for us until some time after yourselves review this matter with us as it is critical.

Should NSWMA not to be able to provide the data within the next twenty (21) days, we will put together as best as we can a request for a correction to this injustice.

In the interim, please do not hold onto the stipend that is scheduled to be given to us for the works done by our crew.”³⁵

By way of a letter, which was dated 2007 May 25, Mr. W.G. Charley Grant, Regional Operations Manager, MPM Waste Management Limited, informed Mr. Laurence Heffes, Chairman of DKMD, that “...a cheque in the amount of \$295,670.16 is in our possession

³⁵ Letter which was dated 2007 March 28 from Mr. Laurence Heffes to Mr. W.G. Charley Grant.

and can be collected by you. This amount represents retroactive Minimum Wage Adjustment for the period January-April 2002.

However, the following cheque amounts which are also in our possession cannot be collected until you have submitted your TCC and NCC Certificates:

- *\$261,556.00 for the period April 16-30, 2007*
- *\$264,222.00 for the period May 1-15, 2007.*

Please be reminded that this is a requirement stipulated in the Government's Guideline for the Procurement of Goods and Services."³⁶

By way of a letter, which was dated 2007 July 26, Mr. Christopher Powell, then Acting Executive Director, NSWMA, informed Mr. Laurence Heffes, Chairman, DKMD, *inter alia*, that "...Effective immediately, no further payment(s) will be [sic] against this contract until you have presented your NCC and TCC Certificates. The only exception that will be accommodated is a receipt from the National Contracts Commission verifying that you have applied for the certificate and also a document from the Inland Revenue Department regarding your submission." ³⁷

The OCG also found that, in a Memorandum, which was dated 2007 November 21, from Ms. Jacqueline Plumber, Accountant, MPM Waste Management Ltd., that was addressed to Mr. Gordon Ramsay, Regional Operations Manager, MPM Waste Management Ltd., under the subject "*Payments to Downtown Kingston Management District (DKMD)*" it was indicated that the "...contractor was asked to furnish the organization with his TCC/NCC certificates. To date none has been forth coming and as such the accounts department has hold cheques totaling the amount of One Million Seven Hundred and

³⁶ Letter which was dated 2007 May 25 from Mr. W.G. Charley Grant, Regional Operations Manager for MPM Waste Management Limited, to Mr. Laurence Heffes, Chairman, DKMD.

³⁷ Letter dated 2007 July 26 from Christopher Powell, then Acting Executive Director, NSWMA, to Mr. Laurence Heffes, Chairman, DKMD.

Eleven Thousand Two Hundred and Seventy Three Dollars and Seventy Seven Cents (\$1,711,273.77) to be made payable to DKMD.

Please note, however, that there is an additional \$134,453.90 representing the balance on the half payment and also for this contractual period November 1-15, 2007 the amount of \$268,907.81 that should be made payable.”³⁸

Another Memorandum, which was dated 2007 November 22, that was addressed to Mr. Audley McLean, Operations Director, MPM Waste Management Limited, from Mr. Gordon Ramsay, Regional Operations Manager, NSWMA, indicated, *inter alia*, that “As at July 1, 2007, no purchase orders have been prepared for the Down Town Kingston Management District due to the absence of critical documents such as TCC and NCC Certification. As a result, this contractor has not received compensation for the period, July 16 to October 31, 2007.

Consequently, our major concerns are as follows:

- 1. The assigned unit has been down from September 18, 2007 resulting in MPM hiring private units to assist with night collections.*
- 2. DKMD has continued to collect commercial waste but has not been attending to street wastes at nights.*
- 3. Sweeping has not been up to public cleansing standard in some cases.*
- 4. Given the current situation which makes this system very fragile, should we risk depending on this contractor during the Christmas period?*

In light of the foregoing, I am recommending that in adhering to the current procurement practices, MPM take over sweeping and collection in this zone until the situation is remedied, thus allowing us to address problems such as illegal dumping by Commercial

³⁸ Letter which was dated 2007 November 21, from Jacqueline Plumber, Accountant, MPM Waste Management Ltd. to Mr. Gordon Ramsay, Regional Operations Manager, NSWMA.

operators and also elimination of heaps created by sweepers employed to this contractor.”³⁹

By way of a Memorandum which was dated 2007 November 23, from the Director of Finance, NSWMA, the intervention of Mrs. Gordon-Webley was sought in order to bring a resolution to the matter.

Consequently, the OCG found that the contract with DKMD was terminated by the NSWMA. In this regard, by way of a letter, which was dated 2007 December 11, Mr. Audley McLean, Director of Operations, NSWMA, informed Mr. Laurence Heffes as follows:

“Reference is made to letter dated July 26, 2007 (copy attached for ease of reference) whereby the Acting Executive Director advised you to present current NCC and TCC certificates, which are requirements for contractual engagement with all Government entities. To date you have not complied resulting in the withholding of several bi-monthly payments for public cleansing services rendered since July 26, 2007.

We have consulted on the matter as an entity and have noted the obvious breeches [sic] of the Government Procurement Guidelines. Notwithstanding, the decision was taken to pay over the cheques for works already completed.

However, since we are not in possession of your valid TCC and NCC certificate, we are not in a position to prepare new work orders for your service and on this

³⁹ Letter which was dated 2007 November 22, from Mr. Gordon Ramsay, Regional Operations Manager to Mr. Audley Mclean, Operations Director at MPM Ltd.

*basis we are compelled to terminate your service arrangement effective the 16th of December 2007”.*⁴⁰

As such, the OCG found that DKMD was unable to produce a valid NCC and TCC, and, as a result, its contract with the NSWMA was terminated.

Further, the OCG found that the contracting of DKMD, without a valid TCC and NCC, was in contravention to Section 3.2 of the GPPH (May 2001) and the Ministry of Finance Circular No. 13, which was dated 2001 September 14.

Ministry of Finance Circular No. 13 provides, *inter alia*, that:

“Contractors must be tax compliant:

(a) At the time of registration for Government of Jamaica Approved Contractor status; and

(b) At the time of tender for contract award...”

Section 3.2 of the GPPH (May 2001) provides, *inter alia*, that:

Participation opportunities within this contract value range (J\$250,000 to Less than J\$1M) shall be limited to NCC registered domestic contractors only...”

However, it must be noted that the Memoranda which were dated 2007 November 21 and 22, respectively, indicated that the NSWMA was withholding the payments which were to be made to DKMD for work which was already done.

It should be noted that the foregoing is contrary to the then applicable Ministry of Finance and Planning’s guidelines which are detailed in Circular No. 13, which was dated 2001 September 14, which provides that *“Contractors are not required to provide a*

⁴⁰ Letter dated 2007 December 11 from Mr. Audley McLean, Director of Operations at the NSWMA, to Mr. Laurence Heffes, Chairman of DKMD.

valid Tax Compliance Certificate in order to receive payment for work satisfactorily performed under contract.”⁴¹

In a Follow-Up Requisition, which was dated 2009 August 14, the OCG sought to ascertain whether there was any written contractual agreement between the NSWMA and DKMD.

In her sworn response to the OCG’s Requisition, which was dated 2009 August 31, Mrs. Joan Gordon-Webley indicated that *“Our searches of the files at NSWMA reveal that no written agreement exists between NSWMA and DKMD”*.⁴²

The OCG, in its Follow-Up Requisition to Mrs. Joan Gordon-Webley, which was dated 2009 August 14, also sought to ascertain whether the issue regarding the payments for DKMD was resolved. In the referenced Requisition, the following question was asked:

“In a memorandum, which was dated 2007 November 23, to Mrs. Joan Gordon-Webley, Executive Director, NSWMA, from Deryke Smith, Director of Finance, NSWMA, it was indicated that “the Authority is currently holding \$1,711,273.77 for DKMD, being contractual payments which are being held because of non-presentation of their TCC and NCC certification.” Has the issue regarding payment to this contractor been resolved? If yes, please detail:

- i. The circumstances under which it was resolved; and*
- ii. The date on which it was resolved.”⁴³*

In her sworn response to the OCG’s Requisition, which was dated 2009 August 31, Mrs. Joan Gordon-Webley indicated that *“By letter dated December 11, 2007, the then*

⁴¹ Ministry of Finance guidelines - Circular No. 13, which was dated 2001 September 14.

⁴² Letter which was dated 2009 August 31, from Mrs. Joan Gordon-Webley in response to the OCG’s Requisition.

⁴³ OCG’s Follow-Up Requisition which was dated 2009 August 14, to Mrs. Joan Gordon-Webley.

*Director of Operations Audley McLean informed the DKMD that the decision was taken to pay over the cheques for work already completed.”*⁴⁴

A copy of a Memorandum which was dated 2009 August 31, from Ms. Angela Thompson, Finance Director, NSWMA, which confirmed that the cheques were paid to DKMD, was submitted to the OCG as documentary evidence.

In the referenced Memorandum it was indicated that “*Cheques totaling \$1,711,273.77 were collected and signed for on December 13, 2007 by Miss Josephine Brown...*”⁴⁵

Termination of Contract with Morgan’s Disposal Services/Patricia Morgan

The OCG found that there was a contract between the MPM Waste Management Limited and Morgan’s Disposal Services/Patricia Morgan, which was entered into on 2004 July 7. The said contract indicated that Morgan’s Disposal Services/Patricia Morgan was to provide solid waste collection services to the MPM Waste Management Limited.

The Termination Clause of the contract indicated that:

- I. *At any time after the Commencement Date, THE WASTE MANAGEMENT COMPANY may investigate each case where the Contractor has failed to properly perform the services in accordance with the provisions of the Contract, has committed a breach of any of its obligations, or has committed any offence under the Contract.*

⁴⁴ Letter which was dated 2009 August 31, from Mrs. Joan Gordon-Webley, in response to the OCG’s Requisition.

⁴⁵ Memorandum which was dated 2009 August 31, from Ms. Angela Thompson, Finance Director, NSWMA, to Ms. Thalia Blair, Legal Director.

II. The Contractor shall have the right to terminate this Agreement, if THE WASTE MANAGEMENT COMPANY has not been able to make timely and regular payments and the Contractor has been unable to meet its cash flow requirements for personnel and consumable expenditure, or any other cause deemed reasonable by arbitration.

In light of the foregoing, the Contractor shall be entitled to recover such payments as a debt from the Waste Management Company. As it relates however to any loss or damage resulting from the termination of the said contract, same shall be referred to arbitration in accordance with Clause 21.

III. THE WASTE MANAGEMENT COMPANY shall be entitled, without prejudice to any other rights or remedies, to terminate this Agreement immediately at it's sole discretion at any time after occurrence of the following:

- a. If it is discovered, at anytime, that the Contractor has made a fraudulent statement deliberately or representation in this Agreement; or*
- b. If the Contractor fails to comply with its obligations under this Agreement and has received three (3) Defaults Notices which have not been resolved within the contract year.*
- c. Then in any such circumstances THE WASTE MANAGEMENT COMPANY may, but not unreasonably or vexatiously, without prejudice to any accrued rights or remedies under the Contract, terminate the Contractor's services under Contract by notice in writing having immediate effect.*

IV. If the Contractor's employment is terminated and is not reinstated, THE WASTE MANAGEMENT COMPANY shall:

- a. Cease to be under any obligation to make further payment until the cost, loss and/or damage resulting from or arising out of the termination of the*

Contractor's services shall have been calculated and provided such calculations shows a sum or sums due to the Contractor;

- b. Be responsible for any sum so calculated to be due to the Contractor and shall pay such sum within a reasonable time;*
- c. Be entitled to employ and pay other persons to provide and complete the provision of the Services or any part thereof;*
- d. Be entitled to deduct from any sum or sums which would have been due from THE WASTE MANAGEMENT COMPANY to the Contractor under this Contract or any other Contract with THE WASTE MANAGEMENT COMPANY or be entitled to recover the same from the Contractor as a debt any loss or damage to THE WASTE MANAGEMENT COMPANY resulting from or arising out of the termination of the Contractor's services. Such loss or damage shall include the reasonable cost to THE WASTE MANAGEMENT COMPANY of the time spent by its officers in terminating the Contractor's employment and in making alternative arrangements for the provision of the services or any part thereof.*

*V. When the total cost, loss and/or damage resulting from or arising out of the termination of Contractor's employment have been calculated and deducted so far as predictable from any sum or sums which would have been due to the Contractor in respect of services performed up to the time of Termination of the Contract, any balance shown as due to THE WASTE MANAGEMENT COMPANY shall be recovered as a debt, or alternately, THE WASTE MANAGEMENT COMPANY shall pay to the Contractor any balance shown as due to the Contractor.*⁴⁶

The OCG found that an Equipment Lease Agreement was also signed between the NSWMA and Morgan's Disposal Services/Patricia Morgan on 2004 July 15. The Lease

⁴⁶ Contract between the MPM Waste Management Limited and Morgan's Disposal Services which was consummated on 2004 July 7.

Agreement indicated that “...the Owner will let and the Lessee will take on lease upon the terms and conditions hereinafter contained the property (hereinafter the “The Equipment”) more particularly described in the Second Schedule and made a part of this Lease. The allotment of numbers and types of vehicles herein were established based on an assessment of the prevailing conditions at a point in time and on the availability and type of equipment at that time.”

The conditions of the Lease Agreement indicated that “**THE LESSEE SHALL THROUGHOUT THE TERM OF THIS AGREEMENT:-:**

- a. *Keep the Equipment in good serviceable repair and condition (fair wear and tear only excepted) at all times;*
- b. *Ensure that the operators of the Equipment adhere to the operational procedure in the given Safety Manuals;*
- c. *Ensure the provision and use of the correct engine oils, hydraulic fluids. The equipment must be washed at least once per week;*
- d. *Ensure that repairs to tyres and the purchase of the appropriate tyres are done as recommended in the manufacturer’s manual or as per instructions given by persons who are certified as competent by the owners;*
- e. *Ensure the operator of the Equipment has fulfilled all the requirements of the National Works Agency and Owner in order to be termed qualified;*
- f. *Permit the Owner and any person authorized by the Owner at all reasonable times to enter upon the premises in which the Equipment is for the time being placed or kept for the purposes of inspecting and examining the conditions of the Equipment or exercising any rights conferred on the Owner hereunder;*
- g. *Notify the Owner of any change in the Lessee’s address and upon request by the Owner promptly inform the Owner of the whereabouts of the Equipment;*

- h. Indemnify the Owner against loss or destruction of or damage to the Equipment or any part thereof from whatever cause arising and whether or not such loss destruction or damage results from the negligence of the Lessee provided that such loss is not covered by insurance taken out by the Owner;*
- i. The Lessee shall not utilize the lease Equipment for the removal of solid waste other than non-commercial solid waste except as set out in the Agreement, without the prior written agreement of the Owner and appropriate arrangement for payment to the Owner for the use of such Equipment for such other purposes;*
- j. The equipment should only be used for the collection of compactable waste. No white goods e.g. fridge, stove etc. should be collected.*
- k. The Lessee shall utilize the Equipment only within the Lessees' correct zone as stated in the Agreement referred to in section 1 above, except as otherwise authorized by the Owner;*
- l. Not to use the Equipment or permit the same to be used contrary to Law or any regulation or by-law for the time being force;*
- m. Indemnify the Owner, its agents, employees, officers and directors suffered by any person against all and any liabilities, obligations, losses, injury, damages, penalties, claims, demands, accident, suits, costs and expenses, including legal expenses of whatever kind and nature imposed or incurred or assessed against the Owner, its agents, employees, officers and directors in any way relating to or arising out of the initial purchase of the Equipment, the Lease to the Lessee, ownership, possession, selection, use, delivery, letting operation maintenance return or condition of the Equipment or any failure on the part of the Lessee to perform or comply with any terms of this Agreement. The indemnities contained in this sub- clause shall survive the termination of this Agreement...*

LOSS, DAMAGE OR DESTRUCTION

- a. *Where the Equipment is damaged, however this occurs, the Lessee shall notify the owner within twenty four (24) hours and shall supply written statements, diagrams etc., clearly setting out the circumstances in which the Equipment was damaged;*
- b. *If the Equipment or any part of the Equipment is damaged or lost in such ways as not to constitute a total loss, the Lessee shall be liable to reinstate and repair or replace to the Owner's satisfaction the Equipment so damaged or lost as soon as practicable under the terms and conditions of this Agreement with no cessation of the payment of rent;*

DEFAULT

If the Lessee fails to observe or perform any of the other terms and conditions of the Lease Agreement or of the said Agreement aforementioned between the Owner and the Lessee, whether expressed or implied or if any presentation or warranty made by the Lessee in any document or certificate furnished to the Owner in connection herewith shall prove to be incorrect in any material aspect or if the Owner shall on any reasonable ground consider itself insecure, the Owner may without prejudice to any pre-existing liability of the Lessee to the Owner by notice in writing to the Lessee, determine this Agreement.”⁴⁷

The OCG found that by way of a letter, which was dated 2008 January 17, Mr. Audley McLean, Director of Operations, NSWMA, informed Ms. Patricia Morgan, Public Cleansing Manager, Morgan's Disposal Services, *inter alia*, as follows:

“The Management of the NSWMA has become very unsatisfied with your performance in the execution of the public cleansing contract obligations for zone 11.

⁴⁷ Contract between the MPM Waste Management Limited and Morgan's Disposal Services/Patricia Morgan which was consummated on 2004 July 7.

Through the negligence of your driver the company has been without the use of one of its assigned collection units as a result of the overturning of the truck at Hunts Bay.

Secondly, our Fleet Manager had to pull unit # 86 from service since December 28, 2007 for the lack of serviceable tyres. Although several request have been made of you to replace the tyres, to date you have not made any attempt to comply...

*You should be aware that the services being provided by the Company attracts the full cost from your contract sum. In addition, the cost for the repairs to the damaged unit CPM # 13 in the sum of two hundred and twenty four thousand dollars (\$224,000) must be recovered in accordance with **‘Section 3b of the equipment lease agreement.’***

Most importantly, the cleaning of the zone has much to be desired and your current mode of operation does not lend itself to the needed improvement in the execution of the contract.

In light of the foregoing, the decision has been taken to terminate your contract arrangement with immediate effect....”⁴⁸

Based upon the foregoing, the OCG found that this contract was terminated because of non-performance and the company’s inability to repair and/or replace damaged parts of the equipment which was leased from the NSWMA. The foregoing reasons were stated in the letter of termination, and the OCG found that this was in accordance with the Termination Clause of the contract and the terms and conditions of the Equipment Lease Agreement.

⁴⁸ Letter dated 2008 January 17, from Mr. Audley McLean, Director of Operations, NSWMA to Patricia Morgan, Public Cleansing Manager, Morgan’s Disposal Services.

The Termination of Contract with Mr. Raphael Ragbar - Roving Team Contractor

The OCG was provided with copies of three (3) contracts which were consummated between Mr. Raphael Ragbar, Roving Team Contractor and the NSWMA. The dates on the contracts were 2004 August 30, 2005 August 1 and 2006 February 28, respectively.

The contract, which was dated 2004 August 30, indicated that:

“The Contractor, having represented to NEPM that he has the required professional skills, personnel and technical resources, has agreed to provide the services and complete the Works on the terms and conditions set forth in this Agreement understanding that he is not a substitute for the Zonal Contractor in any zone.”⁴⁹

The tasks that were to be undertaken, as detailed in the contract, were as follows:

- *“Picking up of litter along un-contracted highways and bag same for collection*
- *Desilting of roadways in un-contacted [sic] areas of zones using silt bags*
- *Remedying defactions in Contractor Zones as identified and instructed by the Regional Operations Manager (ROM)*
- *Assisting in the removal of illegally placed posters in the parishes outside of the Corporate Area*
- *Cleaning and removal of vegetation from roadways identified by the ROM using machetes and bushwhackers*
- *Cleaning of open lots*
- *Pruning of Trees*
- *Application of herbicides to restrict growth in curb channels*

⁴⁹ Contract dated 2004 August 30 between the NEPM and Raphael Ragbar.

- *Selected verge cleaning*
- *Removal of grass and debris from curb channel (sculling)*
- *Cleaning after special events*
- *Bushing*”⁵⁰

The Termination Clause of the 2004 August 30 contract provided as follows:

“Either party may end this Agreement by serving not less than one (1) week Notice. NEPM may terminate this Agreement, if:

- 9.1 The Contractor without reasonable cause fails to proceed diligently with the Works or wholly suspends the carrying out of the Works when called upon by NEPM to do so;*
- 9.2 The Contractor, in the opinion of NEPM has engaged in corrupt or fraudulent practices in completing or in the execution of the Works specified in the annexed schedule;*
- 9.3 The Contractor acts against the best interest of NEPM while carrying out the duties more particularly described in the Schedule annexed hereto;*
- 9.4 The Contractor or The workers supplied by the Contractor refuse and/or neglect to adhere to instructions, rules, policies, procedures, codes or conduct or any other requirement/regulation laid down by NEPM;*
- 9.5 The Contractor or the workmen are found to be under the influence of alcohol or drugs;*
- 9.6 The Contractor fails to comply with or is in breach of the provisions of the National Solid Waste Management Act, 2001 or its subsequent regulations;*
- 9.7 Notwithstanding the above, NEPM may terminate or suspend the Contract for Convenience.”*⁵¹

⁵⁰ Contract dated 2004 August 30 between the NEPM and Raphael Ragbar.

⁵¹ Contract dated 2004 August 30 between the NEPM and Raphael Ragbar.

The OCG found that the particulars of the contracts which were dated 2005 August 1 and 2006 February 28, were virtually the same as the original contract, which was dated 2004 August 30.

By way of a letter, which was dated 2008 January 18, Mr. Audley McLean, Director of Operations, NSWMA, informed Mr. Raphael Ragbar - Roving Team Contractor, *inter alia*, as follows:

“...the NSWMA is reorganizing its public cleansing operations and will no longer require the services of your Roving Team.

*In light of this, your contract for Roving Team service will come to an end on January 23, 2008.”*⁵²

The OCG, in its Requisition to Mrs. Joan Gordon-Webley, which was dated 2009 June 3, requested that Mrs. Joan Gordon-Webley “...detail the exact circumstances which necessitated and/or informed the NSWMA’s decision to terminate the respective contracts.”⁵³

In her sworn response to the OCG’s Requisition, which was dated 2009 July 8, Mrs. Joan Gordon-Webley indicated that she was “...informed by The Portland Parish Council and do verily believe that Raphael Ragbar failed, neglected or refused to effectively sweep the streets.”⁵⁴

However, it should be noted that the foregoing reasons, which were given by Mrs. Gordon-Webley, were not stated in the letter of termination, which was dated 2008 January 18, that was sent to Mr. Ragbar.

⁵² Letter which was dated 2008 January 18, from Mr. Audley McLean, Director of Operations, NSWMA, to Mr. Raphael Ragbar - Roving Team Contractor.

⁵³ OCG’s Requisition to Mrs. Joan Gordon-Webley which was dated 2009 June 3.

⁵⁴ Letter which was dated 2009 July 8, from Mrs. Joan Gordon-Webley, in response to the OCG’s Requisition.

Further, the documentary evidence which was submitted to the OCG, by the NSWMA, in fulfillment of the OCG's Requisition, did not include any communication regarding the NSWMA's dissatisfaction with the work which was undertaken by Mr. Ragbar's company.

It was observed, however, that there was communication between the NSWMA and Mr. Ragbar, regarding the submission of NCC and TCC certificates. In this regard, by way of a letter, which was dated 2007 November 29, Mr. Alvin Williams, Regional Operations Manager, NSWMA, informed Mr. Raphael Ragbar that "*...It is mandatory that you be in possession of both certificates as payment for the next fortnight cannot be guaranteed without these valid TCC and NCC Certificates.*"⁵⁵

The aforementioned indicates that the NSWMA was withholding payment for work which was already executed due to the Contractor's failure to produce valid NCC and TCC certificates.

The actions of the NSWMA were, therefore, contrary to the then Ministry of Finance and Planning Procurement Policy, and, in particular, Circular No. 13, which was dated 2001 September 14, which stipulates that payment should not be withheld for work satisfactorily completed, even if the contractor fails to produce a NCC or TCC.

It is instructive to note that by way of a letter, which was dated 2009 September 15, Livingston, Alexander and Levy, Attorneys-At-Law, wrote to the OCG, on behalf of Mrs. Joan Gordon-Webley, "*...to correct typographical errors in the Statutory Declaration of Joan Gordon-Webley.*"⁵⁶ which was dated 2009 July 8, and to provide "*... a Supplemental Statutory Declaration.*"⁵⁷

⁵⁵ Letter which was dated 2007 November 29 from Mr. Alvin Williams, Regional Operations Manager, NSWMA, to Mr. Raphael Ragbar.

⁵⁶ Letter which was dated September 15, 2009 from Livingston, Alexander and Levy, Attorneys-at-Law.

⁵⁷ Letter which was dated September 15, 2009 from Livingston, Alexander and Levy, Attorneys-at-Law.

In the referenced ‘*Supplemental Statutory Declaration*’, which was dated 2009 September 9, the following information, with regard to the contract of Mr. Raphael Ragbar, was provided:

*“That at paragraph 7(a)(v) of the Statutory Declaration I stated that the date of expiration of the formal agreement between Raphael Ragbar and the NSWMA was the 29th August, 2006 whereas the correct date of expiration of the formal agreement was the 28th August, 2006.”*⁵⁸

Termination of Contract with Mr. Lennox Dickenson

The OCG was provided with copies of three (3) contracts which were entered into between Lennox Dickenson and NEPM Waste Management Limited. The dates of the contracts were 2004 August 30, 2005 August 1 and 2006 February 1.

The last and applicable contract, between NEPM Waste Management Limited and Mr. Lennox Dickenson, was dated 2006 February 1. The referenced contract indicated, *inter alia*, that:

*“The Contractor, having represented to NEPM that he has the required professional skills, personnel and technical resources, has agreed to provide the services and complete the Works on the terms and conditions set forth in this Agreement for duration of **six (6) months** understanding that she is not a substitute for the Zonal Contractor in any zone.”*⁵⁹

The tasks which were to be undertaken, as detailed in the contract, were as follows:

⁵⁸ Supplemental Statutory Declaration of Mrs. Joan Gordon-Webley, which was dated 2009 September 15, which was sent through Livingston, Alexander and Levy, Attorneys-At-Law.

⁵⁹ Contract which was dated 2006 February 1 between the NSWMA and Mr. Lennox Dickenson.

- *“Picking up of litter along un-contracted highways and bag same for collection*
- *Desilting of roadways in un-contacted areas of zones using silt bags*
- *Remedying defactions in Contractor Zones as identified and instructed by the Regional Operations Manager (ROM)*
- *Assisting in the removal of illegally placed posters in the parishes outside of the Corporate Area*
- *Cleaning and removal of vegetation from roadways identified by the ROM using machetes and bushwhackers*
- *Cleaning of open lots*
- *Pruning of Trees*
- *Application of herbicides to restrict growth in curb channels*
- *Selected verge cleaning*
- *Removal of grass and debris from curb channel (sculling)*
- *Cleaning after special events*
- *Bushing”⁶⁰*

The Termination Clause of the contract, which was dated 2006 February 1, indicated, *inter alia*, that:

“Either party may end this Agreement by serving not less than one (1) week Notice. NEPM may terminate this Agreement, if:

9.1 The Contractor without reasonable cause fails to proceed diligently with the Works or wholly suspends the carrying out of the Works when called upon by NEPM to do so;

⁶⁰ Contract between Lennox Dickson and the NSWMA which was dated 2006 February 1.

- 9.2 *The Contractor, in the opinion of NEPM has engaged in corrupt or fraudulent practices in completing or in the execution of the Works specified in the annexed schedule;*
- 9.3 *The Contractor acts against the best interest of NEPM while carrying out the duties more particularly described in the Schedule annexed hereto;*
- 9.4 *The Contractor or The workers supplied by the Contractor refuse and/or neglect to adhere to instructions, rules, policies, procedures, codes or conduct or any other requirement/regulation laid down by NEPM;*
- 9.5 *The Contractor or the workmen are found to be under the influence of alcohol or drugs;*
- 9.6 *The Contractor fails to comply with or is in breach of the provisions of the National Solid Waste Management Act, 2001 or its subsequent regulations;*
- 9.7 *Notwithstanding the above, NEPM may terminate or suspend the Contract for convenience.*⁶¹

By way of a letter, which was dated 2008 January 18, Mr. Audley McLean, Director of Operations, NSWMA, wrote to Mr. Lennox Dickenson, indicating, *inter alia*, that “...the NSWMA is reorganizing its public cleansing operations and will no longer require the services of your Roving Team.

*In light of this, your contract for Roving Team service will come to an end on January 23, 2008.*⁶²

The OCG, in its Requisition to Mrs. Joan Gordon-Webley, which was dated 2009 June 3, requested that Mrs. Joan Gordon-Webley “...detail the exact circumstances which

⁶¹ Contract between Lennox Dickenson and the NSWMA which was dated 2006 February 1.

⁶² Letter which was dated 2008 January 18, from Mr. Audley McLean, Director of Operations, NSWMA, to Mr. Lennox Dickenson.

necessitated and/or informed the NSWMA's decision to terminate the respective contracts."⁶³

In her sworn response to the OCG's Requisition, which was dated 2009 July 8, Mrs. Joan Gordon-Webley indicated that "*Lennox Dickson was contracted to, inter alia, cut grass, remove debris, use herbicides and bush open lots. Lennox Dickenson failed, neglected or refused to use the herbicides. In addition, the bushing of open lots falls under the ambit of the Parish Council's portfolio and his services were terminated for non-performance.*"⁶⁴

Mrs. Gordon-Webley's sworn statement indicated that Mr. Dickenson "...*failed, neglected or refused to use the herbicides.*" However, it should be noted that the contract specifically indicated the requirement for the "*Application of herbicides...*"

Of import is the fact that the Letter of Termination, which was dated 2008 January 18, did not indicate Mr. Dickenson's failure to meet the terms and condition of the contract.

Termination of Contract with Mr. Donovan Wilson

The OCG has been provided with copies of four (4) contracts which were entered into between Mr. Donavon Wilson and NEPM Waste Management Limited. The dates of the referenced contracts were: 2004 August 30, 2005 July 1, 2005 August 31 and 2006 February 28, respectively.

The contract, which was dated 2006 February 28, indicated that:

⁶³ OCG's Requisition to Mrs. Joan Gordon-Webley which was dated 2009 June 3.

⁶⁴ Letter which was dated 2009 July 8, from Mrs. Joan Gordon-Webley, in response the OCG's Requisition.

“The Contractor, having represented to NEPM that he has the required professional skills, personnel and technical resources, has agreed to provide the services and complete the Works on the terms and conditions set forth in this Agreement understanding that he is not a substitute for the Zonal Contractor in any zone.”⁶⁵

The tasks which were to be undertaken, which were detailed in the 2006 February 28 contract, are as follows:

- *“Picking up of litter along un-contracted highways and bag same for collection*
- *Desilting of roadways in un-contacted [sic] areas of zones using silt bags*
- *Remedying defactions in Contractor Zones as identified and instructed by the Regional Operations Manager (ROM)*
- *Assisting in the removal of illegally placed posters in the parishes outside of the Corporate Area*
- *Cleaning and removal of vegetation from roadways identified by the ROM using machetes and bushwhackers*
- *Cleaning of open lots*
- *Pruning of Trees*
- *Application of herbicides to restrict growth in curb channels*
- *Selected verge cleaning*
- *Removal of grass and debris from curb channel (sculling)*
- *Cleaning after special events*
- *Bushing”⁶⁶*

The Termination Clause of the referenced contract indicated as follows:

⁶⁵ Contract which was dated 2006 February 28, between the NSWMA and Mr. Donovan Wilson.

⁶⁶ Contract which was dated 2006 February 28, between the NSWMA and Mr. Donovan Wilson.

“Either party may end this Agreement by serving not less than one (1) week Notice. NEPM may terminate this Agreement, if:

- 9.1 The Contractor without reasonable cause fails to proceed diligently with the Works or wholly suspends the carrying out of the Works when called upon by NEPM to do so;*
- 9.2 The Contractor, in the opinion of NEPM has engaged in corrupt or fraudulent practices in completing or in the execution of the Works specified in the annexed schedule;*
- 9.3 The Contractor acts against the best interest of NEPM while carrying out the duties more particularly described in the Schedule annexed hereto;*
- 9.4 The Contractor or The workers supplied by the Contractor refuse and/or neglect to adhere to instructions, rules, policies, procedures, codes or conduct or any other requirement/regulation laid down by NEPM;*
- 9.5 The Contractor or the workmen are found to be under the influence of alcohol or drugs;*
- 9.6 The Contractor fails to comply with or is in breach of the provisions of the National Solid Waste Management Act, 2001 or its subsequent regulations;*
- 9.7 Notwithstanding the above, NEPM may terminate or suspend the Contract for convenience..⁶⁷*

By way of a letter, which was dated 2008 January 18, Mr. Audley McLean, Director of Operations, NSWMA, wrote to Mr. Donovan Wilson, and informed him as follows:

“Please be advised that the NSWMA is reorganizing its public cleansing operations and will no longer require the services of your Roving Team.

⁶⁷ Contract which was dated 2004 August 30, between Mr. Donavon Wilson and the NSWMA.

In light of this, your contract for Roving Team service will come to an end on January 23, 2008.”⁶⁸

The OCG, in its Requisition, which was dated 2009 June 3, requested that Mrs. Joan Gordon-Webley “...detail the exact circumstances which necessitated and/or informed the NSWMA’s decision to terminate the respective contracts.”⁶⁹

In her sworn response to the OCG’s Requisition, which was dated 2009 July 8, Mrs. Joan Gordon-Webley indicated that “Donovan Wilson was contracted to, inter alia, sweep streets, bag the refuse from the streets, collect the garbage and remove illegal posters. The removal of illegal posters falls within the ambit of the Parish Council’s portfolio. Further, in accordance with the decision taken by the NSWMA and outlined at paragraph 6(b) (ii) hereof, the NSWMA wished to split the contract for sweeping streets and bagging garbage, on the one hand, and collection of garbage, on the other hand. Having terminated the original contract Donovan Wilson was contracted once again to provide the service of collection of garbage only.”⁷⁰

The OCG found that the evidence which was presented by the NSWMA supported the foregoing assertions of Mrs. Gordon-Webley. In this regard, the OCG was provided with a copy of a Procurement Transmittal Form, which was authorized by Ms. Maxine Wright, on 2008 June 20, and which indicated that Mr. Donavon Wilson was contracted “To provide one (1) 24 cubic yards compactor unit to do collection and disposal of solid waste.”

The said procurement was authorized on 2008 August 25, by the Procurement Committee and was approved by the Executive Director on 2008 September 8. The value of this

⁶⁸ Letter which was dated 2008 January 18, from Mr. Audley McLean, Director of Operations, NSWMA, to Mr. Donavan Wilson.

⁶⁹ OCG Requisition to Mrs. Joan Gordon-Webley, which was dated 2009 June 3.

⁷⁰ Letter which was dated 2009 July 8 from Mrs. Joan Gordon-Webley in response the OCG’s Requisition.

contract was \$1,360,000.00 and the duration of the contract was for thirty-one (31) days.⁷¹

It is instructive to note that by way of a letter, which was dated 2009 September 15, Attorneys-At-Law, Livingston, Alexander and Levy, wrote to the OCG, on behalf of Mrs. Joan Gordon-Webley, “...to correct typographical errors in the Statutory Declaration of Joan Gordon-Webley.”,⁷² which was dated 2009 September 9, and to provide “... a Supplemental Statutory Declaration...”⁷³

In the referenced “*Supplemental Statutory Declaration*”, which was dated 2009 July 8, the following information, with regard to Mr. Donovan Wilson’s Contract was detailed:

*“I stated that the date upon which the services of Donovan Wilson commenced for the second time was the 16th February, 2008 and at paragraph 10(a)(vi) I exhibited the documents relative to the procurement of the services of Donovan Wilson. Whereas I am unable to locate a documents [sic] which confirm the exact date upon which the services of Donovan Wilson commenced, further investigations have uncovered NSWMA’s letter dated the 15th February, 2008, addressed to Donovan Wilson, which indicated that his services would be required on the 16th February, 2008”.*⁷⁴

Termination of Contract with Mr. Basil Knight

The OCG was provided with copies of three (3) contracts which were entered into between Mr. Basil Knight and NEPM Waste Management Limited. The dates on the contracts were: 2004 April 1, 2005 December 1 and 2006 June 1, respectively.

⁷¹ Procurement Transmittal Form relating to the contracting of Donavon Wilson.

⁷² Letter which was dated 2009 September 15 from Livingston, Alexander and Levy, Attorneys-at-Law.

⁷³ Letter which was dated 2009 September 15 from Livingston, Alexander and Levy, Attorneys-at-Law.

⁷⁴ Letter from Mrs. Joan Gordon-Webley to the OCG which was dated 2009 September 9.

The contract, which was dated 2006 June 1, indicated that Mr. Knight was “*To collect solid waste and transport said Waste to nearest disposal site.*”⁷⁵

The Termination Clause of the referenced contract indicated that:

Either party may end this Agreement by serving not less than one (1) week Notice.

NEPM may end this Agreement, if:

- 9.1 *The Contractor without reasonable cause fails to proceed diligently with the Works or wholly suspends the carrying out of the Works when called upon by NEPM to do so;*
- 9.2 *The Contractor, in the opinion of NEPM has engaged in corrupt or fraudulent practices in completing or in the execution of the Works specified in the annexed schedule;*
- 9.3 *The Contractor acts against the best interest of NEPM while carrying out the duties more particularly describe in Schedule annexed hereto;*
- 9.4 *The Contractor fails to comply with or is in breach of the provisions of the National Solid Waste Management Act, 2001 or its subsequent regulations;”*⁷⁶
- 9.5 *Notwithstanding the above, NEPM may terminate or suspend the Contract for convenience.*

By way of a letter, which was dated 2008 January 29, that was addressed to Mr. Basil Knight, from the NSWMA, it was indicated, *inter alia*, that “*You are to be advised that*

⁷⁵ The contract which was dated 2006 June 1, between the NSWMA and Mr. Basil Knight.

⁷⁶ Contract which was dated 2006 June 1, between the NSWMA and Mr. Basil Knight.

the Management of the National Solid Waste Management Authority (NSWMA) is currently concluding a restructuring of its Public Cleansing operations.

*As a consequence of this exercise, regrettably, your services will no longer be required. Therefore, your Public Cleansing Contract with NEPM Waste Management Limited will be terminated, effective **February 16th, 2008.**”⁷⁷*

The OCG, in its Requisition, which was dated 2009 June 3, requested that Mrs. Joan Gordon-Webley “...detail the exact circumstances which necessitated and /or informed the NSWMA’s decision to terminate the respective contracts.”⁷⁸

In her sworn response to the OCG’s Requisition, which was dated 2009 July 8, Mrs. Joan Gordon-Webley indicated that “*Basil Knight was contracted to, inter alia, sweep streets, place the garbage in bags and collect the same. Upon review of the work it became apparent that the streets were not being swept regularly. In addition, in many instances when the streets were swept, the garbage was simply swept into piles and not placed in bags. Consequently, when the wind blew, the work of the sweepers would be completely eradicated. The routine failure to place the garbage in the bags also meant that, whereas Basil Knight was always paid for collection, there was routinely no collection of garbage taking place.*”⁷⁹

The OCG has seen no evidence to suggest that the foregoing reasons for the termination of the contract, which were proffered by Mrs. Gordon-Webley, were communicated to Mr. Basil Knight in the letter of termination from the NSWMA, which was dated 2008 January 29.

⁷⁷ Letter which was dated 2008 January 29, to Mr. Basil Knight from the NSWMA.

⁷⁸ OCG’s Requisition, which was dated 2009 June 3, to Mrs. Joan Gordon-Webley, Executive Director NSWMA.

⁷⁹ Mrs. Joan Gordon-Webley’s response to the OCG’s Requisition, which was dated 2009 July 8.

Termination of Contract with Eastern Environmental Company Limited

The OCG has been provided with a copy of a contract which was entered into between Eastern Environmental Company Limited and MPM Waste Management Limited, which was dated 2004 June 22. Eastern Environmental Company Limited was contracted to collect solid waste and provide sweeping services.

On 2004 June 22, the NSWMA also signed an Equipment Lease Agreement with Eastern Environmental Company Limited to enable the company to execute its duties.

The Termination Clause of the contract for the collection of waste and sweeping services indicated, *inter alia*, that:

- I. *“At any time after the Commencement Date, THE WASTE MANAGEMENT COMPANY may investigate each case where the Contractor has failed to properly perform the services in accordance with the provisions of the Contract, has committed a breach of any of its obligations, or has committed any offence under the Contract.*
- II. *The Contractor shall have the right to terminate this Agreement, if THE WASTE MANAGEMENT COMPANY has not been able to make timely and regular payments and the Contractor has been unable to meet its cash flow requirements for personnel and consumable expenditure, or any other cause deemed reasonable by arbitration.*

In light of the foregoing, the Contractor shall be entitled to recover such payments as a debt from the Waste Management Company. As it relates however to any loss or damage resulting from the termination of the said contract, same shall be referred to arbitration in accordance with Clause 21.

III. THE WASTE MANAGEMENT COMPANY shall be entitled, without prejudice to any other rights or remedies, to terminate this Agreement immediately at it's sole discretion at any time after occurrence of the following:

- a. If it is discovered, at any time, that the Contractor has made a fraudulent statement deliberately or representation in this Agreement; or*
- b. If the Contractor fails to comply with its obligations under this Agreement and has received three (3) Default Notices which have not been resolved within the contract year.*
- c. Then in any such circumstances THE WASTE MANAGEMENT COMPANY may, but not unreasonably or vexatiously, without prejudice to any accrued rights or remedies under the Contract, terminate the Contractor's services under Contract by notice in writing having immediate effect.*

IV. If the Contractor's employment is terminated and is not reinstated, THE WASTE MANAGEMENT COMPANY shall:

- a. Cease to be under any obligation to make further payment until the costs, loss and/or damage resulting from or arising out of the termination of the Contractor's services shall have been calculated and provided such calculations shows a sum or sums due to the Contractor;*
- b. Be responsible for any sum so calculated to be due to the Contractor and shall pay such sum within a reasonable time;*
- c. Be entitled to employ and pay other persons to provide and complete the provision of the Services or any part thereof;*

d. *Be entitled to deduct from any sum or sums which would have been due from THE WASTE MANAGEMENT COMPANY to the Contractor under this Contract or any other Contract with the WASTE MANAGEMENT COMPANY or be entitled to recover the same from the Contractor as a debt any loss or damage to THE WASTE MANAGEMENT COMPANY resulting from or arising out of the termination of the Contractor's services. Such loss or damage shall include the reasonable cost to THE WASTE MANAGEMENT COMPANY of the time spent by its officers in terminating the Contractor's employment and in making alternative arrangements for the provision of the services or any part thereof.*

V. *When the total cost, loss and/or damage resulting from or arising out of the termination of the Contractor's employment have been calculated and deducted so far as predictable from any sum or sums which would have been due to the Contractor in respect of services performed up to the time of Termination of the Contract, any balance shown as due to THE WASTE MANAGEMENT COMPANY shall be recovered as a debt, or alternately, THE WASTE MANAGEMENT COMPANY shall pay to the Contractor any balance shown as due to the Contractor.*⁸⁰

Under the terms of the Lease Agreement, which was dated 2004 June 22, it was indicated that the Lessee shall, throughout the term of this agreement:

- a. *"Keep the Equipment in good serviceable repair and condition (fair wear and tear only excepted) at all times;*
- b. *Ensure that the operators of the Equipment adhere to the operational procedures in the given Safety Manuals;*

⁸⁰ Contractual agreement between Eastern Environmental Company Limited and MPM Waste Management Limited, which was dated 2004 June 22.

- c. *Ensure the provision and use of the correct engine oils, hydraulic fluids. The equipment must be washed at least one per week;*
- d. *Ensure that repairs to tyres and the purchase of the appropriate tyres are done as recommended in the manufacturer's manual or as per instructions given by persons who are certified as competent by the owners;*
- e. *Ensure the operator of the Equipment has fulfilled all the requirements of the National Works Agency and Owner in order to be termed qualified;*
- f. *Permit the Owner and any person authorized by the Owner at all reasonable times to enter upon the premises in which the Equipment is for the time being placed or kept for the purposes of inspecting and examining the conditions of the Equipment or exercising any rights conferred on the Owner hereunder;*
- g. *Notify the Owner of any change in the Lessee's address and upon request by the Owner promptly inform the Owner of the whereabouts of the Equipment;*
- h. *Indemnify the Owner against loss or destruction of or damage to the Equipment or any part thereof from whatever cause arising and whether or not such loss destruction or damage results from the negligence of the Lessee provided that such loss is not covered by insurance taken out by the Owner;*
- i. *The Lessee shall not utilize the leased Equipment for the removal of solid waste other than non-commercial solid waste except as set*

out in the Agreement, without the prior written agreement of the Owner and appropriate arrangement for payment to the Owner for the use of such Equipment for such other purposes;

- j. The equipment should only be used for the collection of compactable waste. No white goods e.g. fridge, stove etc. should be collected.*
- k. The Lessee shall utilize the Equipment only within the Lessees' correct zone as stated in the Agreement referred to in section 1 above, except as otherwise authorized by the Owner.*
- l. Not to use the Equipment or permit the same to be used contrary to Law or any regulation or by-law for the time being force;*
- m. Indemnify the Owner, its agents, employees, officers and directors suffered by any person against all and any liabilities, obligations, losses, injury, damages, penalties, claims, demands, accident, suits, costs and expenses, including legal expenses of whatever kind and nature imposed or incurred or assessed against the Owner, its agents, employees, officers and directors in any way relating to or arising out of the initial purchase of the Equipment, the Lease to the Lessee, ownership, possession, selection, use, delivery, letting operation maintenance return or condition of the Equipment or any failure on the part of the Lessee to perform or comply with any terms of this Agreement. The indemnities contained in this sub-clause shall survive the termination of this Agreement;*

The Lessee shall not:-

- I. Sell, assign, sublet, pledge, mortgage, charge, encumber, alter, add to, improve or part with possession or otherwise deal with the Equipment or any interest therein nor create or allow to be created any lien or charge whatsoever on the Equipment whether for repairs or otherwise.”⁸¹*

By way of a letter, which was dated 2007 December 21, Mrs. Joan Gordon-Webley, Executive Director, NSWMA, wrote to Ms. Sandra Richards, CEO, Eastern Environmental Company Limited, and advised her that the services of Eastern Environmental Company Limited were terminated, effective 2007 December 31.

The OCG, in its Requisition, which was dated 2009 June 3, requested, *inter alia*, that Mrs. Joan Gordon-Webley “...detail the exact circumstances which necessitated and/or informed the NSWMA’s decision to terminate the respective contracts.”

In her sworn response to the OCG’s Requisition, which was dated 2009 July 8, Mrs. Joan Gordon-Webley indicated, *inter alia*, that “Under the terms of the Eastern Environmental Company Limited’s contract, they were provided with motor vehicle(s), owned by the NSWMA, to assist them with performing their contractual obligations. It was alleged, that the employees of Eastern Environmental Company Limited used one of the NSWMA’s motor vehicles to commit larceny. The matter is in the hands of the police and persons apprehended.”⁸²

Mrs. Gordon-Webley provided the OCG with documentation to support her foregoing assertion. In a Memorandum, which was dated 2007 December 5, from Mr. Astley Todd, National Fleet Manager, to Mr. Audley McLean, Director of Operations, NSWMA, under

⁸¹ Lease Agreement between Eastern Environmental Company Limited and MPM Waste Management Limited, which was dated 2004 June 22.

⁸² Mrs. Joan Gordon-Webley’s response to the OCG’s Requisition, which was dated 2009 July 8.

the caption “**Renault Midlum # 88 (contractor Sandra Richards)**” it was indicated that “...the police have held driver, Shirley with a huge quantity of empty bottles allegedly stolen from Desnoes & Geddes.

*The incident happened last evening (December 4th). Donald Hardware Fleet Supervisor made enquiries at Hunts Bay up to 9:30 p.m. but the truck was still being held by the Police.*⁸³

In a second Memorandum, which was captioned “**HUNTER 88- LIC # 203242**”, and which was dated 2007 December 6, which was addressed to Mr. Audley Mclean, Director of Operations, from Mr. Gordon Ramsay, Regional Operations Manager, the following information, *inter alia*, was detailed:

“The above mentioned unit was involved in an incident involving stolen bottles on December 4, 2007. It was reported that the stolen bottles were removed from a D&G facility on Hunts Bay Lane and transported in Hunter 88.

The unit was seized by the police (Constable Roberts) at 6:00 p.m. on Olympic Way and the Driver arrested.

*In speaking with Constable... Roberts and DSP Phipps we were informed that the unit might be returned to us today as the stolen items needed to be checked off and removed from the truck. We will be standing by to assist in the process. Mr. {Name withheld by the OCG} (Driver of H88) is employed to Sandra Richards, contractor for Zone 6.”*⁸⁴

⁸³ Memorandum which was dated 2007 December 5, from Mr. Astley Todd, National Fleet Manager, to Mr. Audley McLean, Operations Director, which was copied to Denzil Wilks, Corporate Services Director and Mr. Gordon Ramsay, Actg. Regional Operations Manager, NSWMA.

⁸⁴ Memorandum which was dated 2007 December 6, to Mr. Audley Mclean, Director of Operations, from Gordon Ramsay, Regional Operations Manager, copied to Errol Barrett, Public Cleaning Manager, under the caption “**Hunter 88 –LIC # 203242**”.

Consequently, by way of a letter which was dated 2007 December 10, Mr. Gordon Ramsay, informed Ms. Shirley Richards, CEO, Eastern Environmental Company Limited, as follows:

“I refer to the lease between Eastern Environmental Company Limited (Sandra Richards) and NSWMA for the equipment (license# 203242-Hunter 88) containing the following clauses:

“It is understood and agreed that the equipment provided shall be returned at the time stated herein or upon completion of the daily schedule with the designated Zone and further throughout the term of this agreement”.

- i. The Lessee shall utilize the Equipment only within the Lessees’ correct zone as stated in the Agreement referred to in section 1 above, except as otherwise authorized by the Owner;*
- j. Not to use the Equipment or permit the same to be used contrary to Law or any regulation or by-law for the time being forced;*

Please note that the situation involving the transportation of stolen items in the above mentioned unit at approximately 6:00 p.m. on Olympic Way has caused the Organisation much embarrassment and a feeling of insecurity.

In light of the above, we now write to confirm our position on the agreement that effective Friday, December 07, 2007, MPM Waste Management Limited will be responsible for the operation of the unit until further notice. All related costs will be borne by the Organisation... ”⁸⁵

⁸⁵ Letter which was dated December 10, 2007 to Ms. Shirley Richards, Eastern Environmental Company Contractor for Zone 6, from Gordon Ramsay, Regional Operations Manager, NSWMA.

In response to this letter, Ms. Sandra Richards, CEO, Eastern Environmental Company Limited, sent an undated letter to the NSWMA under the caption ***“larceny Incident Involving Hunter 88 License 203242”***

In the referenced letter, Ms. Richards indicated, *inter alia*, that “*I am writing in regards to an incident that took place on the 4th December 2007. Based on the information gathered, my current driver... was involved in a larceny incident using the Hunter 88 Unit licensed 203242. ... a driver that was employed to me from the fleet of approved drivers by M.P.M; to fill the position of my previous driver Mr. Leon Brown. Mr. Brown had been my driver for a couple of years, but due to his illness ... and having his leg amputated, he had become unable to perform his required duties. As a result of this, Mr. ‘X’ was hired for the job a few months now.*

I have been in constant dialogue with representatives of M.P.M, concerning the situation and from what was communicated to me, I thought I had taken the necessary precautions and acted accordingly. I want to make it vehemently clear that I have no involvement in this or any other illegal activity.

I employed Mr. ‘X’ as a driver recommended to me by M.P.M for the Hunter 88 truck and nothing otherwise. It may however seems [sic] that I am not doing much, because whenever any abnormal activities occur with an employee/s of a contractor, M.P.M, based on company’s policies and regulations would advise the contractor as to when to come in and file a formal report. The company would then carry out their own investigation and report the findings to the specific contractor. I am shock of the actions taken against me by N.S.W.M.A and M.P.M, because up until now no representative of either of the company has informed me of the next step I should take.

Based on how the situation is unfolding, I have no choice but to file a formal report on the matter at hand. My objective has been and always will be to adhere to the policies

and regulations of M.P.M and the N.S.W.M.A. I regret any embarrassment and inconvenience arises [sic] from this terrible situation...’’⁸⁶

In response to the foregoing letter, Mrs. Joan Gordon-Webley, by way of a letter which was dated 2007 December 21, responded to Ms. Sandra Richards and stated, *inter alia*, as follows:

“We are in receipt of your letter regarding the captioned.

Your concerns have been noted. However, you would be acquainted with the fact that we have to balance the interests of all the parties concerned, with specific reference to preserving the reputation and image of the Authority and its regional entity, MPM Waste Management Limited.

Arising from the alleged larceny by one of your employees utilizing Garbage Compactor Registration # 20 3224 on lease to you which pursuant to Article 13 of your “Zonal Contract, Contract No. ZC/32 between the MPM Waste Management Limited and EASTERN ENVIRONMENTAL COMPANY LIMITED, states “The contractor shall be fully and solely be responsible for its own acts and omissions and those of its employees, officers and agents”, it is not prudent for the MPM Waste Management Limited to continue contractual relations with Eastern Environmental Company Limited. Following from the actions of Representatives and/or Contractor which were in contravention of the law of the land and brought the MPM Waste Management Limited reputation into disrepute.

It is the Authority’s understanding that subsequent to the occurrence of the series of events, the truck was impounded at the Hunt’s Bay Police Station and released only on the intervention of the Regional Operations Manager, MPM Waste

⁸⁶ Undated letter from Ms. Sandra Richards, CEO of Eastern Environmental, which was addressed to the Executive Director of the NSWMA.

Management Limited and to date, the said truck remains under the jurisdiction of MPM Waste Management Limited to whom it was released.

*Regrettably, these series of events have had negative repercussions on the MPM Waste Management Limited. Thus, under Section 13 of the General Conditions of Contract, the Contract for Eastern Environmental Company Limited with MPM Waste Management Limited is hereby terminated effective 2007 December 31...*⁸⁷

Based upon the foregoing, the OCG found that the contract with Eastern Environmental Company Limited was terminated because of an alleged act of Larceny which was committed by an employee of the said company.

Termination of Contract for Sovereign Resources (UK) Limited

The OCG has been provided with a copy of a contract and a Lease Agreement between Sovereign Resources (UK) Limited and the NSWMA.

The contract, which was entered into on 2004 July 15, was for the collection of solid waste and the provision of sweeping services. The contract document stipulated that the contract was for a period of two (2) years unless otherwise extended or terminated.

It must be noted that the Termination Clause of the said contract indicated as follows:

- I. At anytime after the Commencement Date THE WASTE MANAGEMENT COMPANY may investigate each case where the Contractor has failed to properly perform the services in accordance with the provisions of the Contract,*

⁸⁷ Letter which was dated 2007 December 21, from Mrs. Joan Gordon-Webley, to Ms. Sandra Richards, CEO, Eastern Environmental Company Limited.

has committed a breach of any of its obligations, or has committed any offence under the Contract.

- II. The Contractor shall have the right to terminate this Agreement, if THE WASTE MANAGEMENT COMPANY has not been able to make timely and regular payments and the Contractor has been unable to meet its cash flow requirements for personnel and consumable expenditure, or any other cause deemed reasonable by arbitration.*

In light of the foregoing, the Contractor shall be entitled to recover such payments as a debt from the Waste Management Company. As it relates however to any loss or damage resulting from the termination of the said contract, same shall be referred to arbitration in accordance with Clause 21.

- III. THE WASTE MANAGEMENT COMPANY shall be entitled, without prejudice to any other rights or remedies, to terminate this Agreement immediately at it's sole discretion at any time after occurrence of the following:*

- a. If it is discovered, at anytime, that the Contractor has made a fraudulent statement deliberately or representation in this Agreement; or*
- b. If the Contractor fails to comply with its obligations under this Agreement and has received three (3) Default Notices which have not been resolved within the contract year.*
- c. Then in any such circumstances THE WASTE MANAGEMENT COMPANY may, but not unreasonably or vexatiously, without prejudice to any accrued rights or remedies under the Contract, terminate the Contractor's services under Contract by notice in writing having immediate effect.*

- IV. If the Contractor's employment is terminated and is not reinstated, THE WASTE MANAGEMENT COMPANY shall:*

- a. *Cease to be under any obligation to make further payment until the costs, loss and/or damage resulting from or arising out of the termination of the Contractor's services shall have been calculated and provided such calculations shows a sum or sums due to the Contractor;*
- b. *Be responsible for any sum so calculated to be due to the Contractor and shall pay such within a reasonable time;*
- c. *Be entitled to employ and pay other persons to provide and complete the provision of the Services or any part thereof;*
- d. *Be entitled to deduct from any sum or sums which would have been due from THE WASTE MANAGEMENT COMPANY to the Contractor under this Contract or any other Contract with the WASTE MANAGEMENT COMPANY or be entitled to recover the same from the Contractor as a debt any loss or damage to THE WASTE MANAGEMENT COMPANY resulting from or arising out of the termination of the Contractor's services. Such loss or damage shall include the reasonable cost to THE WASTE MANAGEMENT COMPANY of the time spent by its officers in terminating the Contractor's employment and in making alternative arrangements for the provision of the services or any part thereof.*

V. *When the total cost, loss and/or damage resulting from or arising out of the termination of the Contractor's employment have been calculated and deducted so far as predictable from any sum or sums which would have been due to the Contractor in respect of services performed up to the time of Termination of the Contract, any balance shown as due to THE WASTE MANAGEMENT COMPANY shall be recovered as a debt, or alternately, THE WASTE MANAGEMENT COMPANY shall pay to the Contractor any balance shown as due to the Contractor.*⁸⁸

⁸⁸ Contract dated 2004 July 15, between Sovereign Resources (UK) Limited and the NSWMA.

The contract with Sovereign Resources (UK) Limited was terminated on 2008 February 15. In this regard, by way of a letter which was dated 2008 February 15, Mr. Audley McLean, Director of Operations, NSWMA, informed Mr. Dean Williams, Managing Director, Sovereign Resources (UK) Limited, *inter alia*, as follows:

“...the NSWMA has some serious concerns with aspects of the management of your contract resulting from the non cleaning of the above mentioned zone.

- i. You have failed to supply the management of the NSWMA with current NCC and TCC registrations to facilitate the settlement of payments to you.*
- ii. Workers employed to you have stopped cleaning since February 12, 2008 as a result of non payment of salaries to them over the past month.*
- iii. A number of workers employed to you have written suggesting that you have made deductions from their salaries for NHT, NIS etc but their checks at the respective Government agencies reveals no records of these payments being turned over to them.*

Finally, you have failed to perform the contract agreement and efforts by MPM Regional Office to contact you by telephone proved futile. Given the nature of the work and the fact that its non provision creates a negative impact on the Company's operations, MPM was compelled to assume full responsibility for operations, MPM was compelled to assume full responsibility for the execution of the public cleansing sweeping and garbage collection services in the zone since Tuesday February 12th 2008.

The non execution of the contract obligations cannot be condoned by the Organization and it is on this basis that your services are being terminated effective February 12, 2008....”⁸⁹

⁸⁹ Letter which was dated 2008 February 15, to Mr. Dean Williams, Managing Director of Sovereign Resources Limited from Mr. Audley McLean, Director of Operations at the NSWMA.

Having received this Letter of Termination, Mr. Williams consulted his Attorneys-at-Law, Bishop & Fullerton. Subsequently, a letter was sent by Bishop & Fullerton to the NSWMA, regarding the matter.

The concerned letter from Bishop & Fullerton, Attorneys-at-Law, which was dated 2008 February 20, was addressed to Mr. Audley McLean, and indicated as follows:

“We refer to yours of 15th instant and write for and on behalf of the Company mentioned at caption whose agent, Mr. Dean Williams, has handed us your letter mentioned above for our attention and response.

*We now **DEMAND** immediate reinstatement and a speedy withdrawal of your letter for the following reasons:*

- a. That clause 13 of the Zonal Contract signed between the parties and dated the 15th July 2004 provides, inter alia, that the Waste Management Company may terminate at its sole discretion, after the following occur: “If the contractor fails to comply with its obligations under this Agreement and has received three (3) Default Notices which have not been resolved within the contract year”;*
- b. Clause 21 regarding disputes provides that: “Any dispute, controversy or claim between the parties as to matters arising out of or relating to this Agreement or the breach, termination or invalidly [sic] thereof that cannot be settled amicable [sic] within thirty (30) days after receipt by one party for such amicable settlement...”*

The effect of the above is that your letter has breached the spirit and intention of the contract, which governs the conduct of the parties.

In the event that you fail to immediately reinstate our client, we are giving you this notice pursuant to Clause 21 (iii) of the contract to request amicable settlement of our disputes,

controversy or claim or any dispute, controversy or claim you may have with our client within 30 days from the date of this letter.”⁹⁰

By way of a letter, which was dated 2008 March 3, Bishop & Fullerton, Attorneys-at Law, representing Mr. Dean Williams, advised the OCG of the following:

“We write for and on behalf of Sovereign Resources (UK) Limited whose agent: Mr. Dean Williams has asked us to refer the matter to your office for investigation pursuant to section 4(1) (II) of the Contractor-General Act.

By way of background, the following documents have been attached for your perusal:

- a. Letter of termination dated the 15th February 2008;*
- b. Letter in response to the termination dated the 20th February 2008; and*
- c. Zonal Contractor [sic] between the parties at caption.*

We believe that our client’s contract with the NSWA [sic] may have been terminated with impropriety and/or irregularity. What we are sure about is that the provisions in the Zonal Contract, signed between the parties, relating to termination have been totally ignored by the NSWA [sic].

In light of the above, we invite your investigation.”⁹¹

In response to this letter, the OCG, by way of a letter which was dated 2008 March 6, wrote to the referenced Attorneys, under the caption: *“Termination of Government Contract-National Solid Waste Management Authority (NSWMA) and Sovereign Resources (UK) Limited”*. The letter stated, *inter alia*, that:

⁹⁰ Letter, which was dated 2008 February 20, from Bishop & Fullerton which was addressed to Mr. Audley McLean, Director of Operations, NSWMA.

⁹¹ Letter which was dated 2008 March 3, from Bishop and Fullerton, Attorneys -at -Law, to the OCG.

“A cursory review of your letter and the documents which were appended thereto have disclosed the following:

- 1. The veracity of the claims upon which the NSWMA has relied as the basis for terminating your Client’s services have not been denied or challenged by you.*
- 2. Your complaint in respect of the actions of the NSWMA appears to be that it has not complied with what you regard to be a mandatory contract pre-termination procedure - namely the procedure which is spelt out in Clause 13 (III) (b) of the Zonal Contract.*
- 3. Your complaint, however, appears to ignore the preamble to the said Clause 13 (III) (b) which clearly provides that the “Waste Management Company shall be entitled, **without prejudice to any other rights or remedies**, to terminate this Agreement immediately at its sole discretion at any time after occurrence of the following...(our emphasis).*

This, in our view, means that the NSWMA is not contractually obliged to comply with the referenced Clause 13 (III) (b) procedure in every case of its termination of a Zonal Contract so long as it is purporting to act pursuant to some “other right or remedy” which it feels it may lawfully have.

- 4. In the circumstances, it is clear that the actions of the NSWMA, and the claim which you have advanced in relation thereto, have together raised certain questions of a legal nature which may be best resolved, in the first instance, via the “Disputes” procedures which are outlined in Clause 21 of the Zonal Contract between the NSWMA and your Client.⁹²*

⁹² Letter which was dated 2008 March 6 from the OCG to Bishop and Fullerton, Attorneys -at -Law.

On 2008 March 26, the OCG conducted an Interview with Mr. Williams. The following, *inter alia*, are extracts from the OCG's "Record of Interview":

Mr. Williams: *"I would just like to say to you that first I would like to look at the TCC, which I copied... One expired on the 16th December 2007 and the other which I got renewed was issued on February 5, 2008.*

Prior to all of this I received a letter from the National Solid Waste dated February 15, regarding termination of Public Health Contractor for zone 16...The contents of the letter states, "you have failed to supply the National Solid Waste with current NCC and TCC registration to facilitate the settlement of payment to.[sic] I want to categorically say this is a lie, because I have shown...(an OCG Representative) copies of my NCC and TCC which was renewed and expired May 5th of 2008."

OCG Representative: *"Were they in possession of the TCC?"*

Mr. Williams: *"Yes they were because I submitted this the new TCC on February 5, I collected it and the same day I collected it I went to the MPM Office at 34 Half Way Tree Road and submitted it to the HR persons there and called Mr. Gordon."*

OCG Representative: *"What Gordon is it?"*

Mr. Williams: *"Ramsey Gordon, he is the Regional Manager, I spoke with him saying I am calling to inform him that I had submitted to his office the TCC, this was on February 5th, he said to me he was in St. Thomas, the Wednesday would have been Ash Wednesday, they've cancelled all payments as it relates to me because the TCC was outstanding, because I know I need to get the payment I called him to say to him I have submitted the TCC to him, to his office because this is what was outstanding. He assured me that he would not be able to look at it until Thursday when he resumed office because*

Wednesday would have been Ash Wednesday. I submitted them, left, went on my merry way.

On the 7th, 5th, 6th we worked everything was beautiful, no problem. We should have gotten paid from the 7th. I have not gotten paid from the previous fortnight. I paid my workers on the 15th, on the 30th, or 31st of every month, so they should have paid me on the 7th, they didn't pay any money on the 7th, nor the 8th. On the 9th, my workers said that they needed their money because they should have gotten paid and they didn't get paid at the time, so I then spoke to Mr. Ramsey informing him that I received a call from my Supervisor Mr. Cedric Fisher informing him that Mr. Barrett, he is a Supervisor at the National Solid Waste, that he (Mr. Barrett) has gotten orders from Mrs. Gordon Webley for me to stop working.

Mr. Williams: *Mr. Gordon replied, if I am sure that what I heard. I said yes that's what I heard from my Supervisor, he said he was not informed about it, and that day the 10th, they had said we should stop working. On the 11, which is Monday at 5:30 I received a call from Mr. Fisher my supervisor informing me that I should report to the ED (Executive Director) and the work which has stop from the Saturday, report to the ED the Monday Morning."*

OCG Representative: *"Who stopped the work?"*

Mr. Williams: *"Mr. Barrett."*

OCG Representative: *"You had verbal instructions to stop the work?"*

Mr. Williams: *"Even my Supervisor had verbal instructions to stop the work."⁹³*

⁹³ OCG's interview which was conducted with Mr. Dean Williams on 2008 March 26.

OCG Representative: *“Did you query the instructions?”*

Mr. Williams: *“No well I had nobody to query it to, but I called McLean immediately. Mr. Audley McLean is the Regional Director of Operations. I called him to say to him that I just received a phone call from my Supervisor saying that the ED have given Mr. Barrett instructions for me to discontinue working. After speaking to Mr. McLean he said he knew nothing about it and what is it he would advise me to do was to report to the office at 8:00 o’clock on Monday morning to see him and Mrs. Gordon-Webley about it.*

I went there at 8:00 o’clock, tried to get a meeting with both, I however spoke to Mr. McLean and Mr. McLean went to Mrs. Gordon-Webley’s office, came back to say to me that she will not take any talk from me. I said to Mr. McLean that I would pretend that I didn’t hear what you said, so we didn’t talk to Mrs. Gordon -Webley. I don’t know what discussion she and Mr. McLean had but I went there based on his instruction, he knew nothing about it so he advised me to come which I did and there was nothing, nothing happened. I left and on Tuesday no work, they had a roving team that they had deployed into the area since the time of the 9th, they deployed a roving team.”

OCG Representative: *“Was there was any written notice?”*

Mr. Williams: *“No, no form of communications, nothing whatsoever, absolutely nothing.”*

OCG Representative: *“Was there any concern expressed?”*

Mr. Williams: *“No nothing, nothing in writing, nothing to say other than what I have outlined. However on the 13th, February 13th, I called Mr. McLean re the cheque that was due, cause this was two cheques in one now that was due.”*

OCG Representative: *“Two outstanding payments?”*

Mr. Williams: *“Yes two outstanding payments, I asked him about the cheque, why it was not ready and he said he didn’t understand why, because I have submitted the TCC from the 5th and Wednesday was the 13th and the cheque was not ready, so he called Mr. Ramsey and asked Mr. Ramsey, why the cheque was not ready. He told me to give him a few minutes and call him back, which I did and Mr. McLean said that he has given Mr. Ramsey the order to prepare the cheque for me.*

However my Supervisor Mr. Cedric Fisher informed me on the 15th that the new contractor has took all my workers and they started working on the 13th, yes he informed me that the new contractor who appears to be the sister of the new sitting Councilor Audley Gordon, otherwise known as Mickey appears to have the contract and they have reinstated all the old workers, the persons that were working with me on February 13th.”

OCG Representative: *“What is the name of Mickey’s company?”*

Mr. Williams: *“...The company is GEOKAR Associates Ltd. that is the name of the contractor or I understand the contract is now given to this company and they took responsibility and started working, because the roving team that MPM had they have taken and all of the workers all of them that was working for me except Mr. Fisher and one Mr. Stewart and a driver, those two was excepted (sic) from the group but all the other persons had started working for him.”⁹⁴*

OCG Representative: *“What is the name of your zone?”*

Mr. Williams: *“Zone 16.”*

OCG Representative: *“What was the duration of your contract?”*

⁹⁴ OCG’s interview which was conducted with Mr. Dean Williams on 2008 March 26.

Mr. Williams: *"I think it was a 3 year if I am not mistaken"*

OCG Representative: *"How many years have you gone out of that?"*

Mr. Williams: *"The contract have now expired, it should have been up for renewal last year but what I think happen is because of the change of government all of this never go through, as there was a bidding process and buying the manual and all of those exercise, but I was informed that the contract automatically is still in effect because there has to be a new contract issue or new contract for the old one to phase, so we were still operating on the old schedule of that contract despite the fact that it has expired."*⁹⁵

OCG Representative: *"At the time when you discovered the contract was expired, was there any meeting with the NSWMA?"*

Mr. Williams: *"No"*

OCG Representative: *"So you just continued working?"*

Mr. Williams: *"We all of us, not only me alone all of the other contractors."*

OCG Representative: *"and you submitted claims?"*

Mr. Williams: *"Submitted claim for payment and we have been paid, no problem until the experience about the TCC and they said that because of the fact that the contract has been extended they would not be able to pay me until I submit the new TCC."*

OCG Representative: *"So you haven't received anything in writing that the contract was extended?"*

⁹⁵ OCG's interview which was conducted with Mr. Dean Williams on 2008 March 26.

OCG Representative: *"I see here where the contract had expired since 2006, it was two years, it started in 2004."*

OCG Representative: *"Did you in anyway asked the NSWMA why you don't have a new contract, since it has expired in 2006?"*

Mr. Williams: *"As I said to you they were planning, and there was booklets and the proposal of the new contract which I received paid for a total of \$500 and there were aspects of it as it relates to the Contractor General and other entities about bonds and all of this, so it was a discussion from last year."*

Some time in March or there about 2007, they wanted to implement the new contract. As I said during the time coming up to the election the government changed and we didn't hear anything more about that aspect of it. There was no indication to us by any means any way as to say or to state the procedure or what they had intended to do and when it is going to commence or when it is going to be looked at, no there was no communication."

OCG Representative: *"The contract you had, has a clause that deals with dispute resolution, did you attempt to use that medium at any time?"*

Mr. Williams: *"Yes"*

OCG Representative: *"What happened?"*

Mr. Williams: *"Apart from that, there has been a sum of money, that there was a dispute with, coming up to the election I was one of the persons who did not get any payment at all, some of them have received full payment some have received partial, half, 50%, 20%, 10%, I didn't get any payment. Since the new ED Mrs. Webley, I have been making several attempts to meet with her to discuss it, I met with former ED, Mr. Powell,*

he said that he would look into it, I met with the Financial Director, he said he would look into it.”⁹⁶

When Mrs. Webley came into office I submitted a letter saying to her that I need to discuss this and among other things, I said to her, meeting with Mr. McLean and Mr. Gordon Ramsey saying to her I am one contractor have a lot of experience, both international and local, because I use to do the same business in London many years ago. I want to put some things into the mix, as to the direction that I think that I can advance to enhance the whole beautification, collection, the manner in which we do things. I waited from that time, I’ve been indicating calling them, briefed Mr. McLean, briefed Mr. Ramsey, didn’t get a chance to speak to Mrs. Webley, still have not had a chance to talk with her after several attempts to discuss this and among other things.”

OCG Representative: *“Since our last correspondence with you, what has been your action?”*

Mr. Williams: *“My action is I spoke with my counsel Keith Bishop, I pointed out to him that I believe the TCC among the letter from the Contractor General to bring it to the Contractor General attention that these thing were in truth and in fact not so. Whatever they have put in the letter it is not a fact, therefore it seems to me that there is some other underlying reasons and I was there encouraging to send another letter with the evidence of the TCC, and the letter from the Contractor General, my request so far as it relates to the Contractor General it would not have expired until July of 2008, so under that basis and the fact that we did not get any correspondence, and based on what the arbitration clause in the contract indicated that we should do, it has outlined clearly that ratification notice must be given as it relates to the payment. It cannot be just verbal talk there has to be some communication.*

⁹⁶ OCG’s interview which was conducted with Mr. Dean Williams on 2008 March 26.

If there is a dispute the clause said it must be settled amicable and if it is not settled within 30 days then it should go before a tribunal, and under that basis I said to my self I am going to take it upon my responsibility because we have not received a response from the National Solid Waste as it relates to the contract, because Counsel advised them that there has been a breach, they breached the peace, the arrangement and therefore I should be reinstated with immediate effect. They had disregarded it and as I have pointed out, they gave me a letter dated 15th February and even before they gave the letter of termination they have already seek to have a new contractor in place even before all of that and I am saying this gives me more reason to bring it to the contractors attention...”

OCG Representative: *“Just an observation, the termination was February 12 and the letter was dated February 15th.”*

OCG Representative: *“Have you been paid?”*

Mr. Williams: *“No, apart from the two payments that I’ve mentioned I have not been paid. I made sure to send in the bill, they’ve not paid me since the last payment I received.”*

OCG Representative: *“What was the last payment you received?”*

Mr. Williams: *“The last payment I received was on the 14th February.”*

OCG Representative: *“and that was for the outstanding amount that was due?”*

Mr. Williams: *“the two outstanding fortnights.”*

OCG Representative: *“so how much money is outstanding for you now?”*

Mr. Williams: *“well based on the looks of it is from the time since, which is about a month, this week it will be three fortnights.”*

OCG Representative: *“The payment received on the 14th February was for services rendered up until when?”*

Mr. Williams: *“up until the 7th of February.”*

Mr. Williams: *“My reason, I personally think it’s a clear indication that some persons seems as if they have no regard for the law, for the party that governs and put these stipulations. If there was no Contractor General, to even have an audience today, I would be another frustrated person out there not knowing what to do, and have to think about the mediation, which can be long and drawn out, but with the investigation authority that the Contractor General has so that I am very happy that I can be called into a meeting of this sort where I can be able to ventilate to say specifically what is happening. The decision needs to be taken and most swift to combat not only that which is happening at National Solid Waste but among other entities which people feel that they are bigger and above the law.”*

Based upon the information which was contained in Mr. Williams’ letter of termination, which was dated 2008 February 15, and the OCG’s interview with Mr. Williams, which was conducted on 2008 March 26, the following issues were identified:

1. Mr. Williams indicated that on 2008 February 9, he was advised verbally by his supervisor, Mr. Cedric Fisher, that a directive had been issued by Mrs. Gordon-Webley, for Sovereign Resources (UK) Limited to stop working. The foregoing had allegedly occurred prior to Mr. Williams’ receipt of a formal letter of termination.

The OCG has identified documentary evidence to support the assertion, as the letter of termination which was sent to Mr. Williams indicated that the contract was terminated as at 2008 February 12. However, the date on the referenced letter was 2008 February 15. The foregoing would indicate that the contract was terminated before the contractor was officially informed of same.

2. The letter of termination, which was signed by Mrs. Joan Gordon-Webley, and which was dated 2008 February 15, informed Mr. Williams, that the contract was terminated because, *inter alia*, ““...the NSWMA has some serious concerns with aspects of the management of your contract resulting from the non cleaning of the above mentioned zone.
 - i. *You have failed to supply the management of the NSWMA with current NCC and TCC registrations to facilitate the settlement of payments to you.*
 - ii. *Workers employed to you have stopped cleaning since February 12, 2008 as a result of non payment of salaries to them over the past month...*

It is instructive to note that Mr. Williams indicated in the interview with the OCG, which was held on 2008 March 26, that the NSWMA was withholding payments for work which was already completed.

It must be noted, that according to Circular No. 13, from the then Ministry of Finance and Planning, which was dated 2001 September 14, “*Contractors are not required to provide a valid Tax Compliance Certificate in order to receive payment for work satisfactorily performed under contract.*”

3. Mr. Williams also indicated that a company, by the name of ‘GKA GEOKAR Associates Limited’ was contracted to replace his company, Sovereign Resources

(UK) Limited. This information was consistent with the information which was detailed on a Procurement Transmittal Form, which was submitted to the OCG, by Mrs. Joan Gordon-Webley, along with her response to the OCG's Requisition, which was dated 2009 July 8.

The referenced Procurement Transmittal Form indicated that GEOKAR Associates Limited was contracted to the NSWMA on 2008 February 21, a few days after the contract with Sovereign Resources (UK) Limited was terminated. The Procurement Transmittal Form indicated that *"Emergency procurement guidelines were used to manage the emergency situation in order to continue the essential services at the previous contract value."*

The clause(s) of the contractual agreement(s) upon which the NSWMA relied as justification and/or grounds for the termination of each of the contractors

The OCG, in its Requisition to Mrs. Joan Gordon-Webley, which was dated 2009 June 3, sought to ascertain the clauses of the respective contractual agreement(s) upon which the NSWMA relied as justification and/or grounds for the termination of each of the identified contractors.

In the referenced Requisition, the OCG posed the following question:

“Please detail/indicate the precise clause(s) of the contractual agreement(s) upon which the NSWMA relied as justification and/or grounds for the termination of each of the contractors which are referenced in Question #1 above.”⁹⁷

Mrs. Joan Gordon-Webley, in her sworn response to the OCG’s Requisition, which was dated 2009 July 8, provided the following tabular information:

	<i>Name of the Contractor</i>	<i>Clause Relied Upon</i>
i.	<i>Romac Maintenance Services</i>	<i>No termination clause used as the contract expired on the 28th February, 2004.</i>
ii.	<i>Lloyd Neil</i>	<i>No termination clause used as the contract expired on the 30th June, 2009.</i>
iii.	<i>Downtown Kingston Mall Management District (DKMD)</i>	<i>No termination clause used as there was no formal contract.</i>
iv.	<i>Morgan’s Disposal Services / Patricia Morgan (Zone II)</i>	<i>No termination clause used as the contract expired on the 6th July, 2006.</i>
v.	<i>Raphael Ragbar</i>	<i>No termination clause used as the contract expired on the 29th August, 2006.</i>
vi.	<i>Lennox Dickenson</i>	<i>No termination clause used as the contract expired on the</i>

⁹⁷ The OCG’s Requisition to Mrs. Joan Gordon-Webley, which was dated 2009 June 3.

	<i>Name of the Contractor</i>	<i>Clause Relied Upon</i>
		<i>31st July, 2006.</i>
vii.	<i>Donovan Wilson</i>	<i>No termination clause used as the contract expired on the 27th August, 2006.</i>
viii.	<i>Basil Knight</i>	<i>No termination clause used as the contract expired on the 30th June, 2006.</i>
iv.	<i>Eastern Environmental Company Limited</i>	<i>No termination clause used was [sic] the contract expired on the 21st June, 2006.</i>
v.	<i>Sovereign Resources (UK) Limited</i>	<i>No termination clause used as the contract expired on the 14th July, 2006.</i>

It is instructive to note that, by way of a letter which was dated 2009 September 15, Livingston, Alexander and Levy, Attorneys-At-Law, wrote to the OCG, on behalf of Mrs. Joan Gordon-Webley, “...to, *inter alia*, correct typographical errors in the Statutory Declaration of Joan Gordon-Webley,”⁹⁸ which was dated 2009 July 8, and to provide “... a Supplemental Statutory Declaration...”⁹⁹

In the concerned “*Supplemental Statutory Declaration*”, which was dated 2009 September 9, the following information, with regard to Mr. Lloyd Neil, was stated:

“...I stated that the date of expiration of the formal agreement of Lloyd Neil was the 30th June, 2009, whereas the correct date of expiration of the formal agreement was the 30th June, 2006.”

Based upon the information presented in the table above, the OCG found that most of the contracts had expired in 2006. Therefore, the contractors were working without formal written contracts prior to the formal written termination of their contracts.

⁹⁸ Letter which was dated September 15, 2009 from Livingston, Alexander and Levy.

⁹⁹ Letter which was dated September 15, 2009 from Livingston, Alexander and Levy.

It is instructive to note that Mr. Dean Williams, in his interview with the OCG, also indicated that his contract expired since 2006, but that his company was still providing public cleansing services for the NSWMA. In the OCG's interview with Mr. Williams, which was dated 2008 March 26, it was stated as follows:

“Mr. Williams: *The contract have now expired, it should have been up for renewal last year but what I think happen is because of the change of government all of this never go through, as there was a bidding process and buying the manual and all of those exercise, but I was informed that the contract automatically is still in effect because there has to be a new contract issue or new contract for the old one to phase, so we were still operating on the old schedule of that contract despite the fact that it has expired...*”¹⁰⁰

OCG Representative: *So you haven't received anything in writing that the contract was extended?”*

OCG Representative: *I see here where the contract had expired since 2006, it was two years, it started in 2004.”*

OCG Representative: *Did you in anyway asked the NSWMA why you don't have a new contract, since it has expired in 2006?*

Mr. Williams: *As I said to you they were planning, and there was booklets and the proposal of a new contract which I received paid for a total of \$500 and there were aspects of it as it relates to the Contractor General and other entities about bonds and all of this, so it was a discussion from last year.”*

Some time in March or there about 2007, they wanted to implement the new contract. As I said during the time coming up to the election the government changed and we didn't

¹⁰⁰ OCG's interview which was conducted with Mr. Dean Williams on 2008 March 26.

hear anything more about that aspect of it. There was no indication to us by any means any way as to say or to state the procedure or what they had intended to do and when it is going to commence or when it is going to be looked at, no there was no communication.”

It is instructive to note that the OCG has seen evidence to suggest that the NSWMA requested an extension of the Public Cleansing contracts in 2007 May.

A further extension was requested from the NCC on 2007 October 1. This is evidenced by a letter which was dated 2007 October 1, which was addressed to the NCC, from Mr. Christopher Powell, then Acting Executive Director, NSWMA, and which was under the caption ***“Extension of Existing Public Cleansing Contracts for NSWMA and its Regional Companies”***. The referenced letter stated as follows:

“I hereby refer to my correspondence dated 2007 May 9, requesting an extension of the Public Cleansing Sweeping and Collection Contracts for the Authority and its Regional Entities, MPM Waste Management Limited (MPM), SPM Waste Management Limited (SPM), NEPM Waste Management Limited (NEPM), and the WPM Waste Management Limited(WPM).

We are therefore seeking your permission for a further extension of these said contacts [sic] until 31st March, 2008. This is based on the fact that the tender for the public cleansing contracts had to be suspended upon advice of the Office of the Contractor General (OCG).

Thus, the requested extension will enable the Authority and its entities to place its tender machinery in place and review the proposed changes suggested by the OCG in order to complete a properly executed tender.

Grateful that this matter be given the urgency that it requires and the late notice is regretted.”

In response to the 2007 October 1 letter from the NSWMA, the NCC wrote a letter to Mr. Devon Rowe, then Director General, Ministry of Local Government, which was dated 2007 October 22. The referenced letter, which was captioned ***“Extension of Existing Public Cleansing Contracts for NSWMA and its Regional Companies”***, stated as follows:

“Please refer to a letter of 2007 October 1 from Mr. Christopher Powell, Acting Executive Director of the National Solid Waste Management Authority, regarding the captioned matter.

The National Contracts Commission considered the matter at its meeting held on October 10, 2007 and endorsed the request by the NSWMA for an extension of the Public Cleansing Sweeping and Collection contracts for the Authority and its Regional Entities until 2008 March 31, to facilitate the NSWMA’s Tender Process.”¹⁰¹

¹⁰¹ Letter from the NCC which was dated 2007 October 22 which was addressed to Mr. Devon Rowe, Permanent Secretary, Ministry of Local Government.

The Procurement Committee of the NSWMA

The OCG, in its Requisition to Mrs. Joan Gordon-Webley, which was dated 2009 June 3, posed the following question:

“Did the NSWMA and/or its Regional Offices have Procurement Committees in place as at June 2007? If yes, please provide the following information:

- i. The names and titles of the members of the NSWMA’s Procurement Committee for the period 2007 June to 2009 May;*
- ii. The names and titles of the members of the Procurement Committee at each of the NSWMA’s Regional Offices for the period 2007 June to 2009 May;*
- iii. If your response to Question #5 is no, please indicate the reason(s) for which the NSWMA and/or any of its Regional Offices was/were operating without a Procurement Committee.”¹⁰²*

Mrs. Joan Gordon-Webley, in her sworn response to the OCG’s Requisition, which was dated 2009 July 8, indicated as follows:

“The following persons have held the position of chairman of the Procurement Committee, and were entitled to cast a vote:

- i. June 2007 – July 2007 – Deryke Smith (Director of Finance);*
- ii. July 2007 – January 2008 – Denzil Wilks (Corporate Services Director);*
- iii. April 2008 – June 2008 – Rupert Pryce (Corporate Service Director); and*
- iv. December 2008 – May 2009 – Audley McLean (Director of Operations).*

¹⁰² OCG’s Requisition to Mrs. Joan Gordon-Webley, which was dated 2009 June 3.

- b. *The following persons have held the position of deputy chairman of the Procurement Committee, and were entitled to cast a vote:*
- i. *November 2007 – January 2008 – Deryke Smith (Director of Finance); and*
 - ii. *January 2008 – May 2009 – David Bloomfield (Executive Assistant (January 2008 – May 2008) and Acting Regional Operations Manager (June 2008 – May 2009)).*
- c. *The following persons have held the position of legal officer of the Procurement Committee, and were not entitled to cast a vote:*
- i. *June 2007 – January 2008 – Casie Jean Graham (Director of Legal Services); and*
 - ii. *April 2008 – May 2009 – Grace-Ann Cameron (Director of Legal Services).*
- d. *The following persons have held the position of procurement officer of the Procurement Committee, and were not entitled to cast a vote*
- i. *June 2007 – January 2008 – Casie Wilson-Brown (Acting Procurement Officer);*
 - ii. *April 2008 – June 2008 – Marlon Osbourne (Procurement Officer); and*
 - iii. *July 2008 – March 2009 – Bevenisha Moodie (Procurement Officer).*
- e. *The following persons alternated the responsibility of being the recording secretary of the Procurement Committee, during the period of June 2007 – May 2009 and were not entitled to cast a vote:*
- i. *Nicola Edwards;*
 - ii. *Dionne Webb; and*
 - iii. *Elaine Depass.*
- f. *The following persons have held the position of a member of the Procurement Committee, and were entitled to cast a vote:*
- i. *June 2007 – November 2008 – Audley McLean (Operations Director);*

- ii. *June 2007 – June 2008 – Astley Todd (National Fleet Manager);*
 - iii. *June 2007 – November 2007 – Rachel Allen (National Coordinator/Special Projects)*
 - iv. *June 2007 – May 2009 – Janet Williams (Regional Administrator MPM);*
 - v. *June 2007 – May 2009 – Barbara Johnson (Regional Administrator SPM);*
 - vi. *June 2007 – May 2009 – Dawn Gordon (Regional Administrator WPM);*
 - vii. *June 2007 – May 2009 – Maxine Wright (Regional Administrator WPM); and*
 - viii. *June 2007 – May 2009 – Claudette Braham-Davis (Administrative Manager);*
and
- g. *The following persons have held the position of an alternate member of the Procurement Committee, and were entitled to cast a vote:*
- i. *June 2007 – December 2008 – Conrad Russell (Financial Accountant) and*
 - ii. *June 2007 – September 2008 – Sharon Martillier (Budget & Revenue Manager).*
- h. *The following person held the position of an invitee of the Procurement Committee, and was not entitled to cast a vote:*
- i. *June 2007 – September 2008 – Vashti Wilson (Internal Audit Manager)''¹⁰³*

The foregoing information indicates that the NSWMA, as at 2007 June, had a Procurement Committee to approve recommendations for the award of contracts, which was in keeping with the requirements of the GOJ's procurement procedures.

¹⁰³ Mrs. Joan Gordon-Webley's response to the OCG's Requisition which was dated 2009 July 9. Question # 5

The Contractors who replaced the Terminated Contractors

The OCG, in the conduct of its Investigation required information from the NSWMA with regard to the engagement of the contractors which replaced the ‘Terminated Contractors’.

As such, the OCG, in its Requisition to Mrs. Gordon-Webley, which was dated 2009 June 3, posed the following question:

“For each of the contractors which are listed in Question #1 above, please also indicate the following:

- i. The name(s) of the contractor(s), company(ies) and/or entity(ies) which has/have replaced each of the named contractors;*
- ii. The date(s) on which the contractor(s), company(ies) and/or entity(ies) which are listed in Question #4(i) above, were engaged by the NSWMA and/or anyone acting on its behalf;*
- iii. The name(s) of the NSWMA representative(s) who was/were directly involved in the contracting of each of the contractors which are listed in Question # 4(i) above.*

Please provide documentary evidence, where possible, in support of your response and/or any assertions which are made.”¹⁰⁴

In response to this question, which was dated 2009 July 8, Mrs. Joan Gordon-Webley, enclosed the following table:

¹⁰⁴ OCG’s Requisition to Mrs. Joan Gordon-Webley, which was dated 2009 June 3.

<i>Name of Original Contractor</i>	<i>Replacement Contractor</i>	<i>Date of Replacement</i>	<i>NSWMA Representative Involved</i>
<i>Romac Maintenance Services</i>	<i>none</i>	<i>none</i>	<i>None</i>
<i>Lloyd Neil</i>	<i>Stanley Davis</i>	<i>16th February, 2008</i>	<i>Alvin Williams</i>
<i>Downtown Kingston Management District (DKMD)</i>	<i>Lewis & Family</i>	<i>16th June, 2008</i>	<i>Audley McLean & David Bloomfield</i>
<i>Morgan's Disposal Services / Patricia Morgan (Zone II)</i>	<i>Domestic and Environmental Cleaning Solutions</i>	<i>25th February, 2008</i>	<i>Janet Williams & David Bloomfield</i>
<i>Raphael Ragbar</i>	<i>Rupert Hall c/o RHD Trading</i>	<i>30th November, 2008</i>	<i>Bevenisha Moodie</i>
<i>Lennox Dickenson</i>	<i>St. Ann Logistic & Services</i>	<i>16th February, 2008</i>	<i>Alvin Williams</i>
<i>Donovan Wilson</i>	<i>Donovan Wilson</i>	<i>16th February, 2008</i>	<i>Alvin Williams</i>
<i>Basil Knight</i>	<i>Donovan Davis</i>	<i>12th March, 2008</i>	<i>Alvin Williams</i>
<i>Eastern Environmental Co. Ltd.</i>	<i>JAAPA Service</i>	<i>5th January, 2009</i>	<i>Janet Williams & David Bloomfield</i>
<i>Sovereign Resources (UK) Limited</i>	<i>Geokar Associates Limited</i>	<i>21st February, 2008</i>	<i>Janet Williams & David Bloomfield</i>

The Procurement Methodology which was used to engage the services of the Replacement Contractors

In order to ascertain whether the NSWMA adhered to the GOJ procurement guidelines in the contracting of the referenced replacement contractors, the OCG, in its Requisition, to Mrs. Gordon-Webley, which was dated 2009 June 3, asked the following question:

For each of the contractors which have been named in Question #4(i) please detail the procurement methodology which was employed in the contracting of the listed contractor(s), company(ies) and/or entity(ies). Please provide the following, where possible, in support of your response:

- i. A copy of the tender document, request for proposal and/or letter of invitation to tender which was issued by the NSWMA;*
- ii. A copy of the quotation(s) and/or bid(s) which was/were submitted by each of the contracted parties;*
- iii. A copy of the NSWMA's tender evaluation report for each of the respective contracts which were awarded;*
- iv. A copy of the NSWMA's Procurement Committees' written recommendation and/or approval to engage each of the contractors which have been named in Question #4(i)."*

Mrs. Joan Gordon-Webley, in her sworn response to the OGG's Requisition, which was dated 2009 July 8, submitted the requisite documents.

The OCG conducted a review of the documents and the following were identified:

The Contracting of Mr. Stanley Davis

In response to the OCG's Requisition, which was dated 2009 July 8, Mrs. Joan Gordon-Webley indicated that Mr. Stanley Davis replaced Mr. Lloyd Neil, at the NSWMA, on 2008 February 16, by way of the Direct Contracting Procurement Methodology.

The Tender Report which was submitted to the OCG, by Mrs. Gordon-Webley, indicated that the 'Scope of Work' was *"To use One (1) 20 cubic yard Compactor unit... for Ninety Two (92) days. Period: October 01-Decemeber 31, 2008. To collect solid waste from the following areas in St. Mary:*

Collection of solid waste is to be made in the following areas:

*Gayle, Tower Isle, Charles Town, Tree Hills, Arcadia an [sic] environs. \$154,070.00 per month. Any other emergency or otherwise assigned work that may be safely carried out during the contracted period."*¹⁰⁵

It was stated in the '**METHODOLOGY**' that *"Due to the urgent and sensitive nature of the work required in the parish the following was considered:*

- (a) The severe backlog of waste and complaints from citizens*
- (b) A compactor was needed in order to avert the out break of disease*
- (c) It should be noted that the unit currently operates under request for Proposed Extension of Garbage Collection by the Executive Director...*
- (d) To avoid the infestation of rodents*
- (e) NEPM used the Limited Tender procedure"*¹⁰⁶

¹⁰⁵ Tender Report for the Contracting of Mr. Stanley Davis.

¹⁰⁶ Tender Report for the Contracting of Mr. Stanley Davis.

In the ‘ANALYSIS OF TENDERS’ it was indicated that *“The contractor was evaluated on the basis of responsiveness; the satisfactory nature of the work previously done for the authority by the contractor, co-cooperativeness[sic], the contractor’s previous ability to follow instructions and value for money was critical in this decision.”*¹⁰⁷

The NSWMA also submitted to the OCG, a copy of Mr. Stanley Davis’ NCC registration which was valid until 2009 September 2 and a copy of his TCC which was valid until 2008 December 20.

It is instructive to note that Mrs. Gordon Webley, in her sworn response to the OCG’s Requisition, indicated that Mr. Stanley Davis replaced Mr. Lloyd Neil, at the NSWMA, on 2008 February 16, but the tender report indicated that Mr. Davis was contracted during the period 2008 October 01 to 2008 December 31. Therefore, the OCG sought to ascertain how the services which were originally performed by Mr. Neil were dealt with during the period of 2008 February 16 to 2008 October 1.

In this regard, the OCG, in its Follow-Up Requisition, which was dated 2009 August 14 asked:

“In your sworn response to Question # 4 of the OCG’s requisition, which was dated 2009 July 9, you indicated that the services which were provided by Mr. Lloyd Neil were replaced by Mr. Stanley Davis, at the NSWMA on 2008 February 16. However, the Tender Report which was produced by you as supporting documentation in your response, indicated that Mr. Davis was contracted for the period of 2008 October 01 to 2008 December 31.

¹⁰⁷ Tender Report for the Contracting of Mr. Stanley Davis.

Please clarify this discrepancy and provide details of how the services which were originally provided by Mr. Neil were carried out during the period 2008 February 16 to 2008 September 30."¹⁰⁸

In response to the OCG's Requisition, which was dated 2009 August 31, Mrs. Gordon-Webley indicated, *inter alia*, that "During the period of February 16, 2008 to September 30, 2008 Stanley Davis carried out services in the area of St. Mary."¹⁰⁹ Five (5) Purchase Orders for the period were submitted as follows:

1. Purchase Order dated 2008 March 18, in the amount of \$230,640.00;
2. Purchase Order dated 2008 March 12, in the amount of \$59,080.00;
3. Purchase Order dated 2008 May 29, in the amount of \$154,070.00;
4. Purchase Order dated 2008 July, in the amount of \$154,070.00;
5. Purchase Order dated 2008 August 19, in the amount of \$154,070.00.

Based upon the foregoing, the services of Mr. Stanley Davis were engaged during the period of 2008 February 16 to 2008 September 30, without a formal agreement being in place. Further, payments were made with an aggregated value of \$751,930.00 during the period of 2008 March to 2008 August.

However, the OCG has seen a Tender Report and a Procurement Transmittal Form which suggest that a formal agreement was contemplated as at 2008 October. The OCG was, however, not provided with a copy of a written contract.

It is instructive to note that the Procurement Transmittal Form indicated that the contract was awarded using the Sole Source Procurement Methodology and the propose start date was 2008 October 1. In addition, the contract sum was \$462,210.00.

¹⁰⁸ OCG's Follow-Up Requisition which was dated 2009 August 14, to Mr. Stanley Davis.

¹⁰⁹ Letter which was dated 2009 August 31, from Mrs. Gordon-Webley in response to the OCG's Requisition.

It is instructive to note that by way of a letter, which was dated 2009 September 15, Attorneys-At-Law, Livingston, Alexander and Levy, wrote to the OCG on behalf of Mrs. Joan Gordon-Webley, “...to correct typographical errors in the Statutory Declaration of Joan Gordon-Webley”¹¹⁰ which was dated 2009 July 8, and to provide “... a Supplemental Statutory Declaration...”¹¹¹

In this “Supplemental Statutory Declaration” which was dated 2009 September 9, the following information, with regard to the contracting of Stanley Davis, stated “That at paragraph 8(a)(ii) of the Statutory Declaration I stated that the services of Stanley Davis commenced on the 16th February, 2008 and at paragraph 10(a)(i) of the Statutory Declaration I exhibited the documents relative to the procurement of the services of Stanley Davis. Whereas I am unable to locate a document which confirms the exact date upon which the services of Stanley Davis commenced, further investigations have uncovered the Purchase / Service Order dated the 12th March, 2008, relative to the services of Stanley Davis, which state that the bill was in respect of services provided during the period the 16th February, 2008 to the 29th February, 2008 and I exhibit hereto, marked “C” for identification, a copy of the said Purchase / Service Order.”¹¹²

The Contracting of Lewis and Family Construction and Cleaning Service

Mrs. Joan Gordon-Webley, in her sworn response to the OCG’s Requisition, which was dated 2009 July 8, indicated that Lewis and Family Construction and Cleaning Service replaced Downtown Kingston Management District (DKMD) on 2008 June 16.¹¹³

A Tender Report which was submitted to the OCG, by Mrs. Gordon-Webley, indicated that Lewis and Family Construction and Cleaning Service was contracted using the

¹¹⁰ Letter which was dated September 15, 2009 from Livingston, Alexander and Levy, Attorneys-at-Law.

¹¹¹ Letter which was dated September 15, 2009 from Livingston, Alexander and Levy, Attorneys-at-Law.

¹¹² Letter which was dated September 15, 2009 from Livingston, Alexander and Levy, Attorneys-at-Law.

¹¹³ Letter which was dated 2009 July 9 from Mrs. Joan Gordon-Webley in Response to the OCG’s Requisition.

Limited Tender Procurement Methodology. The scope of the work was *“To supply Sweeping Services in Downtown Kingston Zone 1 as described in the attached boundary document and in keeping with the attached Bill of Quantities and Scope of Works document...”*¹¹⁴

It was indicated on the Procurement Transmittal Form that invitations to provide proposals were sent to five (5) contractors, namely:

1. Geokar Associates Limited;
2. Domestic and Environmental Cleaning Solutions Limited (DECS);
3. Heathenson Limited;
4. Lewis and Family Construction and Cleaning Service; and
5. Clarke’s Pest Control.

The Procurement Transmittal Form also stated that four (4) of the five (5) companies which were invited to tender, had responded to the invitation. Geokar Associates Limited and Domestic and Environmental Cleaning Solutions Limited (DECS) had submitted letters, which indicated that they were not interested in the tender, whilst Heathenson Limited and Lewis and Family Construction and Cleaning Service submitted quotations which were subsequently evaluated. Clarke’s Pest Control did not respond to the invitation to tender.

The Comparative Estimate for the referenced procurement was in the amount of J\$3,319,744.60.

¹¹⁴ Tender Report which was submitted by Mrs. Joan Gordon-Webley, and which was used in the contracting of ‘Lewis and Family’.

Lewis and Family Construction and Cleaning Service, the lowest evaluated bidder, was recommended for the award of contract in the sum of \$3,490,000.00¹¹⁵ The Tender Report indicated that the contract period was for 2008 June 16 to 2008 October 15.¹¹⁶

The OCG has observed a discrepancy with respect to the bid which was offered by Lewis and Family Construction and Cleaning Service. The Procurement Transmittal Form indicated that the bid which was offered was in the amount of J\$3,490,000.00.

Of note, is the fact that the recommendation to award the contract to Lewis and Family Construction and Cleaning Service was approved by the NSWMA's Procurement Committee, and the award of contract was reported, to the OCG, on the 2008 2nd Quarter QCA Report. However, the contract sum of J\$3,319,744.60 was recorded on the NSWMA's Tender Report and reported to the OCG, by way of the NSWMA's 2nd Quarter QCA Report.

It is instructive to note that the OCG identified the following discrepancies with the tender process.

1. The OCG was provided with an invitation to tender from the NSWMA, which was dated 2008 June 13, that was addressed to Clarke's Pest Control, which indicated that responses should be submitted on 2008 June 16.
2. The date of the invitation to tender, that is 2008 June 13, was also identified in letters which were dated 2008 June 15, that were addressed to the NSWMA from Geokar Associates Limited and Domestic & Environmental Cleaning Solutions (DECS), in which both companies declined to participate in the referenced tender.

¹¹⁵ Tender Transmittal Form

¹¹⁶ Tender Report used in the contracting of Lewis and Family Construction and Cleaning Service.

3. Lewis and Family Construction and Cleaning, submitted to the NSWMA, a Company Profile Form, which was dated 2008 June 10, in application for the referenced tender. This was three (3) days before Geokar Associates Limited, Domestic & Environmental Cleaning Solutions (DECS) and Clarke's Pest Control were invited to tender, by the NSWMA.

Initially, a copy of the signed contract between the NSWMA and Lewis and Family Construction and Cleaning Service was not submitted to the OCG. In this regard, the OCG sent a Follow-Up Requisition, which was dated 2009 August 14, to Mrs. Joan Gordon-Webley, in which she was asked the following question:

“Was there any written contract agreement between the NSWMA and Lewis & Family? If yes, please provide a copy(ies) of same”¹¹⁷

Mrs. Joan Gordon-Webley, in her sworn response to the OCG's Requisition, which was dated 2009 August 31, indicated that:

“There was a written contract between the NEPM Waste Management Limited and Lewis and Family Construction and Cleansing Services...” A copy of this contract was submitted to the OCG as documentary evidence.

Contracting of Domestic & Environmental Cleaning Solutions (DECS)

Domestic & Environmental Cleaning Solutions (DECS) replaced Morgan's Disposal Services/Patricia Morgan as a public cleansing contractor on 2008 February 25. The NSWMA submitted several documents relating to the contracting of Domestic & Environmental Cleaning Solutions (DECS). The documentation included, Procurement

¹¹⁷ Follow-Up Requisition to Mrs. Joan Gordon-Webley, which was dated 2009 August 14.

Committee and Board Sub-Committee Approvals, bid submissions, a Tender Report and a Procurement Transmittal Form.

Based upon the documents which were provided to the OCG, by the NSWMA, the Limited Tender Procurement Methodology was purportedly utilized. Three (3) entities had expressed an interest and Domestic & Environmental Cleaning Solutions (DECS) was recommended for the award of the contract.

The contract was in the amount of \$3,454,335.50 and the contract duration was for a period of three (3) months. The other two (2) entities which had purportedly expressed an interest were Sparkle Services, and Good Works Sanitation and Maintenance Services.¹¹⁸

Based upon the documents which were submitted to the OCG, the three (3) companies were selected to participate in this tender after they wrote to the NSWMA expressing an interest in providing public cleansing services to the NSWMA. The OCG has seen no evidence to indicate that a Request for Proposal was sent to these entities.

It is instructive to note that letters of interest had a variance in time ranging from 2007 December 10 to 2008 January 29. In point of fact, the Letter of Interest from Domestic & Environmental Cleaning Solutions (DECS) was dated 2008 January 29, Sparkles Services' Letter of Interest was dated 2007 December 17 and Good Works Sanitation and Maintenance Services' Letter of Interest was dated 2007 December 10.

Of note, is the fact that the Tender Transmittal Form did not provide the proposed cost from the respective bidders. However, it was noted that Domestic & Environmental Cleaning Solutions (DECS) was reported as being selected because it "...has vast

¹¹⁸ Procurement Transmittal Form used in the contracting of DECS.

experience in operating compactors & tippers. This company provides units to the Supplementary fleet of MPM.”¹¹⁹

It was also stated on the Transmittal Form that *“Emergency procurement guidelines will be used to ensure continuation of essential services at the previous contract rates.”*¹²⁰

The said contract was for the cleansing of Zone 11 (Stony Hill, Golden Spring, Constant Spring Gardens, Havendale, and Meadowbrook).¹²¹

Mrs. Gordon-Webley, in her sworn response to the OCG’s Requisition, which was dated 2009 July 8, indicated that Domestic & Environmental Cleaning Solutions (DECS) was contracted using the Direct Contracting Procurement Methodology for this procurement. This contradicted the information which was written on the Procurement Transmittal Form which was submitted by her, as it indicated that the Limited Tender Methodology was used.

Consequently, in a Follow-up Requisition, which was dated 2009 August 14, the OCG asked the following question:

“In your sworn response to Question # 6 of the OCG’s requisition, which was dated 2009 July 9, you indicated that the procurement methodology which was used in the contracting of DECS was the Direct Contracting methodology. However, the Procurement Transmittal Form which was provided by you as supporting documentation in your response to the OCG, indicated that the Limited Tender methodology was used. Please clarify this discrepancy.”

¹¹⁹ Procurement Transmittal Form used in the contracting of DECS.

¹²⁰ Procurement Transmittal Form used in the contracting of DECS.

¹²¹ Procurement Transmittal Form used in the contracting of DECS.

In response to this question, Mrs. Gordon-Webley, in her sworn response to the OCG's Requisition, which was dated 2009 August 31, indicated, *inter alia*, that "NSWMA engaged the services of Domestic and Environmental Cleaning Solutions Limited on February 25, 2008. The procurement method used was Limited Tender as outlined in NSWMA's procurement transmittal form which exhibited as "Exhibit M" in my previous Statutory Declaration. The said form shows that the three (3) lowest responsive tenderers were DECS, Good Works Sanitation and Maintenance Services and Sparkle Services. The NCC and TCC for the aforementioned companies were also exhibited. This shows that NSWMA invited and considered tenderers other than DECS and therefore the Direct Contracting Method was not used. Thus, the statement in my Statutory Declaration dated July 9, 2009 that the direct contracting methodology was use was clearly outlined in error."¹²²

However, the OCG does not agree with this posture given the relative disparity in the dates of the purported "Letters of Interest" as well as the absence of a Request for Proposal.

The Contracting of Rupert Hall T/As R.D.H. Trading

According to Mrs. Joan Gordon-Webley, in her sworn response to the OCG's Requisition, which was dated 2009 July 8, Mr. Rupert Hall T/As R.D.H. Trading was contracted by the NSWMA to replace Mr. Raphael Ragbar as a public cleansing contractor, on 2008 November 30.¹²³

¹²² Response from Mrs. Joan Gordon-Webley which was dated 2009 August 31.

¹²³ Mrs. Joan Gordon-Webley's response to the OCG's Requisition which was dated 2009 July 8.

According to the NSWMA's Procurement Report, Mr. Hall was contracted “ *...for the supply service in the form of Roving Team(s) to perform cleaning and sanitation in designated areas within the Buff Bay and surrounding area of Portland.* ”¹²⁴

The Procurement Methodology which was utilized was the Limited Tender Methodology, in which five (5) contractors were purportedly invited to provide quotations, namely: D&L Construction, Roberts Rich Look, Parmella Champagnie, Rupert Hall T/As R.D.H. Trading and A-Team Trucking and Equipment Limited.¹²⁵

The bidders were required to provide a valid NCC and TCC, Company profile and one (1) quotation on the prescribed Bill of Quantities. The OCG found that of the five (5) contractors, two (2) responded to the invitation, namely Mr. Rupert Hall/T/As R.D.H. Trading, with a bid price of \$240,150.00 bi-monthly (\$5,763,600.00 per annum) and A-Team Trucking and Equipment Limited, with a bid price of \$250,770.00.¹²⁶

The OCG has seen no evidence to indicate whether the quote which was provided by A-Team Trucking and Equipment Limited was bi-monthly or per annum.

According to the NSWMA's Procurement Report, Mr. Rupert Hall, T/As R.D.H. Trading, “*...proved to be the most competitive quotation when compared to the comparable estimate ...*” was the most experienced contractor, and was subsequently recommended for the award of contract in the sum of \$5,597,558.00 for a one year contractual period.¹²⁷

¹²⁴ Procurement Report, National Solid Waste Management Authority, NEPM, Region Roving Team 1 (Buff Bay, Portland).

¹²⁵ Procurement Report, National Solid Waste Management Authority, NEPM, Region Roving Team 1 (Buff Bay, Portland).

¹²⁶ Procurement Report, National Solid Waste Management Authority NEPM, Region Roving Team 1 (Buff Bay, Portland).

¹²⁷ Procurement Report, National Solid Waste Management Authority NEPM Region Roving Team 1 (Buff Bay, Portland)

The signed contract between the NSWMA and Mr. Rupert Hall T/As R.D.H. Trading, indicated that the contract sum was in the amount of \$5,763,600.00 per annum, and that the contract duration was the period of 2008 November 30 to 2009 November 29.

However, the NSWMA did not submit a Procurement Transmittal Form, for this procurement or the bid submissions from the responsive bidders.

Consequently, the OCG, in its Follow-up Requisition to Mrs. Joan Gordon-Webley, which was dated 2009 August 14, asked the following question:

“With regard to the contracting of Mr. Rupert Hall, please provide the following:

- i. A copy of the Tender Transmittal form;*
- ii. A copy of the submissions which were made by all bidders, inclusive of the NCC registration, TCC, the Company Profile and the quotation on the prescribed quotation form.”*

In her response to the OCG’s Requisition, which was dated 2009 August 31, Mrs. Gordon-Webley indicated that *“attached hereto and marked “JGW6” for identification is a bundle of documents which have the information in respect of Rupert Hall. We are trying to locate the documents for the other bidder. A –Team Trucking and Equipment Limited.”*¹²⁸

The Procurement Transmittal Form indicated that this procurement was approved by the NSWMA’s Procurement Committee.

Of note, is that the NSWMA also recorded this procurement on the 4th quarter report of the OCG’s QCA Report.

¹²⁸ Letter which was dated 2009 August 31 from Mrs. Joan Gordon-Webley in response to the OCG’s Requisition.

Based upon the foregoing, it was found that although the NSWMA purportedly sent invitations to five (5) contractors, namely: D&L Construction, Roberts Rich Look, Parmella Champagnie, Rupert Hall T/As R.D.H. Trading and A-Team Trucking and Equipment Limited, only three (3) letters of invitation were submitted to the OCG as documentary evidence. The referenced letters were addressed to D&L Construction, Roberts Rich Look and Parmella Champagnie.

The NSWMA did not submit to the OCG, the letters of invitation which were sent to the two (2) bidders, which responded to the invitation, namely: Rupert Hall T/As R.D.H. Trading and A- Team Trucking and Equipment Limited.

Contracting of St Ann's Logistic & Services Limited

According to Mrs. Joan Gordon-Webley, in her sworn response to the OCG's Requisition, which was dated 2009 July 8, St. Ann's Logistic & Services Limited was contracted by the NSWMA to replace Lennox Dickenson on 2008 February 16. On the Procurement Transmittal form, which was provided to the OCG, by Mrs. Gordon-Webley, it was indicated that St. Ann's Logistic & Services Limited was contracted to "To provide labourers to do sweeping and bush whacking activities." ¹²⁹

The OCG has seen evidence of two (2) Procurement Transmittal Forms which revealed that in both instances the Sole Source Procurement Methodology was utilized in the contracting of St. Ann's Logistic & Services Limited. The referenced contracts were scheduled to commence on 2008 October 1 and 2008 December 1, respectively.

The documentation which was provided to the OCG revealed that the contractor had provided quality service to the NEPM Waste Management Limited on prior occasions.

¹²⁹ Procurement Transmittal form used in the contracting of St. Ann Logistic & Services Limited.

The contract value, in each instance was \$192,427.20 and the procurement was approved by the NSWMA's Procurement Committee on 2008 October 9.¹³⁰

The Procurement Transmittal Form for the referenced procurement also indicated that this was an *"Extension of contract, contractor has previously worked for the NEPM satisfactorily."*¹³¹

Of note, is the fact that although Mrs. Gordon-Webley indicated that St. Ann's Logistic & Services Limited was contracted by the NSWMA to replace Mr. Lennox Dickenson on 2008 February 16, the OCG was not provided with a copy of the referenced contract.

In addition, the documentation which was provided to the OCG was specifically in relation to services which were scheduled to commence on 2008 October 1 and 2008 December 1, approximately seven (7) post the purported replacement of Mr. Lennox Dickenson.

Consequently, the OCG sent a Follow-Up Requisition to Mrs. Gordon-Webley on 2009 August 14, which posed the following question:

*"Was there any written contractual agreement between the NSWMA and St. Ann Logistic & Services? If yes, please provide a copy of the signed contract?"*¹³²

In response to the OCG's Requisition, which was dated 2009 August 31, Mrs. Gordon-Webley indicated that *"Our searches of the files at NSWMA reveal that no written agreement exists between NSWMA and St. Ann Logistic & Services."*¹³³

¹³⁰ Procurement Report used in the contracting of St. Ann Logistic & Services Limited.

¹³¹ Procurement Transmittal form used in the contracting of Donavon Wilson.

¹³² The OCG's Follow-Up Requisition to Mrs. Gordon-Webley, which was dated 2009 August 14.

¹³³ Letter which was dated 2009 August 31, from Mrs. Gordon-Webley in response to the OCG's Requisition.

The Contracting of Mr. Donavon Wilson

According to Mrs. Joan Gordon-Webley, in her sworn response to the OCG's Requisition, which was dated 2009 July 8, after Mr. Wilson's contract was terminated on 2008 January 23, he was again contracted by the NSWMA, on 2008 February 16, to collect garbage.

The OCG also found that Mr. Wilson was contracted in more than one instance by the NSWMA, as evidenced by several Procurement Transmittal Forms relating to the contracting of Mr. Wilson, which were submitted to the OCG by the NSWMA. The following table displays information which was gathered from the referenced Procurement Transmittal Forms and Tender Reports:

Procurement Description	Proposed Start Date	Contract sum	Contract Duration	Date of Approval by Procurement Committee	Date of Approval by Executive Director	Remarks
To provide one (1) 2.4 cubic yards compactor unit to do collection and disposal of solid waste.	July 1, 2008	\$12, 000. Per trip- \$480,000.00	Thirty One (31) days.	August 25, 2008	September 8, 2008	Contractor has previously worked for NEPM. Extension of Contract.
To provide one (1) 25 cubic yard compactor to collect waste in Annotto Bay, Enfield, Epsom, , Castleton and Dover.	August 1, 2008	480,000.00	Thirty One (31) days.	September 29, 2008	November 10, 2008	Extension of contract. Contractor was selected from pool of supplementary fleet and had worked satisfactorily for NEPM previously.
To provide one (1) 25 cubic yard compactor to collect waste in Annotto Bay, Enfield, Epsom, Castleton and Dover	September 1, 2008	\$480,000.00	Thirty (30) Days	September 10, 2008	November 17, 2008	Contractor has previously worked satisfactorily for NEPM and was selected from a pool of supplementary fleet.
To provide labourers to do sweeping and highway pickups.	October 1, 2008	\$271,685.57	Thirty one (31) days			

The Contracting of Mr. Donavon Davis

According to Mrs. Gordon-Webley, in her sworn response to the OCG's Requisition, which was dated 2009 July 8, Mr. Donavon Davis was contracted to replace Mr. Basil Knight, on 2008 March 12.

According to a NSWMA Purchase/Service Order, which was dated 2008 March 12, Mr. Davis was contracted "*To supply labour and supervision for the collection and disposal of solid waste from Annotto Bay, Junction, Castleton and environs to Doctor's Wood landfill.*" The value of this contract was in the sum of \$42,200.00¹³⁴

The Contracting of J.A.A.P.A. Services Limited

Mrs. Joan Gordon-Webley, in her sworn response to the OCG's Requisition, which was dated 2009 July 8, indicated that J.A.A.P.A. Services Limited was contracted to replace Eastern Environmental Company Limited on 2008 January 5.

The NSWMA's Procurement Transmittal Form, which was submitted to the OCG, by Mrs. Gordon-Webley, indicated that the Selective Tender Procurement Methodology was utilized in the engagement of J.A.A.P.A. Services Limited.

The OCG also found that there were three (3) letters of interest from three (3) different companies, namely:

1. Vanse Investment Limited - dated 2007 December 12.
2. WAL Construction - dated 2007 November 8.
3. J.A.A.P.A. Services Limited - dated 2007 December 20.

¹³⁴ Purchase Order which was dated 2008 March 12 from the NEPM to Donovan Davis

The Procurement Transmittal Form also indicated that the aforementioned contractors were the “*Lowest Responsive Tenderers*”.

The letter from Vanse Investment Limited, which was dated 2007 December 12, to the NSWMA stated that:

“We the above-mentioned company would like to be considered for a contract for the Garbage Collection with the National Waste Management Authority.

Enclosed, please find the NCC and TCC Registration in the required category. We are anticipating a favorable response to same. Thank you”.

The letter from WAL Construction, to the NSWMA, which was dated 2007 November 8, indicated, *inter alia*, that:

“I herein apply for a job as contractor in the Zone 9 area of Kingston and will furnish you with a copy of my TCC and NCC License at your request.”

The letter from J.A.A.P.A. Services Limited, to the NSWMA, which was dated 2007 December 20, indicated that:

“This serves to introduce to you J.A.A.P.A. Services Ltd., we provide a range of services including waste management, garbage disposal, landscaping, general cleaning and janitorial services.

We are desirous of becoming a service provider for your organization and any assistance provided would be greatly appreciated, we stand ready to join you as soon as you will need us, and we assure you that our organization is committed to maintaining the high standard of service you strive for.”

The NSWMA's Procurement Transmittal Form indicated that J.A.A.P.A. Services Limited was awarded the contract for the cleaning of the Zone 6 area (Harbour View, Port Royal and Bull Bay) using the Selective Tender Methodology. It also indicated that the proposed start date of this contract was 2008 January 5, and that the contract duration was three (3) months. The contract amount was \$1,237,067.10.¹³⁵

The Procurement Transmittal Form also indicated that *"Emergency Procurement Guidelines were used to effect [sic] continuation of works on the previously contracted value."*¹³⁶ It was also indicated that J.A.A.P.A Services Limited has *"Indepth knowledge of the service delivery Area (ie. Harbour View) and experience in the solid waste management field."*

Of note, is the fact that the Procurement Transmittal Form did not indicate the quotations which were given by each contractor.

Based upon the representations which were made to the OCG, that J.A.A.P.A. Services Limited was selected for the contract out of a list of three (3) contractors, which had expressed an interest in providing the service to the NSWMA, and also the fact that there was no indication that there was any advertisement for this contract, the OCG is of the considered opinion that the procurement would appear to fit more closely to that of the Limited Tender Procurement Methodology.

However, it is instructive to note that the letters of interest which were submitted by the three (3) companies did not appear to be in response to a specific Request for Proposal or Request for Quotation, and the NSWMA did not submit copies of any request for proposal to these entities.

¹³⁵ Procurement Transmittal Form

¹³⁶ Letter from Mrs. Joan Gordon-Webley which was dated 2009 July 9.

Additionally, based upon the contents of the letters, the contractors only expressed interest in providing a non-specific service or several services to the NSWMA. The referenced letters were not written in direct response to a Request for Proposal or Request for Quotation.

In fact, the letter from WAL Construction indicated that the company was applying to work in the Zone 9 area, while the Procurement Transmittal Form indicated that this contract was for “Zone 6 KSA (Harbour View, Port Royal, Bull Bay)” area. The foregoing buttresses the OCG’s considered opinion that the aforementioned letters were not written in response to a specific Request for Proposal or a Request for Quotation.

According to Section 2.1.3.3 of the then applicable GPPH (May 2001), with regard to the Limited Tender Methodology, “...procuring entities may contact appropriately qualified contractors on the register and invite them to participate.”

Although the NSWMA classified the contracting of J.A.A.P.A. Services Limited as an emergency procurement there is no evidence to indicate that there was a Request for Quotations or Proposals. Also, the Procurement Transmittal Form did not include the amount proposed by each contractor.

Additionally, the OCG has seen no evidence to indicate that the three (3) contractors were evaluated prior to the award of the contract to J.A.A.P.A. Services Limited.

In this regard, the Procurement Transmittal Form only indicated that J.A.A.P.A Services Limited had “*Indepth knowledge of the service delivery Area (i.e. Harbour View) And experience in the solid waste management field.*”¹³⁷ However, there was no other documentation which attested to how the selection was made.

¹³⁷ Procurement Transmittal Form used in the contracting of J.A.A.P.A Services Limited.

It is instructive to note that the OCG, in its Follow-Up Requisition to Mrs. Joan Gordon-Webley, which was dated 2009 August 14, asked the following Question:

*“Was there any written contractual agreement between the NSWMA and J.A.A.P.A Services Limited? If yes, please provide a copy of the signed contract?”*¹³⁸

In her sworn response to the OCG’s Requisition, which was dated 2009 August 31, Mrs. Joan Gordon-Webley indicated that *“There was a written contract between NEPM Waste Management Limited and Lewis and JAAPA Services Limited.”*

A review of the signed contract, by the OCG, revealed that the agreement was created on 2008 January 5, between MPM Waste Management Limited and J.A.A.P.A Services Limited.

Mrs. Joan Gordon-Webley was also asked in the Follow-up Requisition, which was dated 2009 August 14, to clarify the contradiction in the procurement methodology which was purportedly employed. In this regard, the OCG asked the following question:

*“In your sworn response to Question # 6 of the OCG’s requisition, which was dated 2009 July 9, you indicated that J.A.A.P.A Services Limited was contracted using the Direct Contracting Procurement methodology. However, the Procurement Transmittal Form which was provided by you, in your response to the OCG, indicated that the Selective Tender Methodology was used. Please clarify this discrepancy.”*¹³⁹

¹³⁸ OCG’s Follow-Up Requisition which was dated 2009 August 14.

¹³⁹ The OCG’s Follow-up Requisition which was dated 2009 August 14, to Mrs. Joan Gordon-Webley, Question # 10.

In her sworn response to the OCG's Requisition, which was dated 2009 August 31, Mrs. Gordon-Webley indicted that the *"NSWMA engaged the services of JAAPA on January 5, 2008. The procurement method used was Selective Tender as outlined in NSWMA's procurement transmittal form which was exhibited as "Exhibit R" in my previous Statutory Declaration. The said form shows that the three (3) lowest responsive tenderers were WAL Construction & Maintenance, Vanze Investment Limited and JAAPA Services Limited. The NCC and TCC for the aforementioned companies were also exhibited. This shows that NSWMA invited and considered tenderers other than JAAPA and therefore the Direct Contracting Method was not used. Thus, the statement in my Statutory Declaration dated July 9, 2009 that the direct contracting methodology was used was clearly outlined in error."*¹⁴⁰

The OCG found that, contrary to the foregoing assertion of Mrs. Joan Gordon-Webley, regarding the contracting of J.A.A.P.A. Services Limited, the procurement methodology which was utilized by the NSWMA was akin to that of the Limited Tender methodology.

It is instructive to note that by way of a letter, which was dated 2009 September 15, Livingston, Alexander & Levy, Attorneys-At-Law, wrote to the OCG, on behalf of Mrs. Joan Gordon-Webley, to " ... *inter alia, correct typographical errors in the Statutory Declaration of Joan Gordon-Webley.*"¹⁴¹ which was dated 2009 September 9, and to provide "... *a Supplemental Statutory Declaration.*."¹⁴²

In the referenced *"Supplemental Statutory Declaration"* which was dated 2009 September 9, the following information, with regard to J.A.A.P.A Services Limited was provided:

¹⁴⁰ Response from Mrs. Joan Gordon-Webley which was dated 2009 August 31, Question # 31.

¹⁴¹ Letter which was dated September 15, 2009 from Livingston, Alexander and Levy, Attorneys-at-Law.

¹⁴² Letter which was dated September 15, 2009 from Livingston, Alexander and Levy, Attorneys-at-Law.

“That at paragraph 8(a)(ix), formally 8(a)(iv) on page 7, of the Statutory Declaration I stated that the date upon which the services of JAAPA Service commenced was the 5th January, 2009 whereas the correct date was the 30th January, 2008.”

However, it is instructive to note that the contract which was consummated with J.A.A.P.A Services Limited was dated 2008 January 5, and not 2008 January 30, as previously indicated by Mrs. Gordon-Webley.

The Contracting of Geokar Associates Limited

Mrs. Gordon-Webley, in her sworn response to the OCG’s Requisition, which was dated 2009 July 8, indicated that Geokar Associates Limited was contracted to replace Sovereign Resources (UK) Limited on 2008 February 21, using the Direct Contracting Procurement Methodology.¹⁴³

However, the Procurement Transmittal Form indicated that the procurement methodology which was used was that of the Selective Tender Procurement Methodology.

The OCG also found that there were three (3) letters of interest for the provision of services to the NSWMA from three (3) different contractors, namely:

- a. Robert Ewart/ T/As Sparkle Services – dated 2007 December 17;
- b. Geokar Associates Limited – dated 2007 September 12;
- c. Riverton Meadows Trucking & Disposal Co-operative Society Limited – dated 2008 January 29.

The letter from Robert Ewart/T/As Sparkle Services, to the NSWMA, which was dated 2007 December 17, and which was captioned ‘*Re: Waste Removal Services*’, stated that:

¹⁴³ Letter from Mrs. Joan Gordon-Webley which was dated 2009 July 9.

“This serves to inform you that I am interested in performing domestic waste collection on behalf of MPM/NSWMA over and above my current meager involvement.

Sparkle Services is fully registered with the NCC and has its TCC up to date. We are very experienced in the area of garbage collection and we can provide any additional resources required at short order...”¹⁴⁴

The letter from Geokar Associates Limited, to the NSWMA, which was dated 2007 September 12, under the caption: ‘*Re: Application for Sweeping/Collection of Garbage*’, indicated that:

“We are hereby submitting an application for a sweeping/collection of garbage contract or any other contracts which is available within your organization. We are registered with the National Contractors [sic] Commission and our Tax Compliance Certificate is up-to-date.

*We are an experience [sic] company with a verifiable tract [sic] record.”*¹⁴⁵

The letter from Riverton Meadows Trucking & Disposal Co-operative Society Limited, which was addressed to the NSWMA, and which was dated 2008 January 29, stated that:

“The Riverton Meadows Trucking & Disposal Cooperation Society is hereby expressing sincere interest in the Solid Waste collection and sweeping contract in the parish of Kingston and St. Andrew.

¹⁴⁴ Letter from Sparkle Services, which was dated 2007 December 17, to the NSWMA.

¹⁴⁵ Letter from Geokar Associates Limited, which was dated 2007 September 12, to the NSWMA

The cooperative society has been operating from the year 2003 to present and is very much equipped, experience [sic] as well as ready to undertake such operations.

Presently this organized group resources comprises [sic] of 12 Trucks inclusive of Tippers and Compactors, 5 Administrators and 12 Drivers... ”¹⁴⁶

The Procurement Transmittal Form indicated that this contract was for “*Zone 16 Sweeping and Collection Services.*” It also indicated that the proposed start date of the contract was 2008 February 21. The contract sum was \$2,514,989.90, for a three (3) month period. However, the Procurement Transmittal form did not indicate the bid amount for the respective contractors.

Additionally, the Procurement Transmittal Form which was used in the contracting of Geokar Associates Limited indicated that “*Emergency procurement guidelines were used to manage the emergency situation in order to continue the essential services at the previous contract value.*”¹⁴⁷

Based upon the fact that Geokar Associates Limited was selected for the contract out of a list of three (3) contractors who expressed an interest in providing cleaning services and also the fact that there was no advertisement for this contract, this procurement appears to fit more closely with the Limited Tender Procurement Methodology.

According to Section 2.1.3.3 of the then applicable GPPH (May 2001), with regard to the Limited Tender Methodology, “*procuring entities may contact appropriately qualified contractors on the register and invite them to participate.*”

¹⁴⁶ Letter from Riverton Meadows Trucking & Disposal Co-operative Society, which was dated 2008 January 29, to the NSWMA.

¹⁴⁷ Procurement Transmittal form used in the contracting of Geokar Associates Limited

It is also instructive to note that the letters of interest, which were submitted by the three (3) contractors, did not appear to be in response to a specific Request for Proposal or Request for Quotation, and the NSWMA did not submit to the OCG, copies of the Request for Proposals which should have been sent to the referenced entities.

Additionally, based upon the contents of the letters, the contractors only expressed an interest in providing a service or several services to the NSWMA and were not responding to a specific Request for Proposal nor did they indicate a proposed contract sum.

Further, the letters from the three (3) entities had varying dates which were not within the same time frame. In point of fact, the letters of interest, which spanned a period of five (5) months were dated as follows:

1. Robert Ewart/T/As Sparkles Services - 2007 December 17;
2. Geokar Associates Limited - 2007 September 12;
3. Riverton Meadows Trucking & Disposal Co-operative Society Limited - 2008 January 29

Although the contracting of Geokar Associates Limited was said to be an emergency procurement, there is no evidence to indicate that there was a Request for Quotations or Proposals. Also, the Procurement Transmittal form did not include the amount proposed by each contractor.

Additionally, the OCG has seen no evidence to indicate that there was any evaluation of the three (3) contractors, prior to the award of the contract to Geokar Associates Limited. Based upon the information which was provided to the OCG, by the NSWMA, there was no indication as to how Geokar Associates Limited was selected for the contract.

The Procurement Transmittal indicated that *“Geokar Associates has knowledge of the Service delivery area and is currently in the pool of contractors that has provided to the N.S.W.M.A.”*¹⁴⁸

It is instructive to note that the OCG, in its Follow-Up Requisition which was addressed to Mrs. Joan Gordon-Webley, which was dated 2009 August 14, asked the following question:

*“Was there any written contractual agreement between Geokar Associates Limited and the NSWMA? If yes, please provide a copy(ies) of same?”*¹⁴⁹

In her sworn response to the OCG’s Requisition, which was dated 2009 August 31, Mrs. Joan Gordon-Webley indicated that *“There was a written contract between NEPM Waste Management Limited and Geokar Associates Limited.”*¹⁵⁰

A review of the signed contract, by the OCG, revealed that the agreement was created on 2008 February 21, between MPM Waste Management Limited and ‘Geokar Associates Ltd.’

Mrs. Joan Gordon-Webley was also asked by the OCG, in its Follow-up Requisition, which was dated 2009 August 14, to clarify the contradiction in the procurement methodology which was purportedly employed in the contracting of Geokar Associates Limited. In this regard, the following question was asked:

“In your sworn response to Question # 6 of the OCG’s requisition, which was dated 2009 July 9, you indicated that Geokar Associates Limited was contracted using the Direct Contracting Procurement methodology. However, the Procurement Transmittal Form

¹⁴⁸ Procurement Transmittal Form used in the Geokar Associates Limited

¹⁴⁹ OCG’s Follow-Up Requisition which was dated 2009 August 14.

¹⁵⁰ Response from Mrs. Joan Gordon-Webley, which was dated 2009 August 31.

*which was provided by you, in your response to the OCG, indicated that the Selective Tender Methodology was used. Please clarify this discrepancy.”*¹⁵¹

In her sworn response to the OCG’s Requisition, which was dated 2009 August 31, Mrs. Gordon-Webley indicated that *“The procurement method used was Selective Tender as outlined in NSWMA’s procurement transmittal form which was exhibited as “Exhibit S” in my previous Statutory Declaration. The said form shows that the three (3) lowest responsive tenderers were Geokar Associates Ltd., Riverton Meadows Trucking and Disposal Co-operative Society and Spankle [sic] Services. The NCC and TCC for the aforementioned companies were also exhibited. This shows that NSWMA invited and considered tenderers other than JAAPA [sic] and therefore the Direct Contracting Method was not used. Thus, the statement in my Statutory Declaration dated July 9, 2009 that the direct contracting methodology was used was clearly outlined in error.”*¹⁵²

Although Mrs. Joan Gordon-Webley asserted that the Selective Tender Methodology was used, the evidence does not suggest that this type of procurement methodology was used. Based upon the evidence which was presented, the OCG has found that the contracting of Geokar Associates Limited fits more closely with that of the Limited Tender procurement methodology.

The Contracting of Double Cannon Limited

The OCG, in its Requisition that was addressed to Mrs. Joan Gordon-Webley, which was dated 2009 June 3, asked the following question:

*“What goods, works and/or services was **Double Cannon** contracted to provide to the NSWMA?”*¹⁵³

¹⁵¹ The OCG’s Follow-up Requisition to Mrs. Joan Gordon-Webley, which was dated 2009 August 14.

¹⁵² Response from Mrs. Joan Gordon-Webley, which was dated 2009 August 31. Question # 11

¹⁵³ OCG Requisition to Mrs. Joan Gordon-Webley which was dated 2009 June 3. Question # 8

Mrs. Gordon-Webley, in her sworn response to the OCG's Requisition, which was dated 2009 July 8, indicated as follows:

- a. *"Double Cannon was contracted, during the period of the 1st September, 2008 to the 31st December, 2008, to provide one (1) D6 tractor to push, cover, spread and compact waste at the Tobalski in Saint Ann.*
- b. *Double Cannon was contracted, during the period of July, 2008 to December, 2008, to provide one (1) D10 tractor to push, cover, spread and compact waste at the Riverton Disposal Site.*"¹⁵⁴

The OCG found that the special conditions of the contract for the Tobalski disposal site were as follows:

"SCOPE OF WORKS

To provide one (1) D6 Tractor to push, cover, spread and compact waste at the Tobalski Disposal Site.

CONTRACT PERIOD

September 1-December 31, 2008

SUPPLY OF LABOUR

The Contractor shall supply all labour required for this contract.

PAYMENTS

1. *Payments for (September 1st –September 30, 2008) will be calculated at a rate of Four Thousand Dollars (\$4,000.00) per hour with a maximum of Eight (8) hours*

¹⁵⁴ Mrs. Gordon-Webley's sworn response to the OCG's Requisition, which was dated 2009 July 8.
Question # 8

*per day for Twenty five (25) days, or a total contract sum of **Seven Hundred and Thirty five Thousand Dollars (\$735,000.00).***

2. *Payments for (**October 1st-December 31st, 2008**) will be calculated at a rate of Four Thousand Dollars (\$4,000.00) per hour with a maximum of Eight (8) hours per day for Forty (40) days, or a total contract sum of **One Million One Hundred and Twenty Thousand Dollars (\$1,120,000.00)***
3. *Payment will be made upon confirmation from the Director of Landfill that the equipment described herein were provided and the work was satisfactorily done.*
4. *Payments will be made upon the submission of the invoice and signed tickets for the Work carried out by the Contractor.”¹⁵⁵*

The OCG found that the special conditions of the contract for the Riverton disposal site were as follows:

“SCOPE OF WORKS

To provide one (1) D10 Tractor to push, cover, spread and compact waste at the Riverton disposal site.

CONTRACT PERIOD

July 1-December 31, 2008

SUPPLY OF LABOUR

The Contractor shall supply all labour required for this contract.

¹⁵⁵ Contract between Double Cannon Limited and the NSWMA, which was dated 2008 September 1.

PAYMENTS

1. *Payment for **July 1-31, 2008** will be calculated at a rate of Fifteen Thousand Dollars (\$15, 000.00) per hour, for Twelve (12) hours per day, for Thirty one (31) days; or a total contract sum of **Five Million, Five Hundred and Eighty Thousand Dollars (\$5,580,000.00).***
2. *Payments for **August 1-31, 2008** will be calculated at a rate of Fifteen Thousand (\$15,000.00) Dollars per hour, for Twelve (12) hours per day, for Thirty one (31) days; not to exceed Three Hundred and Seventy Two hours for the contract period; or a total contract sum of **Five Million, Five Hundred and Eighty Thousand Dollars (\$5,580,000.00).***
3. *Payments for **September 1- 30, 2008** will be calculated at rate of Fifteen Thousand (\$15,000.00) Dollars per hour, for Twelve (12) hours per day, for Thirty (30) days; or a total contract sum of **Five Million, Four Hundred Thousand Dollars (\$5,400,000.00).**”¹⁵⁶*

However, it should be noted that the OCG has not seen any documentary evidence to indicate that approval was received from the NCC for the two (2) foregoing contracts.

Consequently, the OCG reviewed the NCC’s database in order to ascertain whether this contract was submitted to the NCC for its approval. There was, however, no record on the NCC database regarding this contract or any other contract between the NSWMA and Double Cannon Limited during the referenced contract period.

¹⁵⁶ Special Conditions of Contract for the Tobalski Site.

It is instructive to note that Section 2.1.3.3 of the GPPH (2001 May) states, *inter alia*, that “*All contracts for \$4M or greater must receive prior written approval from the NCC through the Accounting Officer.*”

It is also instructive to note that based upon the special conditions of the contract for the Riverton Disposal Site the total estimated contract amount for the period of 2008 July 1-2008 December 31 for Double Cannon Limited would have been approximately \$16,560,000.00 and, consequently, should have been submitted to the Cabinet for its approval.

According to Section 2.3 of the then applicable GPPH (May 2001) contracts valuing J\$15,000,000 and above required the receipt of Cabinet approval on the recommendation of the NCC and the Minister.

However, the OCG has not seen any evidence to indicate that Cabinet approval was sought and/or received for the referenced contract.

The OCG, in its Requisition that was addressed to Mrs. Joan Gordon-Webley, which was dated 2009 June 3, asked the following question:

*“Please detail the circumstances under which the services of **Double Cannon** was contracted, by the NSWMA, during the period of 2008 July to 2008 December. Where possible, please provide documentary evidence in support of your response and/or any assertions made.”*¹⁵⁷

Mrs. Gordon-Webley, in her sworn response to the OCG’s Requisition, which was dated 2009 July 8, indicated, *inter alia*, as follows:

¹⁵⁷ OCG Requisition to Mrs. Joan Gordon-Webley which was dated 2009 June 3. Question # 7

“a. Hudson Equipment had the contract to provide equipment for the landfills at Tobalski in Saint Ann, Hudden in Saint Ann and Doctor’s Wood in Portland. Operations were hampered by the fact that Hudson Equipment was not able to fuel and service the equipment for all three landfills on a timely basis. As a result of the difficulty that Hudon [sic] Equipment was experiencing, they asked to be released from their contracts to provide equipment for the landfills at Tobalski in Saint Ann and Hudden in Saint Ann. Hudson Equipment retained the contract for Doctor’s Wood in Portland. The contract for Tobalski in Saint Ann was given to Double Cannon and the landfill in Hudden in Saint Ann is now serviced using equipment belonging to the NSWMA...

b. (i) CAB Construction was contracted to provide a D10 tractor to the Riverton Disposal Site. CAB Construction did not own this piece of equipment but leased the same. When CAB Construction’s NCC expired on the 30th June, 2008, they decided to discontinue the contractual arrangement. This same D10 was then leased to Double Cannon by the owner. CAB Construction then elected to assign their contract to Double Cannon.

(ii) The D10 tractor is an extremely heavy and large piece of equipment. Because of its size, it is difficult to transport at [sic] D10 tractor to a Disposal Site. Further, to the best of my knowledge, information and belief, D10 tractors are also difficult to lease as there are few on the island that are not in constant use. Importantly however, the D10 tractor is an essential tool in fighting fires at the Riverton Disposal Site. I am informed by my site managers and do verily believe that the D10 tractor has been instrumental in assisting the NSWMA in reducing the time to extinguish fires at the Riverton Disposal Site from as long as eight (8) weeks to two (2) – four (4) days. The D10 tractor is therefore a piece of equipment that is essential to the NSWMA and the members of the public which have in the past been affected by the historically long fires at the Riverton Disposal Site.

*(iii) As a result of the foregoing, Double Cannon, the new leasee [sic] of the D10 tractor, was awarded the contract to supply the said D10 tractor to the Riverton Disposal Site.*¹⁵⁸

Mrs. Gordon-Webley also submitted a letter from C.A.B Construction as evidence to support the claims which were made in her foregoing response. In the referenced letter, which was dated 2008 September 2, Mr. Carlos Brown, Managing Director, C.A.B Construction, wrote to Ms. Moodie, the then Procurement Officer, NSWMA, and indicated that:

"I, Carlos Brown, Managing Director of CAB Construction, hereby assign contract for the rental of D10N at Riverton Dump to Double Cannon Limited, effective immediately.

I am also seeking your permission to do so, and ask that you extend to Double Cannon your usual kind courtesies, with thanks in advance."¹⁵⁹

Having regard to the foregoing, the OCG found that Double Cannon Limited was contracted to the NSWMA after C.A.B Construction decided that it would no longer be able to provide the requisite services to the NSWMA. Further, C.A.B Construction requested permission from the NSWMA to transfer the service contract to Double Cannon Limited.

In this regard, the OCG found that the contract which was held with C.A.B Construction was transferred to Double Cannon Limited without going through the relevant tender process.

¹⁵⁸ Mrs. Joan Gordon-Webley's response to the OCG's Requisition which was dated 2009 July 8.

¹⁵⁹ Letter from C.A.B Construction which was dated 2008 September 2.

Additionally, the OCG has not seen any evidence to indicate that the NSWMA had informed the NCC of C.A.B Construction's decision to transfer its service contract to Double Cannon Limited.

Of note is the fact that the contract between Double Cannon Limited and the NSWMA, for the D10 Tractor, was for the period of 2008 July 1 to 2008 December 31. However, the letter from C.A.B Construction, in which it transferred its service contract to Double Cannon Limited was dated 2008 September 2. In this regard, the OCG found that the effective date of the contract transfer (2008 September 2) occurred two (2) months after the commencement of the contract dated 2008 July 1.

Payments made to Double Cannon Limited

The OCG has found that several payments have been made to Double Cannon Limited from the NSWMA totaling \$24,681,820.40 for services provided at the Riverton Disposal Site. Reproduced in the table below are the total payments which were made to Double Cannon:

Table showing total payment to Double Cannon Limited for the Riverton Disposal Site

Date paid	Cheque Number	Amount \$
17/09/08	30065	4,380,000.00
17/09/08	30067	990,000.00
14/11/08	37047	2,616,750.00
27/11/08	32294	2,081,250.00
10/12/08	33098	5,197,000.00
10/12/08	33107	5,197,000.00
23/12/08	34044	2,022,320.40
31/12/08	34267	2,197,500.00
Total		24,681,820.40

Mrs. Gordon-Webley also indicated in her sworn statement to the OCG, which was dated 2009 July 8, that *“For services provided at the Tobalski in Saint Ann, Double Cannon has been paid \$1,743,000.00 for the period of July, 2008 to December, 2008...*

Table Showing Total Payments to Double Cannon Limited for the Tobalski Disposal site

Date	Amount	Type of Service	Cheque #
31/10/2008	\$632,000.00	Payment for hireage of D6 Tractor at Tobalski Landfill for period Sept. 2008.	2515013
6/11/2008	\$403,000.00	Payment for hireage of D6 Tractor at Tobalski Landfill for period Sept. to Oct. 2008.	2515019
30/11/2008	\$104,000.00	Payment for hireage of D6 Tractor at Tobalski Landfill for period Oct. 16-31, 2008.	0007789
30/11/2008	\$192,000.00	Payment for hireage of D6 Tractor at Tobalski Landfill for period Nov. 16-30, 2008	000782
31/12/2008	\$188,000.00 \$224,000.00	Payment for hireage of D6 Tractor at Tobalski Landfill for period Nov. 17-28, 2008 and for period Dec. 1-15, 2008	0008015
Total	\$1,743,000.00		

Contracting of Incomparable Enterprises Limited

A contract between MPM Waste Management Limited and Incomparable Enterprise was consummated on 2008 August 1, to provide “... *A Frontend Loader for the transporting of cover material and baled tyres to designated areas.*”¹⁶⁰

Mrs. Gordon-Webley, in her sworn response to the OCG’s Requisition, which was dated 2009 July 8, detailed the circumstances under which the services of Incomparable Enterprises Limited were contracted by MPM Waste Management Limited for the period of 2008 July to 2008 December.

Mrs. Gordon-Webley, in her sworn response to the OCG, indicated that “*In July 2008 a public appeal was made for owners of heavy equipment to furnish the same to assist NSWMA in fighting a fire at the Riverton Disposal Site. Incomparable Enterprise was one of several contractors who provided equipment and were subsequently engaged. During the course of fighting the fire, the NSWMA’s Fiatallis front end loader became non-operational. While NSWMA was in the process of repairing this piece of equipment, Incomparable Enterprise was retained because it had the required size equipment comparable to the Authority’s Fiatallis...*”¹⁶¹

A copy of the contract for Incomparable Enterprise was also submitted to the OCG as documentary evidence.

The contract indicated that the contract amount was \$5,000 per hour, and the contract period was 2008 August 1 to 2008 December 31.¹⁶²

¹⁶⁰ Contract between the NSWMA and Incomparable Enterprises Limited which is dated 2008 August 1.

¹⁶¹ Sworn Response from Mrs. Joan Gordon-Webley which was dated 2009 July 8.

¹⁶² Contract between the NSWMA and Incomparable Enterprises Limited.

The OCG also found that Incomparable Enterprises Limited was contracted after Mrs. Joan Gordon-Webley received a memorandum, which was dated 2008 July 28, from Andrine Stanhope, Director of Landfill, under the caption “*Sole Source- Incomparable Enterprises Riverton*”

The memorandum stated as follows:

*“Currently Incomparable Enterprises is operating a Front-end-Loader at the Riverton Landfill under the emergency invocation approval. I am seeking your permission to continue the use of their equipment through **Sole Source Methodology**. The NSWMA front-end-loader was damaged during the fire and the use of this equipment is vital to the daily operations at the site. I am recommending that the above contractor be considered for a contractual period from August 1, 2008 to December 31, 2008, which covers the extension period for heavy contractors granted by the NCC. Subsequently, an invitation for open tender will be conducted...”*¹⁶³

Payments made to Incomparable Enterprise Limited

It was stated in Mrs. Joan Gordon-Webley’s sworn response to the OCG’s Requisition, which was dated 2009 July 8, that “*For services provided at the Riverton Disposal Site, during the period of July 2008 to December, 2008, Incomparable Enterprise was paid \$5,143,977.37...*” A copy of the payments relative to Incomparable Enterprise was submitted as evidence. Detailed in the table below are the total payments which were made to Incomparable Enterprise Limited:

¹⁶³ Memorandum which was dated 2008 July 28, from, Ms. Andrine Stanhope, Director Landfill to Mrs. Joan Gordon-Webley.

Table Showing Payments to Incomparable Enterprises Limited for the period July 2008 to December 2008

<i>Date</i>	<i>Cheque Number</i>	<i>Amount</i>
17.10.2008	30678	1,330,917.00
23.12.2008	34045	2,726,393.71
31.12.2008	34266	515,833.33
31.12.2008	34426	570,833.33
Total		5,143,977.37

Based upon the contract amount, (\$5,143,977.37) and the fact that the procurement methodology was Sole Source, the referenced contract should have been submitted to the NCC for its endorsement. However, the OCG found that the NCC database does not have an endorsement for this contract.

Contracting of Efficient Haulage and Equipment Company Limited

Mrs. Joan Gordon-Webley, in her sworn response to the OCG's Requisition, which was dated 2009 July 8, stated the following:

*"Efficient Haulage and Equipment Company Limited was retained during the periods of the 14th August, 2008 to the 31st August, 2008 and from September, 2008 to December 2008. It became necessary to retain Efficient Haulage and Equipment Company Limited due to the constant breakdown of equipment provided by the previous contractor..."*¹⁶⁴

Mrs. Gordon-Webley also indicated that *"During of the period 14th August, 2008 to the 31st August, 2008, Efficient Haulage was contracted to provide one (1) D8 Tractor to spread soil over the garbage to prevent fires on the Retirement Landfill (WPM Waste Mgmt.)."*

¹⁶⁴ Response from Mrs. Joan Gordon-Webley, which was dated 2009 July 8, in response to the OCG's Requisition.

It was also indicated that *“During the period of September 2008 to December, 2008, Efficient Haulage was contracted to provide (1) D8 Tractor to spread soil over the garbage to prevent fires on the Retirement Landfill (WPM Waste Mgmt.).”*¹⁶⁵

A copy of the contract between the NSWMA and Efficient Haulage and Equipment Company Limited, which was dated 2008 August 14, was submitted as documentary evidence to the OCG.

The contract indicated that *“Payments will be calculated at a rate of Eight Thousand Five Hundred Dollars (\$8,500.00) per hour; not exceeding One Hundred and forty four (144) hours per day for the period of eighteen (18) days; or a total contract sum of One Million Two Hundred and Twenty Four (\$1,224,000.00)...”*¹⁶⁶

In a Follow-Up Requisition, that was addressed to Mrs. Joan Gordon-Webley, which was dated 2009 August 14, the following question was posed:

“With regard to the contracting of Efficient Haulage and Equipment Company Limited, please provide the following documents:

- i. A copy of the Tender Document;*
- ii. A copy of the Tender Evaluation Report; and*
- iii. A copy of the Tender Transmittal Form.”*¹⁶⁷

Mrs. Gordon-Webley, in her sworn response to the OCG’s Requisition, which was dated 2009 August 31, provided the OCG with the requisite documents. Upon a review of the documents, the OCG found that Procurement Committee approval was received on 2008

¹⁶⁵ Response from Mrs. Joan Gordon-Webley which was dated 2009 July 8, in response to the OCG’s Requisition.

¹⁶⁶ Contract between Efficient Haulage and Equipment Company Limited and the NSWMA, which was dated 2008 August 14.

¹⁶⁷ OCG’s Follow-Up Requisition to Mrs. Joan Gordon-Webley which was dated 2009 August 14.

August 23. It is instructive to note that the approval from the Executive Director was received on 2008 September 9.

The special conditions of the contract further indicated that the value of the service was \$1,224,000.00 and that the contract period was 2008 August 14 to 31.¹⁶⁸

The Tender Report indicated that *“Due to the urgent and sensitive nature of the work required at the Retirement disposal site which is located in close proximity to several densely populated communities and the danger to public health, the sole source method of procurement was used to secure the services of the contractor. Presently, only one equipment is engaged at the disposal site. However two (2) equipments are needed to satisfy the daily workload of spreading , compacting and cover the intake of daily waste. Also the previous contractors M&K Heavy Equipment have been terminated due to breaches and non-compliances with forth coming NCC documentation”*¹⁶⁹

Based upon the value of the contract and the fact that the procurement methodology which was utilized was the Sole Source Procurement Methodology, this procurement should have been approved by the NCC. However, checks with the NCC database revealed that this contract was not endorsed by the NCC, pursuant to the requirements of section 2.1.3.4 of the GPPH (May 2001) which states that *“All Sole Source or Direct Contracting greater than \$1M must receive prior written approval from the NCC through the Accounting Officer.”*

¹⁶⁸ Contract between the NSWMA and Efficient Haulage and Equipment Company Limited, which was dated 2008 August 14.

¹⁶⁹ Tender Report

The Contracting of West Indies Heavy Duty Equipment Limited

Mrs. Joan Gordon-Webley, in her sworn response to the OCG's Requisition, which was dated 2009 July 8, detailed the circumstances under which West Indies Heavy Duty Equipment Limited was contracted to the NSWMA.

Mrs. Gordon-Webley indicated that *"During the period of the 14th August, 2008 to the 31st August, 2008, West Indies Heavy Duty Equipment was contracted to provide one (1) D8 Tractor to spread soil over the garbage to prevent fires on the Retirement Landfill (WPM Waste Mgmt.)."*¹⁷⁰

Mrs. Gordon-Webley also indicated that *"During the period of September, 2008 to December, 2008 West Indies Heavy Duty Equipment was contracted to provide one (1) D8 Tractor to spread soil over the garbage to prevent fires on the Retirement Landfill (WPM Waste Mgmt.). However, West Indies Heavy Duty Equipment's D8 tractor did not arrive at the Retirement Landfill (WPM Waste Mgmt.) until November, 2008. As a result of the late arrival, payments did not commence until November, 2008."*¹⁷¹

A copy of a contract which was dated 2008 July 1, between the WPM Waste Management Limited and West Indies Heavy Duty Equipment Limited was provided to the OCG as documentary evidence. The contract indicated that *"Payments will be calculated at a rate of Eight Thousand Five Hundred Dollars (\$8,500.00) per hour; not exceeding One Hundred and forty four hours for the period (144) hours per day for eighteen (18) days or a total contract sum of One Million Two Hundred and Twenty*

¹⁷⁰ Response from Mrs. Joan Gordon-Webley, which was dated 2009 July 8, in response to the OCG's Requisition.

¹⁷¹ Response from Mrs. Joan Gordon-Webley, which was dated 2009 July 8, in response to the OCG's Requisition.

Reproduced below is a table which was submitted to the OCG, by the NSWMA, detailing a summary of all the payments which were made to West Indies Heavy Duty Equipment Limited, during the period of July 2008 to December 2008.

Period	Amount	Cheque #
25/08/08	\$126,500.00	57704
1&4/11/08	\$119,000.00	57704
14/11/08 to 30/11/08	\$1,385,500.00	57203
01/12/08 to 16/12/08	\$1,283,500.00	57704
15/08/08 to 31/08/08	\$1,083,500.00	55177
01/09/08 to 09/09/08	\$782,000.00	55177
10/09/08 to 22/09/08	\$918,000.00	55177
09/10/08 to 31/10/08	\$1,508,750.00	56674
01/11/08 to 14/11/08	\$918,000.00	56674
16/11/08 to 28/11/08	\$714,000.00	57705
04/12/08 to 15/12/08	\$939,250.00	57719
Total	\$9,778,250.00	

In a Follow-Up Requisition, that was addressed to Mrs. Gordon-Webley, which was dated 2009 August 14, the following question was posed:

“With regard to the contracting of West Indies Heavy Duty Equipment, please provide the following:

- i. A copy of the Tender Document;*
- ii. A copy of the Tender Evaluation; and*
- iii. A copy of the Tender Transmittal Form.”¹⁷³*

¹⁷² Letter which was dated 2009 August 31, from Mrs. Joan Gordon-Webley in response to the OCG’s Requisition.

¹⁷³ OCG’s Follow-Up Requisition which was dated 2009 August 14, to Mrs. Joan Gordon- Webley. Question # 14

Mrs. Gordon-Webley, in her response to the OCG's Requisition, which was dated 2009 August 31, submitted a Procurement Transmittal Form which indicated that approval was received from the Procurement Committee on 2008 August 25, the Executive Director on 2008 September 8 and the Board Sub-Committee on 2008 September 30.

The Tender Report indicated that the Tender sum was \$1,274,000.00. The Tender Report also indicated that *"Due to the urgent and sensitive nature of the work required at the Retirement disposal site which is located in close proximity to several densely populated communities and the danger to public health, the sole source method of procurement was used to secure the services of the contractor. Also the previous contractors M&K Heavy Equipment have been terminated due to breaches and non-compliances with forth coming NCC documentation."*

Based upon the foregoing information, that was presented by the NSWMA, regarding the contracting of West Indies Heavy Duty Equipment Limited, the OCG sought to ascertain whether or not the NSWMA received NCC approval for the use of the Sole Source Procurement Methodology in the engagement of this contractor.

However, the NCC database revealed that the NSWMA did not request approval from the NCC pursuant to Section 2.1.3.4 of the then applicable GPPH (May 2001), which states that *"All Sole Source or Direct Contracting greater than \$1M must receive prior written approval from the NCC through the Accounting Officer."*

It is instructive to note that this award of contract was reported on the OCG's Quarterly Contract Award (QCA) Report for the respective quarter.

The Termination of the Contract with Vanguard Security Limited

On 2007 October 8, the OCG received an undated document, from an anonymous source, which stated that *“Vanguard Security was awarded the contract to provide security services at all the landfills island wide and all the NSWMA regional offices and garages in 2004. The National Contracts Commission extended his contract until March 2008. Yet the Executive Director, Mrs. Joan Gordon-Webley, in December 2007 started replacing Vanguard Security location by location with Knightsman Security operated by Mr. Anton Young, who is one of Bruce Golding’s personal bodyguards. This contract is valued at \$40 million dollars per annum. It was not put out to public tender nor does it have the approval of NCC.”*

In order to ascertain the veracity of the foregoing allegations, the OCG, in its Requisition that was addressed to Mrs. Joan Gordon-Webley, which was dated 2009 June 3, requested the following information:

“Please list the names of all companies, entities and/or individuals who have provided Security Services to the NSWMA and all of its Regional Offices for the period 2007 June to 2009 May. For each of the named companies, entities and/or individuals, please answer the following questions:

- i. Please detail the circumstances under which the services of each of the listed companies, entities and/or individuals were contracted by the NSWMA...*
- ii. Please provide, where possible, a copy of the contract document which was consummated between the NSWMA and each of the named companies, entities and/or individuals;*

iii. *For each company, entity and/or individual which is listed, in response to Question #16, and for which no contract can be provided, if any, please provide a comprehensive statement detailing the reason(s) for same.*”¹⁷⁴

Mrs. Joan Gordon-Webley, in her sworn response to the OCG’s Requisition, which was dated 2009 July 8, stated that:

“Vanguard Security Limited was providing service to the NSWMA Head Office, all regional offices and garages, landfills, transport and dispatch centers, prior to June 2007...

Vanguard Security Limited was terminated at 61 Half Way Tree Road and Riverton Disposal Site, due to vandalism to areas of buildings that were secured and accessible only to Vanguard Security Limited. On the 17th January, 2008, Knightsman Limited was engaged to secure these locations.

Further, due to reported theft, including batteries from NSWMA’s equipment, and failure to regulate the access of the general public to the facilities, Vanguard Security Limited was also removed from the garages, transport and dispatch offices. Knightsman Limited was engaged to secure these locations on the 1st April, 2008...

Vanguard Security Limited subsequently requested to be removed from all other locations and Knightsman was engaged to replace them on the 1st September, 2008 at Regional Offices.”¹⁷⁵

The NSWMA submitted several pieces of correspondence which provided documentary evidence to support Mrs. Gordon-Webley’s account of the circumstances which led to the

¹⁷⁴ The OCG’s Requisition which was dated 2009 June 3, to Mrs. Joan Gordon-Webley

¹⁷⁵ Mrs. Joan Gordon-Webley’s Response to the OCG’s Statutory Requisition. Question # 16

termination of the contract which was held with Vanguard Security Limited, by the NSWMA. These included the following:

1. A memorandum, which was dated 2008 May 28, which was sent to Mr. Gaucia Vassell, Landfill Manager, from Mr. Nelton Watson, Landfill Supervisor, and which was copied to Mr. Glenroy Soltau, Regional Operations Manager, SPM Waste Management Limited.

The Memorandum, which was captioned: “*ALLEGED IRREGULARITIES AT THE MARTIN HILL DISPOSAL SITE*”, stated that “*It has been alleged by Mr. Michael Henry (watchman) that there are irregularities taking place with the security personnel at the above named location.*”

Mr. Henry said that on May 21, 2008 a man came to him at the disposal site, and asked him if he could allow him to remove metals from the site and he refused. On the following day he observed that the metals were missing.

Mr. Henry reported that on another occasion metals came on the site and Mr. Alwyne Whyne, Richard Whyne and someone else wanted to remove it. He said that he told them not to remove them, but he discovered that it was missing the next day.

Mr. Henry said that whenever he is on duty he has observed that the security personnel is allowing person to dispose of their waste without presenting the authorized tickets.

In light of the above, I am recommending that you take the necessary steps in order to stem these irregularities.”

2. A letter which was dated 2008 May 29 from Mr. Glenroy Soltau, Regional Operations Manager, SPM Waste Management Limited (SPM) to Mr. Michael Williams, Assistant Operations Manager, Vanguard Security Limited, it was indicated as follows:

“Please find attached memo dated May 28, 2008 which was written to the Landfill Manager.

In light of the foregoing, I am recommending that a meeting be convened with the Managers of the Disposal site to arrive at an amicable solution to the named concerns...”¹⁷⁶

3. A letter which was dated 2008 May 30, from Michael Williams, Assistant Operation’s Manager, Vanguard Security Limited, that was addressed to Mr. Glenford Soltau, Acting Regional Manager, SPM, which indicated as follows:

“Regarding your letter dated 29th May 2008 with attached memo from Mr. Nelton Watson dated 28th May 2008, I met with Mr. Andre Wiltshire at his office in Kingston on Friday 30th May 2008.

I will be available to meet with you Wednesday 4th June 2008 at approximately 11 a.m. If this is not convent [sic] time for you kindly advise me and I will be available at whatever time is best suitable for you.”¹⁷⁷

4. A memorandum, which was dated 2008 July 25, that was addressed to Mrs. Joan Gordon-Webley from Mr. Audley McLean, Director of Operations, NSWMA,

¹⁷⁶ Letter which was dated 2008 May 29 from Mr. Glenroy Soltau, Regional Operations Manager, SPM, to Mr Michael Williams, Assistant Operations Manager, Vanguard Security Limited.

¹⁷⁷ A letter which was dated 2008 May 30, from Michael Williams, Assistant Operation’s Manager, Vanguard Security Limited, that was addressed to Mr. Glenford Soltau, Acting Regional Operations Manager, SPM.

which was captioned “**Current Security Arrangements for SPM Garage**”, it was indicated that “*Our Regional Operations Manager has over the past year reported several defaults in the service delivery of the Security assigned to SPM.*

Even though the concerns have been brought to the attention of Vanguard’s Parish Manager and guards have been reassigned, the problems continue.

This kind of operation is no way contributing to the security of the facility and on this basis, I am recommending that the present arrangements be terminated and a suitable provider be engaged.”¹⁷⁸

5. A letter, which was dated 2008 February 25, which was sent to Mr. Eric Martin, Managing Director, Vanguard Security Limited from Mr. Andre Wiltshire, Enforcement and Compliance Director, NSWMA, which was captioned, “**Termination of Security Services (Riverton Disposal Site, NSWMA Head Office and Transport & Dispatch Centre).**”

The said letter indicated, *inter alia*, that “*The National Solid Waste Management Authority formally advises of the termination of all security services at captioned locations.*

This was due to a number of operational situations that was not dealt with to our satisfaction...”¹⁷⁹

6. A letter, which was dated 2008 September 8, from Captain Melkirk Crosse, Group Operations Manager, Vanguard Security Limited, that was addressed to Mr. Andre Wiltshire, Enforcement and Compliance Director, NSWMA, which

¹⁷⁸ A memorandum, which was dated 2008 July 25, that was addressed to Mrs. Joan Gordon-Webley from Mr. Audley McLean.

¹⁷⁹ A letter, which was dated 2008 February 25, was sent to Eric Martin, Managing Director, Vanguard Security Limited from Andre Wiltshire, Enforcement and Compliance Director, NSWMA.

was captioned “*NSWMA Retirement, Freeport & Flankers-Montego Bay NEPM - Ocho Rios.*” The referenced letter stated that “*We have noted recently your organisation’s obvious lack of confidence in Vanguard Security Limited’s ability to deliver quality Security Services.*”

This engenders our request that the company be replaced on the above locations at your earliest convenience.”¹⁸⁰

Based upon the foregoing information, the OCG found that there were several documented performance issues with Vanguard Security Limited at three (3) NSWMA locations. Consequently, the company was terminated from these three (3) locations. In this regard, the OCG found that Vanguard Security Limited subsequently decided to withdraw its services from all of the other NSWMA locations for which it was contracted.

¹⁸⁰ Letter, which was dated 2008 September 8, from Captain Melkirk Crosse, Group Operations Manager, Vanguard Security, to Mr. Andre Wiltshire, Enforcement and Compliance Director, NSWMA.

The Contracting of Knightsman Limited

It is instructive to recall that Mrs. Gordon-Webley, in her response to the OCG's Requisition, which was dated 2009 July 8, stated that *"Vanguard Security Limited was terminated at 61 Half Way Tree Road and Riverton Disposal Site, due to vandalism to areas of buildings that were secured and accessible only to Vanguard Security Limited. On the 17th January, 2008, Knightsman Limited was engaged to secure these locations."*¹⁸¹ (OCG Emphasis)

A review, by the OCG, of the contract which was consummated between the NSWMA and Knightsman Limited, revealed the following:

1. The contract was dated 2008 January 17;
2. The contract value was in the sum of \$3,947,624.00;
3. The applicable locations were the NSWMA Head Office and the Riverton Landfill.

The OCG, in a Follow-up Requisition, which was dated 2009 August 14, and which was addressed to Mrs. Gordon-Webley, asked the following question:

"What was the procurement process which was used by the NSWMA to engage the services of Knightsman Limited? Please provide documentary evidence in support of your response."

In her response to the OCG's Requisition, which was dated 2009 August 31, Mrs. Joan Gordon-Webley indicated that *"The procurement method used by NSWMA to engage the services of Knightsman Limited was Sole Source. This method was used due [sic] the urgent and sensitive nature of the service required. The engagement of Knightsman was*

¹⁸¹ Mrs. Joan Gordon-Webley's response to the OCG's Requisition which was dated 2009 July 8.

deemed urgent as the previous contractor, Vanguard Security Limited had requested to be removed and Knightsman was engaged to replace Vanguard on September 1, 2008.”

Mrs. Gordon-Webley also submitted to the OCG, documents relating to the contracting of Knightsman Limited. In this regard, the OCG found that the Procurement Transmittal Form indicated that the value of security services contract was \$13,198,944.

Further, the OCG found that the said contract was endorsed by the Procurement Committee on 2008 October 31, and by the Executive Director on 2008 November 4.

The Tender Report indicated, *inter alia*, as follows:

“...In order to safeguard the well being of staff and secure equipment, the NSWMA intends to utilize the services of a security contractor for the following locations:

- a. Riverton Disposal Site;*
- b. NSWMA Head Office;*
- c. Transportation and Dispatch Centre;*
- d. WPM Waste Management Ltd;*
- e. SPM Waste Management Ltd;*
- f. NEPM Waste Management Ltd.*

*This procurement represents the extension of a contract previously put in place under emergency invocation and endorsed by the National Contracts Commission.”*¹⁸²

It was also stated that *“This is an extension of a previous contract that was put in place under an invocation of an emergency. Knightsman Ltd is still in place pending a formal tender for the provision of security services...*

¹⁸² Tender Report regarding the contracting of Knightsman Ltd.

Selection was made from the N.C.C List of contractors approved for the provision of security services.

Additionally, it was stated in the Tender Report that *“It is recommended that an addendum be done to the existing contract to extend the provision of security services to December 31, 2008. Provision of services at all locations will cost **Thirteen Million, One Hundred & Ninety Eight Thousand, Nine Hundred and Forty Four (\$13,198,944).**”*

Of note, the Procurement Transmittal Form for this procurement indicated that the contract duration was *“4 months (122 Days)”* and that the proposed start date was 2008 September 1.

Mrs. Gordon-Webley also submitted, to the OCG, evidence to indicate that the NCC’s approval was sought for the extension of the emergency contract which was awarded by the NSWMA to Knightsman Limited.

By way of a letter, which was dated 2008 May 26 and which was addressed to Mr. Devon Rowe, Director General, Office of the Prime Minister, from Ms. Shirley Tyndall, the former Chairman, NCC, under the caption *“**Extension of Security Services Contract**”*.

The concerned letter stated that *“Please refer to a letter dated 2008 April 03 from Mrs. Joan Gordon-Webley, Executive Director of the National Solid Waste Management Authority, regarding the captioned matter.*

*The National Contracts Commission considered the matter at its meeting held on **2008 May 14** and endorsed the request from the NSWMA for an extension of the existing Security contract to 2008 June 30 in order to facilitate the tender process.”*

The OCG's review of the letter, which was dated 2008 April 3, that was addressed to the NCC, from the NSWMA, revealed that the particulars of a change in the contractor from Vanguard Security Limited to Knightsman Limited, was not detailed by the NSWMA. In point of fact the referenced letter stated, *inter alia*, as follows:

"The National Solid Waste Management Authority is presently in the process of preparing the formal Tender for Security Services for the contracts that expired 31st March 2008.

The Authority did not have the services of an Attorney-at-law, Corporate Services Director or Procurement Officer. These persons would have been critical to the timely preparation of the tender...we anticipate that the Tender and Selection process will be concluded in the next three months.

We hereby request approval for the extension of the existing Security Services contracts to June 30, 2008."¹⁸³

In another letter, which was dated 2008 August 7, to Mr. Devon Rowe, then Director General, Office of the Prime Minister, from Ms. Shirley Tyndall, the former Chairman, NCC, which was under the caption ***"Request for Extension of Collection and Sweeping Contracts-National Solid Waste Management Authority (NSWMA)"***.

The referenced letter stated, *inter alia*, that *"Please refer to a dated 2008 July 14 from Mr. Robert Montague, M.P., Minister of State in the Office of the Prime Minister (The Department of Local Government) regarding the subject captioned.*

¹⁸³ Letter which was dated 2008 April 3, from the NSWMA to the NCC.

*The National Contracts Commission considered the matter at its meeting held **2008 July 16** and endorsed the request of the National Solid Waste Management Authority (NSWMA) to extend the collection and sweeping contracts for the following services:*

- 1. Public Cleansing (Roving Team)*
- 2. Garbage Collection*
- 3. Heavy Equipment*
- 4. Security Services*

The Commission is recommending that the NSWMA make every effort to conclude the procurement process for the required services by 2008 December 31st. ”

The Contract Addendum for the contract between the NSWMA and Knightsman Limited was dated 2008 September 23. The referenced contract document indicated, *inter alia*, that:

“IT IS HEREBY AGREED ON AS FOLLOW:-

- 1. That all previously executed addendum shall form part of the contract.*
- 2. That the Contract period of the contract is extended to the 31st of August 2008 under the same terms and condition of the contract of the 17th of January 2008 save and except for those modified herein.*
- 3. The Contract price for the extension of the contract (**July 1st to August 31st, 2008**) shall be calculated at a total contract sum of Four Million Eight Hundred and Twelve Thousand, Seven Hundred and Twenty Dollars (\$4,812,720.00) as per the agreed Bill of Quantities (BOQ). ”¹⁸⁴*

The OCG found that although the NCC indicated to the NSWMA that *“The Commission is recommending that the NSWMA make every effort to conclude the procurement process for the required services by 2008 December 31st. ”* in a letter which was dated

¹⁸⁴ Contract Addendum for the Contract between the NSWMA and Knightsman which was created on 2008 September 23.

2009 January 26, the NSWMA wrote to the NCC requesting an additional six (6) months extension of the contract for Security Services among other contracts, and this extension was granted.

By way of a letter which was dated 2009 January 26, the NSWMA wrote to the NCC indicating, *inter alia*, as follows:

“Further to our meeting on Wednesday, January 21, 2009 at the Office of the National Contracts Commission, we hereby seek your approval for a six months extension of the following contracts:

- i. Public Cleansing*
- ii. Heavy Equipment*
- iii. Security Services*

As the Commission is aware, all the above contracts were extended up to the 31st December 2008. The Authority had put to tender Public Cleansing services for the MPM region, but after two (2) extensions and pre-qualifying exercises, it is evident that the responsiveness was less than adequate.

The bid however will be evaluated and where no contract is awarded or bid received, such zones will be put to tender using the Limited Tender methodology. Please be assured that the contractors to who requests for proposals will be sent will be selected directly from the NCC’s website.

Kindly note that as it relates to Security Services and Heavy Equipment, the tender documents are at the stage of Board Approval and will thereafter be submitted to the Office of the Contractor General for further recommendations. We intend thereafter, to use the Selective Tender methodology to procure these services....”

The foregoing request was granted by way of a letter which was dated 2009 February 17, from the NCC to Mr. Devon Rowe, then Director General, Office of the Prime Minister, which was copied to the NSWMA and which was captioned ***Re: Request for Six (6) Months Extension to Public Cleansing, Rental of Heavy Equipment and Security Services Contracts***

The referenced letter indicated as follows:

“Please refer to a letter dated 2009 January 26 from Mrs. Joan Gordon Webley, Executive Director of the National Solid Waste Management Authority (NSWMA), regarding the captioned matter.

The National Contracts Commission (NCC) considered the matter at its meeting held on 2009 February 04 and offered no objection to the request from the NSWMA to extend the Public Cleansing, Rental of Heavy Equipment and Security Services contracts for a six-month period from January 1, 2009-June 30, 2009.”

The OCG also found that in a letter which was dated 2009 October 15, from the NSWMA to the NCC, which was captioned ***Re: Request for Permission to use the Direct Contracting Methodology for the Provision of Security Services***, it was stated as follows:

“In compliance with the Government Procurement Guidelines, the National Solid Waste Management Authority (NSWMA) hereby seeks your permission to use the Direct Contracting Methodology for the provision of security services at our offices and disposal sites island wide for the period October 15, 2009 to November 30, 2009.

An open tender bid for the provision of security services was recently conducted by the NSWMA , this however saw the response from only one bidder that was disqualified on

the grounds that there was no Certificate of Registration from the National Contracts Commission at the time of tender opening.

We are seeking the endorsement from the National Contracts Commission to use the Limited Tender Methodology for the provision of security services for a contract period of three years. This request is in keeping with the Government of Jamaica Handbook of Public Sector Procurement Procedures; sub-section no. S-2040, page 2 of 6 which states, “Procuring entity may award their contracts by limited tendering procedure when no suitable tenders have been submitted in response to an open tendering procedure, on condition that the requirements of the initial tender are not substantially modified.”

The estimated value of the contract is Thirty Million Dollars (\$30M) per year and is to provide security services at ten locations island-wide for the contract period...”

By way of a letter which was dated 2009 October 26, the NCC responded to the letter from the NSWMA. The letter was captioned “**Re: Request for Permission to use the Direct Contracting Methodology for the Provision of Security Services**” and indicated as follows:

*“Please refer to a letter dated **October 15, 2009** from Mrs. Joan Gordon-Webley, the Executive Director of the National Solid Waste Management Authority regarding the subject captioned.*

*The National Contracts Commission considered the matter at its meeting held on **October 21, 2009** and endorsed the request from the National Solid Waste Management Authority to do the following:*

- a. Utilize Direct Contracting Methodology for the provision of security services for their offices Island wide for the period **October 15, 2009 to November 30, 2009.***

- b. Utilize Limited Tender Procurement Methodology to invite tenders from contractors who are registered with the NCC in the appropriate category to submit bids for the requested security services.*

The National Solid Waste Management Authority should ensure that value for money is being obtained.”

Based upon the foregoing, the OCG found that Vanguard Security Limited was terminated at the Half Way Tree Road and Riverton Disposal Site due to the alleged vandalism to areas of the buildings that were secured and accessible only to Vanguard Security Limited. Consequently, Knightsman Limited was engaged to secure these locations on 2008 January 17, using the Sole Source Procurement Methodology.

Further, due to reported alleged theft, including batteries from NSWMA's equipment, and failure to regulate the access of the general public to the facilities, Vanguard Security Limited was also removed from the garbage, transport and dispatch location. Thereafter, Knightsman Limited was engaged to secure these location on 2008 April 1.

The OCG found that the NSWMA, by way of a letter, which was dated 2008 April 3, requested that the NCC endorse the extension of the contract for security services. In response to the NSWMA's request the NCC extended the contract until 2008 June 30.

By way of a letter which was dated 2008 August 7, the NCC granted another extension to the NSWMA and recommended that the NSWMA make every effort to conclude the procurement process for the required services by 2008 December 31.

By way of a letter, which was dated 2008 September 8, Vanguard Security Limited requested to be released from its contract for all other locations of the NSWMA. Consequently, the services of Knightsman Limited were extended to all NSWMA locations.

On 2008 September 23, a Contract Addendum was signed to extend the services of Knightsman Limited.

Despite the fact that the NCC indicated to the NSWMA in their letter of 2008 August 7, that every effort should be made to conclude the procurement process for the required services by 2008 December 31, by way of a letter which was dated 2009 January 26, the NSWMA wrote to the NCC requesting an additional six (6) months extension of the contract for Security Services, amongst other contracts, as the agency was still finalizing its tender process. This extension was granted by the NCC by way of a letter dated 2009 February 17.

The OCG also found that, by way of letter which was dated 2009 October 15, the NSWMA requested permission to use the Direct Contracting Methodology for the provision of security services. In this regard, the NCC, by way of a letter which was dated 2009 October 26, gave permission to the NSWMA to use the Direct Contracting Procurement Methodology for the provision of security services, for the period 2009 October 15 to 2009 November 30, and to utilize the Limited Tender Methodology thereafter.

It is also instructive to note that, although the OCG has seen several pieces of correspondence between the NSWMA and the NCC, regarding the extension of contracts for security services, **the OCG has not seen any correspondence which informed the NCC of the change of the security services contractor from Vanguard Security Services to Knightsman Limited.** (OCG Emphasis)

Additionally, the contract was valued at approximately \$13,198,944 and should have been endorsed by the NCC, considering the fact that Knightsman Limited was engaged using the Direct Contracting Procurement Methodology.

Importantly, the NCC database revealed that the NSWMA did not request approval from the NCC for the contracting of Knightsman Limited pursuant to the GPPH (2001 May) which states that *“All Sole Source or Direct Contracting greater than \$1M must receive prior written approval from the NCC through the Accounting Officer.”*

The Quarterly Contract Award (QCA) Reports, which were submitted to the OCG, by the NSWMA, as at 2010 April 30, revealed the following contracts were entered into with Knightsman Limited, by the NSWMA:

Date	Amount
January 31, 2010	\$2,566,128
February 1, 2010	\$2,409,432
March 1, 2010	\$2,579,208
August 19, 2009	\$3,035,052
September 23, 2009	\$2,375,440
November 30, 2009	\$2,487,780
March 14, 2008	\$3,947,624
June 2, 2008	\$1,170,626
Total	\$20,571,290

It is instructive to note that according to the QCA Reports which were provided to the OCG, by the NSWMA, the OCG has found that up to the 1st Quarter of 2012, the NSWMA was reporting the award of contracts to Knightsman Limited, for the provision of security services, via the Direct Contracting Procurement Methodology.

The Replacement of Heavy Equipment Consultancy and Maintenance with Alpha Construction-Riverton Landfill

On 2007 October 8, the OCG received an undated letter from an anonymous source in which it was alleged that *“The contract for providing heavy duty equipment for the operation on the Riverton landfill was awarded to Heavy Equipment Consultancy & Maintenance that had the approval of the NCC. However, Mrs. Webley gave the contract to a Fitzroy Chin who had no NCC or TCC. When the procurement officer objected to the breach, Mrs. Webley was livid and put it in the name of Mr. Chin’s relative, Alpha Construction without N.C.C. approval. This contract is over \$70 million per annum.”*¹⁸⁵

The anonymous source submitted several documents in support of the foregoing allegations. Among these document was a memorandum, which was dated 2007 December 27, that was addressed to Mr. Audley McLean, Director of Operations, NSWMA, from Ms. Casey Wilson, Procurement Officer, NSWMA .

The subject of the referenced memorandum was: **“HIREAGE OF HEAVY EQUIPMENT- RIVERTON LANDFILL”** and it stated as follows:

“As you are aware, there are two (2) equipment operating at the Riverton Landfill under the coverage of emergency procedures invoked on December 1, 2007. Although the Procurement Department was not actively involved in the procuring of these equipment, all personnel involved should have a basic appreciation of the government procurement guidelines and must operate accordingly.

It has been brought to my attention that Mr. Fitzroy Chin, one of the service providers currently operating on the landfill has exceeded the two hundred and seventy-five thousand dollars (\$275,000.00) threshold, hence should provide a valid

¹⁸⁵ Undated Document submitted to the OCG by an anonymous source.

Tax Compliance Certificate (TCC) and proof of registration with National Contracts Commission (NCC). Checks have revealed that Mr. Chin is not registered with the National Contracts Commission (NCC) and in fact should not have been contracted to operate on the landfill.

In light of the above, the Authority is currently operating in breach of the government procurement procedures and we must bring this to the attention of the Office of the Contractor General (OCG). However, in the interim it is prudent that we seek to utilize another qualified Contractor until Mr. Chin is able to present proof of registration with the National Contracts Commission (NCC).

The evidence which was presented to the OCG indicates that the NSWMA had not been adhering to the provisions of the GPPH (2001 May).

It is instructive to note that Ms. Wilson received a memorandum from Mrs. Joan Gordon-Webley, which was dated 2007 December 31, indicating Mrs. Gordon-Webley's dissatisfaction with Ms. Wilson's violation of the NSWMA's chain of authority. The memo from Mrs. Gordon-Webley stated as follows:

"With reference to your memo dated December 27, 2007 addressed to Mr. Audley McLean, Director of Operations, please be reminded of the following:-

- In future, I am directing you to first speak with your Departmental Head before you presume to write to obtain the requisite information from a Director of this company.*

Proper procedure dictates that when a concern comes to your desk, you first ask for clarity from your own Departmental Head who would relate any concern to his counterpart.

Please ensure that you follow this procedure in the future as you are totally out of line and not in possession of the relevant facts before writing such a letter which to my mind is a reprimand to your seniors.”

The referenced memorandum from Mrs. Gordon-Webley, indicates that Mrs. Gordon-Webley did not seek to provide any clarifications regarding the alleged breaches of the procurement guidelines.

Of note, another document which was provided by the anonymous source indicated, that Mr. Fitzroy Chin, of Osbourne Store District, Clarendon, was contracted for the use of his D8H tractor during the period of 2007 December 6 to 2008 January 31, to provide Emergency Equipment for Riverton Disposal Site in the amount of \$4,506,000.00

The foregoing information was attached to a NSWMA memo which was dated 2007 December 11, that was addressed to Mr. Denzil Wilks, Chairman of the Procurement Committee, from Mr. Clive McDonald, Landfill Manager, and stated the following:

“This is to advise that the equipment listed on the attached document were sourced on behalf of the NSWMA by the Executive Director’s Assistant, Mr. David Bloomfield, for emergency work through the Christmas season.

Please prepare contracts based on the procurement guidelines in order to regularize the contracting of such equipment.

It should be noted that other contractors have been contacted and as soon as other equipment arrive at the disposal site, you will be advised accordingly.”

Based upon the foregoing, the OCG found that Government Procurement Procedures were not utilized in this procurement. To the contrary, the OCG found that (a) the contractors were selected by Mr. Bloomfield; (b) the procurement was not put to

competitive tender; and (c) the Procurement Manager was only informed about this procurement after the contractor was selected.

Section 3.5 of the then applicable GPPH (May 2001), specifically states that “*Where the estimated value is equal to or greater than J\$4M but less than J\$15M, participation shall be restricted to domestic concerns, only except where no such qualified concern is registered with the NCC. Opportunities should be offered through selective tender by national advertising, where all interested appropriately qualified contractors who are registered with the NCC are afforded the opportunity to tender. All contracts within this range of values shall be referred to the NCC for approval of recommendation for award.*”

The OCG cross-referenced the foregoing information with the list of NCC approved contractors. Mr. Fitzroy Chin is not one of the listed contractors, this supports the allegations which were made by the anonymous source. The letter of complaint from the anonymous source also indicated that “*when the procurement officer objected to the breach, Mrs. Webley was livid and put it in the name of Mr. Chin relative, Alpha Construction without N.C.C. approval...*”

Verification of the foregoing information was conducted in an effort to ascertain whether Alpha Construction was registered with the NCC, during the period 2007 to 2008. The OCG found that although the company was registered with the NCC, the award of contract by the NSWMA to Alpha Construction was not endorsed by the NCC.

Of note is that this procurement was reported on the 1st quarter QCA Report for 2008, which indicated that Alpha Construction was contracted to the NSWMA on 2008 March 7. The contract amount was reportedly \$2,262,000.00. The QCA Report indicated that the procurement methodology which was utilized was the Selective Tender procurement methodology.

NCC Endorsed Contracts for the NSWMA – 2003 to 2010

It is instructive to note that the OCG sought to ascertain the extent to which the NSWMA interacted with and/or obtain NCC endorsement for its procurement activities, in compliance with the requirements of the applicable Procurement Guidelines. Detailed below are the particulars of the contracts which have been endorsed by the NCC, on behalf of the NSWMA, for the period of 2003 September through to April 2010.

It must be noted that, included in the NCC endorsements were certain of the contracts which were awarded to Incomparable Enterprises Limited, Geokar Associates Limited and Double Cannon Limited.

NCC ENDORSMENT DATE	CONTRACT DESCRIPTION	CATEGORY	CONTRACTOR	CONTRACT VALUE\$
03.09.03	To procure insurance.		Allied Insurance Brokers Ltd	8,713,676.00
19.05.04	Supplying Security Services.	SAFETY SERVICES	Vanguard Security Ltd	16,119,216.00
07.03.07	Properties and general insurance placement etc for all locations islandwide. Commencing March 2007. The period for contracting is 3 years.	*INSURANCE SERVICES	Allied Insurance Brokers Ltd	8,361,044.00
21.11.07	Four (4) months leasing of heavy Equipment for Riverton City disposal site.	TRANSPORTATION & HAULAGE	Heavy Equipment Consultancy	22,080,000.00
12.12.07	Emergency for D9 tractor hireage usage at Riverton Disposal site.	INDUSTRIAL, CONSTRUCTION EQUIPMENT & MACHINERY	Heavy Equipment Consultancy & Maintenance Ltd	7,750,800.00
03.12.08	Emergency procurement for hired equipment at Retirement Disposal Site.	JANITORIAL, SANITATION SERVICES	Seals Investment Ltd	1,300,000.00
14.01.09	Emergency procurement contract 1 to transport cover materials from Bull Bay. Push, spread and compact cover material to extinguish fire. \$12,877,500.00 plus \$164,000.00.	TRANSPORTATION & HAULAGE	Geokar Associates	13,041,500.00
14.01.09	Emergency procurement contract 2 to transport cover materials from Bull Bay. Push, spread and compact cover material to extinguish fire. \$3,394,000.00 plus \$7,046,500.00.	TRANSPORTATION & HAULAGE	Heathenson Ltd	10,440,500.00
14.01.09	Emergency procurement contract 3 to transport cover materials from Bull Bay. Push, spread and compact cover material to extinguish fire. \$ 1,581,000.00 plus	TRANSPORTATION & HAULAGE	E & S Construction	1,921,000.00

NCC ENDORSMENT DATE	CONTRACT DESCRIPTION	CATEGORY	CONTRACTOR	CONTRACT VALUEJS
	\$340,000.00.			
14.01.09	Emergency procurement contract 4 to transport cover materials from Bull Bay. Push, spread and compact cover material to extinguish fire. \$862,749.89 plus \$484,500.00	TRANSPORTATION & HAULAGE	Incomparable Enterprise.	1,347,249.89
14.01.09	Emergency procurement contract 5 to push, spread and compact cover materials to extinguish fire.	TRANSPORTATION & HAULAGE	Double Cannon Ltd	3,194,250.00
14.01.09	Emergency procurement contract 6 to load tipper trucks with cover materials	TRANSPORTATION & HAULAGE	Kenneth Walker Enterprise	1,083,573.29
14.01.09	Emergency procurement contract 7 to push, spread and compact cover materials to extinguish fire.	TRANSPORTATION & HAULAGE	Brahams Equipment Ltd	433,400.00
20.05.09	EMERGENCY works to provide cover material, haulage and heavy equipment for extinguishing fire at Riverton Disposal Site.	TRANSPORTATION & HAULAGE	Geokar Associates.	25,898,400.00
05.08.09	Further Extension of Emergency procurement contract for Heavy Equipment services. \$13,800,000.00 plus \$1,248,000.00	TRANSPORTATION & HAULAGE	Double Cannon Ltd	15,048,000.00
05.08.09	Further Extension of Emergency procurement contract for Heavy Equipment services.	TRANSPORTATION & HAULAGE	Heathenson Ltd	6,329,600.00
05.08.09	Further Extension of Emergency procurement contract for Heavy Equipment services.	TRANSPORTATION & HAULAGE	Incomparable Entreprises Ltd	2,760,000.00
05.08.09	Further Extension of Emergency procurement contract for Heavy Equipment services.	TRANSPORTATION & HAULAGE	Paul Biersay	1,056,000.00
05.08.09	Further Extension of Emergency procurement contract for Heavy Equipment services.	TRANSPORTATION & HAULAGE	Hudson Equipment	1,248,000.00
05.08.09	Further Extension of Emergency procurement contract for Heavy Equipment services.	TRANSPORTATION & HAULAGE	West Indies Heavy Duty	7,820,000.00
05.08.09	Further Extension of Emergency procurement contract for Heavy Equipment services.	TRANSPORTATION & HAULAGE	Samson Equipment	2,673,000.00
05.08.09	Further Extension of Emergency procurement contract for Heavy Equipment services. \$456000 plus \$474500.	TRANSPORTATION & HAULAGE	R & W Glanville	930,500.00
29.07.09	The Procurement of Biodegradable Bags.	GENERAL SUPPLIES	Autocraft Limited	6,600,000.00
25.11.09	The leasing of Heavy Equipment for the Myersville Disposal Site.	GENERAL SERVICES	Samson Equipment & Haulage	10,829,300.00
25.11.09	Further Extension of Emergency procurement contract for Heavy Equipment services.	TRANSPORTATION & HAULAGE	Wayne Rich Limited	24,616,000.00
25.11.09	Further Extension of Emergency procurement contract for Heavy Equipment services.	TRANSPORTATION & HAULAGE	Heathenson Ltd	14,624,800.00
07.04.10	Direct Contracting for the procurement of two (2) specialized vehicles.	MOTOR VEHICLE SPARES & Accessories	Safepro Industrial Supplies	

NCC ENDORSMENT DATE	CONTRACT DESCRIPTION	CATEGORY	CONTRACTOR	CONTRACT VALUEJS
14.04.10	Direct Contracting for repairs to a D10 Tractor.	GENERAL SERVICES	Irons Mechanical Services Limited	7,580,000.00
14.04.10	The leasing of Heavy Equipment (D10 Bulldozer) for the Riverton Disposal Site.	TRANSPORTATION & HAULAGE	General Maintenance & Construction Services Ltd	74,460,000.00
14.04.10	The leasing of Heavy Equipment (D9 Bulldozer) for the Riverton Disposal Site.	TRANSPORTATION & HAULAGE	Heathenson Ltd	33,288,000.00
14.04.10	The leasing of Heavy Equipment (966 Front-End Loader) for the Riverton Disposal Site.	TRANSPORTATION & HAULAGE	Wayne Rich Limited	12,095,000.00
21.04.10	The leasing of Heavy Equipment (D8 Bulldozer) for the Riverton Disposal Site.	TRANSPORTATION & HAULAGE	General Maintenance & Construction Services Ltd	29,270,000.00
21.04.10	The leasing of Heavy Equipment (D8 Bulldozer) for the Retirement Disposal Site.	TRANSPORTATION & HAULAGE	Wayne Rich Limited	27,740,000.00

CONCLUSIONS

Based upon the documents which have been reviewed as well as the sworn testimonies which were received from Mrs. Joan Gordon-Webley, the OCG has arrived at the following considered Conclusions:

1. Between the years of 2007 to 2008, the NSWMA terminated and contracted several contractors. With regard to the termination of contracts for public cleansing, Mrs. Joan Gordon-Webley, in her sworn responses to the OCG, provided the letters of termination which indicated, in many instances, that the terminations were as a result of the NSWMA's restructuring of its public cleansing operations.
2. The OCG found that the following contractors were in fact terminated by the NSWMA during the referenced period:
 - a. ROMAC Maintenance Services (now ROMAC Integrated Facilities Services Limited, hereinafter referred to as ROMAC);
 - b. Mr. Lloyd Neil;
 - c. Downtown Kingston Management District (DKMD);
 - d. Morgan's Disposal Services / Patricia Morgan (Zone II);
 - e. Mr. Raphael Ragbar;
 - f. Mr. Lennox Dickenson;
 - g. Mr. Donovan Wilson;
 - h. Mr. Basil Knight;
 - i. Eastern Environmental Company Limited;
 - j. Sovereign Resources (UK) Limited;
 - k. Vanguard Security Limited.

3. Termination of Contract with ROMAC

The OCG has found and concluded that contracts were awarded to ROMAC during the period of 2002 October 1 to 2007, for (a) janitorial services and (b) rental of plants, by the NSWMA.

The NSWMA, pursuant to the Termination Clauses of the respective contracts, terminated the contracts which were entered into with ROMAC, for the provision of janitorial and plant rental services, by giving thirty (30) days notice. The effective date of termination for the respective contracts was 2008 January 6, and this was detailed in the NSWMA's letters of termination, which were dated 2007 December 6.

It should be noted that Mrs. Joan Gordon-Webley, in her sworn response to the OCG's Requisition, which was dated 2009 July 8, indicated that *"The contract was terminated as a cost savings [sic] measure. Janitorial services are now being provided by the NSWMA's ancillary staff and office plants are supplied by the NSWMA's Parks and Gardens Division..."*

However, the OCG has also concluded that the foregoing reasons were not communicated to the contractor, in the two (2) letters of termination, which were dated 2007 December 6. Consequently, the effect is a breach of the principle of procedural fairness.

4. Termination of Contract with Mr. Lloyd Neil

The OCG has found and concluded that three (3) contracts were awarded to Mr. Lloyd Neil between 1995 March 15 and 2006 June 1, *"...for the purpose of improving and maintaining the sanitaty [sic] condition and physical appearance*

of the Public Throughfares, Parks and Markets of the Parishes of St. Ann, St. Mary, St. Thomas, and Portland.”

The effective date of the termination of Mr. Neil’s contract with the NSWMA was 2008 February 16, and this was detailed in the NSWMA’s letter of termination, which was dated 2008 January 29. The OCG also found that Mrs. Gordon-Webley indicated that Mr. Lloyd Neil’s contract was terminated because of his non-performance.

However, the foregoing information was not communicated to Mr. Neil in the letter of termination, which was dated 2008 January 29 and, interestingly, the OCG has found that Mr. Neil was informed that he was terminated because the NSWMA was restructuring its public cleansing operations and not a termination for non-performance.

Notwithstanding the conflicting accounts of the reasons for the termination of Mr. Neil’s contract, the OCG has concluded that the NSWMA’s termination of Mr. Neil’s services was within the terms and conditions of his contract. This is premised upon the fact that the contract, which was dated 2005 December 1, provided, *inter alia*, that the “...NEPM may terminate or suspend the Contract for convenience” and that one (1) week notice be served by either party.

5. Termination of Contract with Downtown Kingston Management District (DKMD)

Mrs. Joan Gordon-Webley, in her sworn response to the OCG’s Requisition, which was dated 2009 August 31, indicated that “*Our searches of the files at*

NSWMA revealed that **no written agreement exists between NSWMA and DKMD**.¹⁸⁶ (OCG Emphasis)

Notwithstanding the foregoing assertions, the OCG found that Downtown Kingston Management District (DKMD) provided the NSWMA with public cleansing services for which it was duly paid. In this regard, the OCG has concluded that a contract existed between the NSWMA and DKMD though not evidenced in writing.

It should be noted that DKMD failed to provide the NSWMA with a valid TCC and NCC during the period in which it was engaged. Based upon the foregoing, the OCG has also concluded that the award of the contract to DKMD was in breach of the GOJ Procurement Guidelines, specifically the then Ministry of Finance and Planning's Circular No. 13, which was dated 2001 September 14, and Section 3.2 of the GPPH (May 2001).

Ministry of Finance Circular No. 13 provides, *inter alia*, that:

“Contractors must be tax compliant:

- (a) At the time of registration for Government of Jamaica Approved Contractor status; and*
- (b) At the time of tender for contract award...”*

Section 3.2 of the GPPH (May 2001) provides, *inter alia*, that:

Participation opportunities within this contract value range (J\$250,000 to Less than J\$1M) shall be limited to NCC registered domestic contractors only...”

¹⁸⁶ Letter which was dated 2009 August 31, from Mrs. Joan Gordon-Webley in response to the OCG's Requisition.

6. Termination of Contract with Morgan's Disposal Services/Patricia Morgan

The OCG has found, and concluded, that a contract was awarded to Morgan's Disposal Services/Patricia Morgan, which was dated 2004 July 7, for the provision of solid waste collection services to MPM Waste Management Limited.

The said contract was terminated because of non-performance and the company's inability to repair and/or replace damaged parts of the equipment which was leased from the NSWMA. The foregoing information was communicated to the contractor, in the letter of termination, which was dated 2008 January 17.

In the premises, the OCG has concluded that the actions of the NSWMA were in accordance with the Termination Clause of the initial contract, which was dated 2004 July 7, and in keeping with the terms and conditions of the Equipment Lease Agreement, which was dated 2004 July 15.

7. Termination of Mr. Raphael Ragbar-Roving Team Contractor

The OCG has found, and concluded, that three (3) contracts were awarded to Mr. Raphael Ragbar, Roving Team Contractor, between the period of 2004 August 30 and 2006 February 28, by the NSWMA.

The OCG also found that by way of a letter, which was dated 2008 January 18, Mr. Ragbar was informed of the termination of his contract, effective 2008 January 23.

In the said termination letter, the NSWMA stated that it was “... *reorganizing its public cleansing operations and will no longer require the services of your Roving Team.*”

However, contrary to the foregoing representations, regarding the termination of Mr. Ragbar’s contract, Mrs. Gordon-Webley, in her sworn written response to the OCG’s Requisition, which was dated 2009 July 8, provided an entirely different account of the reasons for the termination of the contract with Mr. Raphael Ragbar.

In this regard, Mrs. Gordon-Webley indicated to the OCG that amongst the reasons for the termination of the contracts were the reports that “...*Raphael Ragbar failed, neglected or refused to effectively sweep the streets.*”¹⁸⁷

Mrs. Gordon-Webley also indicated that the NSWMA was dissatisfied with the work performance of Mr. Ragbar’s company. However, the documentary evidence which was submitted to the OCG, by the NSWMA, in fulfillment of the OCG’s Requisition, did not include any communication regarding the NSWMA’s dissatisfaction with the work which was undertaken by Mr. Ragbar’s company, prior to the termination of his contract.

Notwithstanding the conflicting accounts of the reasons which were given for the termination of Mr. Ragbar’s contract, the OCG has concluded that the NSWMA retained the right to terminate the contractual agreement with Mr. Ragbar.

This conclusion is premised upon the fact that the contract, which was dated 2006 February 28, provided that the “...*NEPM may terminate or suspend the Contract for convenience.*”

¹⁸⁷ Letter which was dated 2009 June 3, from Mrs. Joan Gordon-Webley in Response to the OCG’s Requisition.

The OCG, however, has also concluded that pursuant to the terms of the concerned contract, the NSWMA failed to provide the required one (1) week notice to Mr. Ragbar, as he was informed of his termination on 2008 January 18, whilst the effective date of the termination of the contract was 2008 January 23. Therefore, the notification period which was given was less than the stipulated one (1) week notification of termination.

In this regard, resort must be sought to the contract for a remedy. Accordingly, Mr. Ragbar is advised to consider a legal remedy, if any.

8. The Termination of the contract with Mr. Lennox Dickenson

The OCG has found and concluded that three (3) contracts were awarded to Mr. Lennox Dickenson, between 2004 August 30 and 2006 February 1, by the NSWMA, for the provision of public cleansing services. It must be noted that the contract, which was entered into on 2006 February 1, had a duration period of six (6) months.

By way of a letter, which was dated 2008 January 18, Mr. Dickenson was informed about the termination of his contract, effective 2008 January 23.

In the concerned termination letter, the NSWMA stated that it was “...*reorganizing its public cleansing operations and will no longer require the services of your Roving Team.*”

However, contrary to the NSWMA’s foregoing representations, Mrs. Gordon-Webley, in her response to the OCG’s Requisition, which was dated 2009 July 8, stated, *inter alia*, that Mr. Dickenson “...*failed, neglected or refused to use the herbicides.*”

It should be noted that the contract which was awarded to Mr. Dickenson, specifically indicated the requirement for “...*the application of herbicides...*” However, of import is the fact that the letter of termination, which was dated 2008 January 18, did not indicate specifically any concerns regarding Mr. Dickenson’s failure to meet the terms and conditions of his contract.

Notwithstanding the conflicting accounts of the reasons for the termination of Mr. Dickenson’s contract, the OCG has concluded that the NSWMA reserved the right to terminate the contractual agreement with Mr. Dickenson. This is premised upon the fact that the contract, which was dated 2006 February 1, provided, *inter alia*, that the “...*NEPM may terminate or suspend the Contract for convenience.*”

The OCG has also concluded that pursuant to the terms and conditions of the contract, the NSWMA failed to provide the required one (1) week notice to Mr. Dickenson, wherein he was informed of the termination of the contract on 2008 January 18, and the effective date of termination was 2008 January 23. This notification period was less than the stipulated one (1) week notification period. Mr. Dickenson, it is recommended, should consider his legal remedy, if any.

9. Termination of contract with Mr. Donavon Wilson

The OCG has found and concluded that four (4) contracts were awarded to Mr. Donavon Wilson between the period of 2004 August 30 and 2006 February 28, for the provision of public cleansing services to the NSWMA.

By way of a letter, which was dated 2008 January 18, Mr. Wilson was informed about the termination of his contract, by the NSMWA, effective 2008 January 23.

In the said termination letter, the NSWMA stated that it was “...*reorganizing its public cleansing operations and will no longer require the services of your Roving Team.*”

Further, in her sworn response to the OCG’s Requisition, which was dated 2009 July 8, Mrs. Joan Gordon-Webley, Executive Director, NSWMA, indicated that “... *the NSWMA wished to split the contract for sweeping streets and bagging garbage, on the one hand, and collection of garbage, on the other hand. Having terminated the original contract Donovan Wilson was contracted once again to provide the service of collection of garbage only.*”

Accordingly, Mr. Wilson’s contract was terminated. Despite the foregoing, Mr. Wilson was again contracted by the NSWMA to provide the service of garbage collection only.

The OCG has concluded that the NSWMA’s termination of Mr. Wilson’s services was within the NSWMA’s purview. This is premised upon the fact that the contract, which was dated 2006 February 28, provided, *inter alia*, that the “...*NEPM may terminate or suspend the Contract for convenience.*”

However, the OCG has also concluded that pursuant to the terms of the contract, the NSWMA failed to provide the required one (1) week notice to Mr. Wilson, as he was informed of his termination on 2008 January 18 whilst the effective date of termination was 2008 January 23. This notification period was less than the stipulated one (1) week notice period. A legal remedy, it is recommended, ought to be considered by Mr. Wilson, but in the circumstances, since he accepted a further engagement, the utility of this advice is recognized but advanced nonetheless.

10. Termination of the Contract with Mr. Basil Knight

The OCG has found and concluded that four (4) contracts were awarded to Mr. Basil Knight between the period of 2004 April 1 and 2006 June 1, for the provision of public cleansing services to the NSWMA.

By way of a letter, which was dated 2008 January 29, Mr. Knight was informed about the termination of his contract effective 2008 February 16.

In the termination letter, the NSWMA stated that “...*the Management of the National Solid Waste Management Authority (NSWMA) is currently concluding a restructuring of its Public Cleansing operations. As a consequence of this exercise, regrettably, your services will no longer be required.*”

However, Mrs. Gordon-Webley, in her response to the OCG’s Requisition, which was dated 2009 July 9, stated that Mr. Knight was terminated because of his non-performance as “...*Upon review of the work it became apparent that the streets were not being swept regularly. In addition, in many instances when the streets were swept, the garbage was simply swept into piles and not placed in bags...The routine failure to place the garbage in the bags also meant that, whereas Basil Knight was always paid for collection, there was routinely no collection of garbage taking place.*”¹⁸⁸

However, the OCG found that the foregoing reasons for Mr. Knight’s termination were not detailed in the letter of termination, which was dated 2008 January 29.

Notwithstanding the conflicting accounts of the reasons for the termination of Mr. Knight’s contract, the OCG has concluded that the NSWMA’s termination

¹⁸⁸ Mrs. Joan Gordon-Webley- response to the OCG’s Requisition, which was dated 2009 July 9.

of Mr. Knight's services was within the terms and conditions of his contract. This is premised upon the fact that the contract, which was dated 2006 June 1, provided that the "...*NEPM may terminate or suspend the Contract for convenience*" and that the contract may be terminated by providing one (1) week notice.

In the instant case, it must be noted that Mr. Knight was provided with a two (2) week notice period.

11. Termination of Eastern Environmental Company Limited

The OCG has found and concluded that Eastern Environmental Company was awarded two (2) contracts on 2004 June 22, by the NSWMA, to (a) collect solid waste and provide sweeping services and (b) a contract for the lease of a truck.

By way of a letter, which was dated 2007 December 21, the services of Eastern Environmental Company Limited were terminated effective 2007 December 31, because of an act of larceny, which was allegedly committed by a driver, who was employed to Eastern Environmental Company Limited.

It is instructive to note that the contract, which was awarded to Eastern Environmental Company Limited, specifically stated, *inter alia*, that the Lessee is "*Not to use the Equipment or permit the same to be used contrary to Law or any regulation or by-law for the time being forced...*"

Having regard, *inter alia*, to the foregoing, the OCG has concluded that the basis upon which the NSWMA terminated the referenced contract was consistent with the provisions of the contract.

As the matter is the subject of a criminal investigation, the OCG will offer no further comment at this time.

12. Termination of Sovereign Resources (UK) Limited

The OCG has found, and concluded that Sovereign Resources (UK) Limited was awarded (a) a contract on 2004 July 15 for the collection of solid waste, and (b) a contract for the lease of vehicles, in 2004.

By way of a letter, which was dated 2008 February 15, Sovereign Resources (UK) Limited was informed about the termination of its contract which became effective 2008 February 12.

In the said letter, the NSWMA stated, *inter alia*, that “...*You have failed to supply the management of the NSWMA with current NCC and TCC registrations to facilitate the settlement of payments to you....Finally, you have failed to perform the contract agreement and efforts by MPM Regional Office to contact you by telephone proved futile....MPM was compelled to assume full responsibility for the execution of the public cleansing sweeping and garbage collection services in the zone since Tuesday February 12th 2008. The non execution of the contract obligations cannot be condoned by the Organization and it is on this basis that your services are being terminated effective February 12, 2008....*”¹⁸⁹

Further, the letter of termination, which was dated 2008 February 15, indicated that the contract was terminated effective 2008 February 12. In this regard, the OCG has concluded that the concerned contract was terminated before a formal letter of termination was actually issued and/or received by Sovereign Resources (UK) Limited.

¹⁸⁹ Letter which was dated 2008 February 15, to Mr. Dean Williams, Managing Director of Sovereign Resources (UK) Limited from Mr. Audley McLean, Director of Operations at the NSWMA.

However, the OCG does not deem the termination of the agreement to be wrongful as the referenced contract provides, in Clause 13 (III), that “*THE WASTE MANGEMENT COMPANY shall be entitled, without prejudice to any other rights or remedies, to terminate this Agreement immediately at it’s sole discretion at any time...*”

13. The OCG also found that most of the contracts, which were terminated, had expired in 2004 February and 2006 June, July and August. As such, the OCG has concluded that the NSWMA has been operating several contracts on an extension basis without any written formal contracts and/or agreements. This is of grave concern

It must be noted that the NSWMA did not request formal approval from the National Contracts Commission (NCC) for the extension of these contracts until 2007 May 9. This is evidenced by a letter, which was dated 2007 October 1, that was addressed to Mr. Devon Rowe, the then Director General, Ministry of Local Government, from the NCC. The letter was captioned “*Extension of Existing Public Cleansing Contracts for NSWMA and its Regional Companies*”.

In the said letter, the NCC granted an extension of the NSWMA’s public cleansing, sweeping and collection contracts up to 2008 March 31.

14. Termination of Services provided by Vanguard Security Limited

Based upon the sworn documentary evidence which was provided by Mrs. Joan Gordon-Webley, the OCG found that Vanguard Security Limited was providing security services to the NSWMA “*...prior to June 2007...*”

The OCG found that there were performance issues with regard to the services which were being provided by Vanguard Security Limited. Consequently, the

company was terminated from three (3) locations, namely (a) Half Way Tree Road, (b) Riverton Disposal Site, and (c) the Transport and Dispatch Centre, due to the alleged vandalism of areas of the buildings that were secured and accessible only to Vanguard Security Limited personnel.

Subsequently, and following a series of correspondence between the NSWMA and Vanguard Security Limited, the company decided to withdraw its services from all locations for which it was providing security services to the NSWMA.

The foregoing indicates that the allegations which were made, by the anonymous source, that *“Mrs. Joan Gordon-Webley in December 2007 started replacing Vanguard Security location by location with Knightsman Security”* is not completely factual as the NSWMA had, initially, only terminated contracts in the areas which were vandalized.

15. The OCG has also found and concluded that the ‘Terminated Contractors’ were replaced by the following contractors:

- i. Mr. Stanley Davis;
- ii. Lewis & Family Construction and Cleaning Service;
- iii. Domestic & Environmental Cleaning Solutions (DECS);
- iv. Rupert Hall T/As R.D.H. Trading;
- v. St. Ann’s Logistic & Services Limited;
- vi. Mr. Donovan Davis;
- vii. J.A.A.P.A. Services Limited;
- viii. Geokar Associates Limited;
- ix. Knightsman Limited.

16. The Contracting of Mr. Stanley Davis

The OCG found that the services of Mr. Stanley Davis were engaged by the NSWMA, as at 2008 February 16, without a formal agreement being in place.

Further, the OCG is unable to definitively state the procurement methodology which was applied by the NSWMA, in the award of a contract to Mr. Davis in 2008 February. However, it must therefore be stated categorically that the award of contract is *prima facie* devoid of merit and highly irregular.

With respect to the contract, which was reportedly awarded in 2008 October, the OCG notes that the procurement method which was utilized was that of the Sole Source Procurement Methodology and the contract was in the sum of \$462,210.00.

17. The Contracting of Lewis and Family Construction and Cleaning Service

The NSWMA indicated that five (5) companies were invited to participate in the tender process which resulted in the award of the contract to Lewis and Family Construction and Cleaning Service in 2008. The OCG was provided with a copy of the Invitation to Tender, which was dated 2008 June 13.

It is instructive to note that the two (2) other bidders, who declined the invitation to participate, both made reference to a 2008 June 13 Invitation to Tender which was sent by the NSWMA.

However, the Lewis and Family Construction and Cleaning Service Company Profile Form, which was submitted to the NSWMA, was dated 2008 June 10. Of note, is the fact that the Lewis and Family Construction and Cleaning Service Company Profile Form predated the date of the Invitation to Tender, which was

sent to at least one (1) of the other companies which participated in this tender. This is very irregular.

18. The Contracting of Domestic & Environmental Cleaning Solutions (DECS)

The OCG found that Domestic & Environmental Cleaning Solutions (DECS) was contracted to replace Morgan's Disposal Services/Patricia Morgan as a public cleansing contractor on 2008 February 25. The records reveal that three (3) entities had expressed an interest in providing the said public cleansing services to the NSWMA.

It is instructive to note that the letters of interest, which were submitted by the three (3) companies, and which were provided to the OCG, were not in response to a specific Request for Proposal or Request for Quotation. To the contrary, the letters of interest reflected that of a general application for the provision of services to the NSWMA.

Further, the NSWMA did not include the proposed cost from the bidders on the Procurement Transmittal Form.

Having regard to the foregoing, the OCG is of the view that the award of the contract to Domestic & Environmental Cleaning Solutions (DECS) is *prima facie* devoid of merit and irregular

19. The Contracting of Rupert Hall/T/As R.D.H. Trading

The OCG found that although the NSWMA purportedly sent invitations to five (5) contractors, namely: D&L Construction, Roberts Rich Look, Parmella Champagne, Rupert Hall/T/As R.D.H. Trading and A-Team Trucking and Equipment Limited, only three (3) letters of invitation were submitted to the OCG

as documentary evidence. The referenced letters were addressed to D&L Construction, Roberts Rich Look and Parmella Champagnie.

The NSWMA did not submit to the OCG the letters of invitation, which were sent to the two (2) bidders, namely, Rupert Hall/T/As R.D.H. Trading and A-Team Trucking and Equipment Limited, whom/which had allegedly responded to the Invitation to Tender.

Further, a copy of the submission, which was allegedly made by A-Team Trucking and Equipment Limited, to the NSWMA, in response to the referenced tender, was not submitted to the OCG.

As a result, the OCG has not seen any documentary evidence of (a) a comparative bid, and (b) the actual invitation which was purportedly extended to the alleged two (2) responsive bidders. In this regard, the OCG finds that the award was *prima facie* irregular and the OCG is unable to definitively state whether the award of the referenced contract was fair, impartial and devoid of any irregularity and impropriety.

20. The Contracting of St. Ann's Logistic & Services Limited

Mrs. Gordon-Webley, in her sworn response to the OCG's Requisition, which was dated 2009 July 8, indicated that St. Ann's Logistic & Services Limited was contracted by the NSWMA to replace Mr. Lennox Dickenson on 2008 February 16.

The Procurement Transmittal Form¹⁹⁰ indicated that the Sole Source Procurement Methodology was used in the contracting of St. Ann's Logistic & Services Limited for services which were to commence on 2008 October 1 and 2008 December 1. The referenced contracts each had a value of \$192,427.20.

However, in response to the OCG's Follow-up Requisition, which was dated 2009 August 31, Mrs. Gordon-Webley indicated that *"Our Searches of the files at NSWMA reveal that no written agreement exists between NSWMA and St. Ann Logistic Services."*

Based upon the foregoing, the OCG has concluded that the NSWMA has maintained a contract with St. Ann's Logistic & Services Limited without having a formal written contract. This occurrence is highly irregular.

21. The Contracting of Mr. Donovan Davis

According to a NSWMA Purchase/Service Order, which was dated 2008 March 12, and which was addressed to Mr. Donavon Davis, the OCG found that Mr. Davis was contracted *"To supply labour and supervision for the collection and disposal of solid waste from Annatto Bay, Junction, Castleton and environs to Doctor's Woodland landfill."* The value of this service contract was \$42,200. This contract value would have only required final approval from the Head of Entity and/or Accounting Officer.

¹⁹⁰ Procurement Transmittal Form – the document which is used by Public Bodies to submit recommendation for contract awards to the National Contracts Commission for its consideration and endorsement. The Procurement Transmittal Form is a summary of key elements of the procurement process.

22. The Contracting of J.A.A.P.A. Services Limited

Based upon the information which was presented to the OCG, regarding the contracting of J.A.A.P.A. Services Limited, the OCG has concluded that the procurement methodology which was utilized was not the Selective Tender Procurement methodology as was indicated on the Tender Transmittal Form, nor was the Direct Contracting Procurement methodology, as was indicated by Mrs. Joan Gordon-Webley, in her response to the OCG's Requisition, which was dated 2009 July 8.

The OCG's conclusion is based upon the fact that (a) J.A.A.P.A. Services Limited was selected for the contract out of a list of three (3) contractors who had expressed an interest in providing the service to the NSWMA, and (b) there was no indication that there was any advertisement for this contract. Consequently, the OCG has found that the methodology is only akin to that of the Limited Tender Procurement Methodology, but it is not.

It is instructive to note that the letters of interest, which were submitted by the three (3) companies, did not appear to be in response to a specific Request for Proposal or Request for Quotation. To the contrary, the letters of interest reflected that of a general application for the provision of services. Further, the NSWMA did not submit, to the OCG, copies of the Request for Proposal or Request for Quotation which was allegedly sent to these entities.

Additionally, the Procurement Transmittal Form did not include the bid amount which was proposed by the respective contractors. Also, the OCG has not seen any evaluation of the three (3) bids prior to the award of the contract to J.A.A.P.A. Services Limited.

Based upon the foregoing, the OCG has concluded that the subject procurement did not adhere to the provisions of the GPPH (May 2001), because (a) there was no Request for Proposal or Quotation; (b) the contractors did not submit quotations or proposals; (c) there was no tender document to indicate how the bids would be evaluated; and (d) there was no tender evaluation document to indicate how the contractor was selected.

Having regard to the foregoing, the OCG states that the award of the contract to J.A.A.P.A. Services Limited was *prima facie* devoid of any merit.

23. The Contracting of Geokar Associates Limited

With regard to the contracting of Geokar Associates Limited, the OCG has found that the type of procurement which was utilized was not the Selective Tender Procurement Methodology as was indicated on the Tender Transmittal Form, or the Direct Contracting Procurement Methodology, as was indicated by Mrs. Joan Gordon-Webley, in her response to the OCG's Requisition, which was dated 2009 July 8.

Based upon the fact that (a) Geokar Associates Limited was selected from a list of three (3) contractors, which expressed an interest in providing cleaning services, and (b) there was no advertisement for this contract, the OCG has concluded that method of procurement is **only akin** to that of the Limited Tender Procurement Methodology, but it is not so.

It is instructive to note that the letters of interest, which were submitted by the three (3) contractors, were not in response to a specific Request for Proposal or Request for Quotation. To the contrary, the contents of the letters of interest, which were submitted by the three (3) contractors, only expressed an interest in

providing a service or several services to the NSWMA and did not reflect a response to a specific Request for Proposal.

In addition, the NSWMA did not submit copies of any Request for Proposal, which was allegedly sent to these entities, for their response.

Further, the letters of interest, which were submitted to the NSWMA, by the three (3) contractors, were dated 2007 September 12, 2007 December 17 and 2008 January 29, and, as such, were not dated during a stipulated timeframe such as what obtains in a formal tender process. This is irregular.

Although this was said to be an emergency procurement, and given the contradictions in the procurement methodology which was purportedly employed, it must be noted that the OCG has not seen any documentary evidence to indicate that there was a Request for Quotation or Proposal. Further, the Procurement Transmittal Form did not include the bid amount which was submitted by each contractor.

Additionally, the OCG has also not seen any documentary evidence to indicate (a) that there was an evaluation of the three (3) bids prior to the award of the contract to Geokar Associates Limited, and (b) the selection criteria which was used to award the contract to Geokar Associates Limited.

As a result, the OCG has concluded that this procurement did not adhere to the requirements of the GPPH because (a) there was no request for Proposal or Quotation, (b) there was no documentary evidence of the bids which was submitted by the contractors; (c) there was no tender document to indicate how the bids would be evaluated; and (d) there was no tender evaluation document to indicate how the contractor was selected.

Having regard to the foregoing, the OCG cannot state that the award of the contract to Geokar Associates Limited was fair and awarded with merit.

24. The Contracting of Knightsman Limited

The OCG found that Knightsman Limited was engaged to secure the Riverton Disposal site and the NSWMA's Half Way Tree locations on 2008 January 17, using emergency procedures. This contract was reportedly awarded after the NSWMA experienced vandalism of its premises and terminated the contract of Vanguard Security Limited, at the respective locations.

Subsequently, on 2008 April 1, Knightsman Limited was engaged to secure the Transport and Dispatch Office, after (a) alleged reports of theft of the NSWMA's equipment, and (b) failure to regulate the access of the general public to the facilities.

It is instructive to note that the NSWMA requested that the NCC endorse the extension of its security contract, however, the NSWMA failed to inform the NCC of the requisite changes in the contractor which was providing said services to the NSWMA. The NCC, by way of a letter, which was dated 2008 May 26, granted an extension of the security contract until 2008 June 30.

Subsequently, by way of a letter, which was dated 2008 September 8, Vanguard Security Limited requested to be released from its contract for all other NSWMA locations, and Knightsman Limited began providing security services to these areas.

Further, on 2008 August 7, the NCC granted another extension for its security contract to the NSWMA. The NCC also recommended that the NSWMA make

every effort to conclude the procurement process for the required services by 2008 December 31.

On 2008 September 23, a 'Contract Addendum' was signed to extend the services of Knightsman Ltd.

Based upon the fact that the NSMWA failed to inform the NCC of the change in contractor (from Vanguard Security Limited to Knightsman Limited), for the provision on security services, the OCG has concluded that the referenced contract was awarded in an irregular manner.

25. The Contracting of Double Cannon Limited

The OCG found that Double Cannon Limited was contracted to the NSWMA after C.A.B Construction decided that it would no longer be able to provide its services to the NSWMA. It was indicated that C.A.B Construction requested permission, from the NSWMA, to transfer its services to Double Cannon Limited.

The foregoing would indicate that the contract which was held with C.A.B Construction was transferred to Double Cannon Limited without going through the relevant tender process or gaining the requisite approvals.

The OCG found that a total of \$24, 681,820.00 was paid to Double Cannon Limited, by the NSWMA, between 2008 September to 2008 December. It must be noted that the initial contract which was awarded to Double Cannon Limited in 2008 July exceeded J\$15 million and, as such, would have required the approval of the NCC and the Cabinet.

Based upon the foregoing the OCG has concluded that the award of the contract to Double Cannon Limited was in breach Section 2.1.3.4 GPPH (2001) which

states that *“All Sole Source or Direct Contracting greater than \$1M must receive prior written approval of the NCC through the Accounting Officer.”*

26. The Contracting of Incomparable Enterprises Limited

The OCG found that Incomparable Enterprises Limited was contracted after Mrs. Joan Gordon-Webley received a Memorandum, which was dated 2008 July 28, from Ms. Andrine Stanhope, Director of Landfill, NSWMA, requesting the continuation of the Sole Source Procurement Methodology to engage this contractor because the NSWMA's front-end loader was damaged during a fire.

The OCG found that for the period 2008 July to 2008 December, Incomparable Enterprises Limited was paid \$5,143,977.37, by the NSMWA, for services which were rendered.

Based upon the foregoing, the OCG has concluded that the award of the contract to Incomparable Enterprises Limited was in breach of Section 2.1.3.4 of the then applicable GPPH (2001 May) which states that *“All Sole Source or Direct Contracting greater than \$1M must receive prior written approval of the NCC through the Accounting Officer.”*

27. The Contracting of Efficient Haulage and Equipment Company Limited

Mrs. Joan Gordon-Webley, in her sworn response to the OCG's Requisition, which was dated 2009 July 8, indicated that *“Efficient Haulage and Equipment Company Limited was retained during the periods of the 14th August, 2008 to the 31st August, 2008 and from September, 2008 to December 2008. It became necessary to retain Efficient Haulage and Equipment Company Limited due to the constant breakdown of equipment provided by the previous contractor...”*

The OCG found that this procurement was approved by the Procurement Committee on 2008 August 23. The value of the referenced contract was \$1,224,000.00 and the contract period was 2008 August 14 to 31.

It must be noted that it has been held out that the services of Efficient Haulage and Equipment Company Limited were procured via the Sole Source Procurement Methodology.

Based upon the foregoing, the OCG has concluded that the award of the contract to Efficient Haulage and Equipment Company Limited was in breach of Section 2.1.3.4 GPPH (2001), which states that *“All Sole Source or Direct Contracting greater than \$1M must receive prior written approval of the NCC through the Accounting Officer.”*

28. The Contracting of West Indies Heavy Duty Equipment Limited

The OCG found that West Indies Heavy Duty Equipment Limited was contracted by the NSWMA using the Sole Source Procurement Methodology. According to Mrs. Gordon-Webley, *“During the period of the 14th August, 2008 to the 31st August, 2008, West Indies Heavy Duty Equipment was contracted to provide one (1) D8 Tractor to spread soil over the garbage to prevent fires on the Retirement Landfill (WPM Waste Mgmt.).*

For the period of 2008 July to 2008 December, the OCG found that the NSWMA paid West Indies Heavy Duty Equipment Limited a total of \$9,778,250.00, despite the fact that the initial tender sum was in the amount of \$1,274,000.00.

The OCG has also found that the referenced procurement received approval from the Procurement Committee of the NSWMA.

Of note, is the fact that the NCC's database revealed that the NSWMA did not request approval from the NCC, pursuant to Section 2.1.3.4 of the GPPH (May 2001), which states that *"All Sole Source or Direct Contracting greater than \$1M must receive prior written approval from the NCC through the Accounting Officer."*

29. The Replacement of Heavy Equipment Consultancy and Maintenance with Alpha Construction - Riverton Landfill

On 2007 October 8, the OCG received an undated letter from an anonymous source in which it was alleged that *"The contract for providing heavy duty equipment for the operation on the Riverton landfill was awarded to Heavy Equipment Consultancy & Maintenance that had the approval of the NCC. However, Mrs. Webley gave the contract to a Fitzroy Chin who had no NCC or TCC. When the procurement officer objected to the breach, Mrs. Webley was livid and put it in the name of Mr. Chin's relative, Alpha Construction without N.C.C. approval. This contract is over \$70 million per annum."*

The OCG found that the GOJ Procurement Procedures were not utilized in the award of the referenced contract. To the contrary, the OCG found that (a) the contractors were selected by Mr. David Bloomfield, NSWMA; (b) the procurement was not put to competitive tender; and (c) the Procurement Officer was only informed about this procurement after the contractor was selected.

Section 3.5 of the then applicable GPPH (May 2001), specifically states that *"Where the estimated value is equal to or greater than J\$4M but less than J\$15M, participation shall be restricted to domestic concerns, except where no such qualified concern is registered with the NCC. Opportunities should be offered through selective tender by national advertising, where all interested appropriately qualified contractors who were registered with the NCC are*

afforded the opportunity to tender. All contracts within this range of values shall be referred to the NCC for approval of recommendation for award.”

30. The OCG has found and concluded that the NSWMA was withholding payment for work which was carried out by the following contractors:

- a. Mr. Lloyd Neil;
- b. Downtown Kingston Management District (DKMD);
- c. Mr. Raphael Ragbar; and
- d. Sovereign Resources (UK) Limited.

The foregoing withholding of payments was as a direct result of the contractors’ failure to produce their respective Tax Compliance Certificates (TCCs) to the NSMWA.

However, the withholding of payment for work which was already done under a contract is contrary to the then Ministry of Finance and Planning’s Circular No. 13, which was dated 2001 September 14, which was entitled “*Tax Compliance and Public Sector Procurement*”. The referenced Circular provides that “*Contractors are not required to provide Tax Compliance Certificate in order to receive payment for work satisfactorily performed under contract.*”

31. In concluding, the OCG has found that there were several breaches of the GPPH (2001 May) in the award and/or termination of several contracts by the NSWMA, during the period of 2007 to 2008. In this regard, the following irregularities were identified:

- a. Award of contract to unregistered contractors;
- b. The Procurement Process was not undertaken pursuant to the provisions of the GPPH (2001 May);

- c. Several contracts were awarded in an irregular manner;
- d. The requisite approvals were not received from the Procurement Committee, NCC and the Cabinet, as the case might have warranted;
- e. Services were being performed by contractors, for and on behalf of the NSWMA, without formal written contracts;
- f. Contractors were operating based upon contracts which had expired, and which, in some instances, had expired in excess of one (1) year;
- g. Contracts were terminated without the requisite notification period being observed;
- h. Payments were withheld by the NSWMA for services which were rendered, on the basis of the contractors' failure to provide a valid TCC.

RECOMMENDATIONS

Section 20 (1) of the Contractor-General Act mandates that “*after conducting an Investigation under this Act, a Contractor-General shall, in writing, inform the principal officer of the public body concerned and the Minister having responsibility therefore of the result of that Investigation and make such Recommendations as he considers necessary in respect of the matter which was investigated.*” (OCG’s Emphasis).

In light of the foregoing, and having regard to the Findings and Conclusions that are detailed herein, the OCG now makes the following Recommendations:

1. It is recommended that an immediate review of the accounting, procurement and public administration practices at the NSWMA and its affiliate agencies be undertaken by the Public Administration and Appropriations Committee of the House of Representatives, the Auditor General and the Ministry of Finance and the Public Service. The review should be conducted to ensure that adequate procedures, systems, checks and balances are not only implemented, but are aggressively enforced to secure a radically improved level of compliance on the part of Public Bodies and Public Officials with relevant Government approved procedures, regulations and laws.
2. The OCG strongly recommends that the Procuring Entity should plan its 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 extend contracts without competitive tender.
3. It is recommended that the NSWMA give adequate notice when it decides to terminate a contract and that the reasons for the termination should be clearly

stated in the letter of termination. This should be done in order to prevent disputes regarding contract terminations.

4. The NSWMA must implement effective measures to ensure that it scrupulously adheres to the requirements of the Government of Jamaica Procurement Guidelines and the Contractor General Act, at all times, when procuring goods, works and services.
5. Given the scope of the NSWMA's procurement activities, inclusive of the need for emergency procurement, the agency must develop, where possible, a schedule of procurement activities in such a manner that will enable timely submissions to the NCC for the consideration of contracts which are to be awarded via the Sole Source Procurement Methodology.
6. The OCG also recommends that the NSWMA considers the utilization of Framework Agreements for the award of contracts which might be necessitated by the exigencies of emergency circumstances.
7. The OCG recommends that the NSWMA and all other Public Bodies, should, where applicable, obtain the endorsement and/or permission of the NCC when contracts falling within its purview are to be extended.
8. Finally, the OCG recommends that the principle of procedural fairness be a hallmark of the administration of GOJ contracts and, consequently, that the lines of communication between contracting parties be timely and forthright.
9. The OCG recommends that there ought to be the cessation of the practice of the operation of contracts in the absence of formal written contracts and/or agreements.