

OFFICE OF THE CONTRACTOR GENERAL OF JAMAICA

Special Report of Investigation

Conducted into the Award of a Multi-Million Dollar Consultancy Contract to Mr. Aubyn Hill and/or his company, Corporate Strategies Ltd.

Ministry of Agriculture & Fisheries

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INTRODUCTION

On 2009 October 16, 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, initiated an Investigation into the circumstances surrounding the award of a multi-million dollar consultancy contract to Mr. Aubyn Hill and/or his company, Corporate Strategies Ltd., by the Sugar Company of Jamaica (SCJ), a Government of Jamaica Public Body.

Section 15 (1) of the 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 an investigation is warranted”.

The OCG’s decision to commence the formal Investigation followed upon certain allegations, which were initially aired over the electronic media on 2009 October 15.

Subsequently, on 2009 October 16, an article which was entitled “\$27M for Aubyn Hill” was posted on the website of the *Sunday Herald* newspaper. The article alleged that Mr. Aubyn Hill’s company, Corporate Strategies Ltd., had been paid \$27 million for consultancy services.

The article further indicated, *inter alia*, as follows:

1. *“Hill’s company, according to invoices submitted to the Ministry of Agriculture, is paid over \$1.9 million monthly for consultancy services, driver’s salary, motor vehicle expenses and telephone expenses.*
2. *Between June and July this year, the Government paid over \$3.9 million for these services.*
3. *The contract, according to documents obtained by the **Sunday Herald**, was approved by Cabinet decision in June 2008 for the privatization of the sugar industry and was extended to July 2009.*
4. *Hill insists that his firm was contracted by the Ministry of Finance to help divest the country’s sugar assets in an arm’s length deal, and he also pointed out that taxpayers are currently getting good value for their money.”¹*

¹ Sunday Herald. “\$27M for Aubyn Hill”. 2009 October 16. <http://www.sunheraldja.com/2009/10/27m-for-aubyn-hill/>

The foregoing allegations raised critical questions and concerns for the OCG, particularly because of the reports that approximately \$27 Million had already been paid out under the contract since 2008 July and the fact that Mr. Aubyn Hill was also the Chairman of the Board of Directors of the SCJ Holdings Ltd., which then held the Government of Jamaica's (GOJ's) assets which were being divested.

Further, the allegations, in relation to the award of the contract to Mr. Aubyn Hill inferred, *inter alia*, (a) a lack of transparency; (b) a lack of impartiality; (c) a breach of applicable Government Procurement Procedures; and (d) a potential conflict of interest.

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

Section 4 (1) of the referenced Act requires, *inter alia*, that GOJ contracts should be awarded "*impartially and on merit*" and that the circumstances of award should "*not involve impropriety or irregularity*".

The OCG's Investigation primarily sought to determine, *inter alia*, the merits of the allegations and to ascertain whether there was compliance with the provisions of the Contractor General Act (1983) and the Government Procurement Guidelines in relation to the award of the contract to Mr. Aubyn Hill and/or to his company, Corporate Strategies Ltd.

At the commencement of its Investigation on 2009 October 16, the OCG undertook a preliminary review of (a) the allegations which were contained in the *Sunday Herald* article, which was dated 2009 October 16; and (b) the documents which were already in the possession of the OCG, with regard to the GOJ Sugar Divestment Process. This was done in an effort to inform the direction of the Investigation as well as to determine the most efficacious method by which to proceed.

The Terms of Reference of the OCG's Investigation into the circumstances which surrounded the award of the multi-million dollar consultancy contract to Mr. Aubyn Hill and/or his company, Corporate Strategies Ltd., 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 Contractor General Act, the 2008 Public Sector Procurement Regulations, the Financial Administration and Audit Act, the Public Bodies Management and Accountability Act, as well as the Corruption Prevention Act.

The OCG was further guided by the expressed provisions which are contained in Section 21 of the Contractor General Act. Section 21 specifically 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 competent authority to take such disciplinary or other proceedings as may be appropriate against that officer or member.

The Findings of the OCG's Investigation into the circumstances which surrounded the award of the multi-million dollar consultancy contract to Mr. Aubyn Hill and/or his company, Corporate Strategies Ltd., 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.

It is instructive to note that the OCG, on 2009 October 16, issued a Media Release in which its decision to commence a formal Investigation into the circumstances which surrounded the award of the multi-million dollar consultancy contract to Mr. Aubyn Hill and/or his company, Corporate Strategies Ltd., was publicly announced.

In the referenced Media Release, the OCG indicated, *inter alia*, that its “...*Special Investigation will seek to determine whether there is any truth to the allegations. If the allegations are in any way true, the Investigation will be guided by the following terms of reference:*

- (1) To ascertain the terms of the contract and whether any other member of the Government’s Sugar Cane Industry Privatization Negotiating Team is being paid under similar or other terms;*
- (2) To determine the overall circumstances of the contract award and the persons and authorities who negotiated and/or approved same;*
- (3) To determine whether the contract was awarded impartially and on merit and in circumstances which did not involve impropriety or irregularity;*
- (4) To determine the procurement methodology which was utilized to award the contract and whether applicable Government Procurement Procedures were complied with. Prior to September 22, 2008, sole source contract awards in excess of \$1 Million in value would have required, among other things, the prior evaluation and endorsement of the National Contracts Commission (NCC) as to justification and cost competitiveness. In addition, the prior approval of the Cabinet would have had to be secured if the projected value of the contract was in excess of \$15 Million;*
- (5) As Mr. Hill is also the Chairman of SCJ Holdings, to determine if the disclosure and conflict of interest provisions of the Companies Act, the Public Bodies Management and Accountability Act or any other law were in any way violated; and*

(6) To determine whether the contract has, so far, been implemented in accordance with its terms.”²

In keeping with the OCG’s stated intent to initiate an Investigation, letters were directed on 2009 October 21, by the Contractor General, to the Minister of Agriculture and Fisheries, the Hon. Dr. Christopher Tufton, the Permanent Secretary in the Ministry of Agriculture and Fisheries (MAF), Mr. Donovan Stanberry, the Chairman of the SCJ, Mr. Robert Levy and to Mr. Aubyn Hill, himself, in his capacity as the Chairman of SCJ Holdings Ltd., to formally advise them of the commencement of the OCG’s Investigation into the circumstances which surrounded the award of the multi-million dollar consultancy contract to Mr. Aubyn Hill and/or his company, Corporate Strategies Ltd.

² OCG Media Release. 2009 October 16

TERMS OF REFERENCE

Primary Objectives

The primary aim of the OCG's Investigation was to determine, *inter alia*, the following:

1. Whether there was compliance with the provisions of the Contractor General Act (1983) and to ascertain whether the applicable Government Procurement Procedures were complied with by the SCJ and/or the MAF.
2. The merits of the allegations which have been made that \$27 Million has been paid to Mr. Aubyn Hill and/or his company, Corporate Strategies Ltd., for consultancy services.

Specific Objectives

The Investigation also had the following specific objectives:

1. To identify the procurement process which was employed by the SCJ, the MAF and/or by anyone acting on their behalf, in the award, implementation, execution and/or variation of the contract(s) which was/were awarded to Mr. Aubyn Hill and/or his company, Corporate Strategies Ltd.
2. To ascertain the terms of the contract(s) which was/were awarded to Mr. Aubyn Hill and/or his company, Corporate Strategies Ltd., and whether any other member of the Government's Sugar Cane Industry Privatization Negotiating Team is being paid under similar or other terms.
3. To determine the overall circumstances of the contract award and the persons and authorities who negotiated and/or approved same.

4. To determine whether the contract(s) has/have, so far, been implemented in accordance with its terms.
5. To determine whether there were any breaches of the Government's Procurement Procedures or applicable laws on the part of the SCJ and/or the MAF and/or by anyone acting on their behalf, in the facilitation, procurement, award, implementation, execution and/or variation of the referenced contract(s).
6. To determine whether the process which led to the award of the contract(s) to Mr. Aubyn Hill and/or his company, Corporate Strategies Ltd. was/were fair, impartial, transparent and devoid of irregularity or impropriety.
7. To determine whether there was any *prima facie* evidence that would suggest impropriety on the part of any individual or entity which contributed to the award (or non-award) of the contract(s) to Mr. Aubyn Hill and/or his company, Corporate Strategies Ltd.
8. To determine whether the disclosure and conflict of interest provisions of the Companies Act, the Public Bodies Management and Accountability Act or any other law were in any way violated by Mr. Aubyn Hill, who, at all material times, was the Chairman of the Board of Director of the SCJ Holdings Ltd. and a Member of the Board of Directors of the SCJ.

METHODOLOGY

The OCG, in the conduct of its Investigations, has developed standard procedures for evidence gathering. These procedures have been developed and adopted pursuant to the powers which are conferred upon a Contractor General by the Contractor General Act (1983).

It is instructive to note that Section 17 (1) of the Contractor General Act empowers a Contractor General “to adopt whatever procedure he considers appropriate to the circumstances of a particular case and, subject to the provisions of (the) Act, to obtain information from such person and in such manner and make such enquiries as he thinks fit.” (OCG Emphasis)

The Terms of Reference of the OCG’s Investigation into the circumstances which surrounded the award of the multi-million dollar consultancy contract to Mr. Aubyn Hill and/or his company, Corporate Strategies Ltd., were primarily developed in accordance with those of the mandates of the Contractor General as are stipulated in Section 4 (1) and Section 15 (1) (a) to (d) of the Contractor General Act.

The Terms of Reference of the Investigation, and the development of the written Requisitions/Questionnaires that were utilized throughout the course of the Investigation, were guided by the OCG’s recognition of the far-reaching responsibilities and requirements that are imposed, *inter alia*, upon Public Officials and Public Officers by applicable Government Procurement Procedures, the Public Sector Procurement Regulations, the Contractor General Act, the Financial Administration and Audit Act, the Public Bodies Management and Accountability Act and the Corruption Prevention Act.

In addition, the OCG was guided by Section 21 of the Contractor General Act which provides that “If a Contractor-General finds, during the course of his Investigations or on the conclusion thereof that there is evidence of a breach of duty or misconduct or

criminal offence on the part of an officer or member of a public body, he shall refer the matter to the person or persons competent to take such disciplinary or other proceeding as may be appropriate against that officer or member and in all such cases shall lay a special report before Parliament.” (OCG Emphasis)

A preliminary Requisition/Questionnaire, which was dated 2009 October 23, was sent by the Contractor General to the Permanent Secretary, Mr. Donovan Stanberry, MAF.

Further Requisitions/Questionnaires were subsequently directed to other Public Officials, and other persons and/or entities that were considered material to the Investigation.

Where it was deemed necessary, Follow-up Requisitions were directed to a number of Respondents in an effort to clarify certain issues which were identified in their initial declarations and responses. These Follow-up Requisitions were also designed, *inter alia*, to clarify any discrepancies in the information which was supplied by the Respondents.

The Requisitions/Questions which were utilised by the OCG included specific questions that were designed to elucidate critical information from Respondents on the matters which were being investigated.

However, in an effort to not limit and/or exclude the disclosure of information which was germane to the Investigation but which might not have been specifically requisitioned by the OCG, the OCG asked all Respondents the following question:

“Are you aware of any additional information which you believe could prove useful to this Investigation or is there any further statement in regard to the Investigation which you are desirous of placing on record? If yes, please provide full particulars of same.”

Very importantly, the form of written Requisition, which was utilised by the OCG, also required each Respondent to provide, under the pain of criminal prosecution, complete, accurate and truthful written answers to a specified list of written questions and to make a formal declaration attesting to the veracity of same before a Justice of the Peace.

The Requisitions were issued pursuant to the powers that are reserved to the Contractor-General under the Contractor General Act and, in particular, under Sections 4, 15, 17, 18 and 29 thereof. The Requisitions were also issued pursuant to Sections 2 and 7 of the Voluntary Declarations Act and Section 8 of the Perjury Act.

It is instructive to note that **Section 18 (2) of the Contractor-General Act** provides that, “*Subject as aforesaid, a Contractor-General may summon before him and examine on oath* -

- a. any person who has made representations to him; or*
- b. any officer, member or employee of a public body or any other person who, in the opinion of the, Contractor-General is able to furnish information relating to the Investigation,*

and such examination shall be deemed to be a judicial proceeding within the meaning of section 4 of the Perjury Act.” (OCG Emphasis)

Further, **Section 18 (3) of the Contractor-General Act** provides that, “**For the purposes of an Investigation under this Act, a Contractor-General shall have the same powers as a Judge of the Supreme Court in respect of the attendance and examination of witnesses and the production of documents**”. (OCG Emphasis)

Section 2 (1) of the Voluntary Declarations Act provides that, “*In any case when by any statute made or to be made, any oath or affidavit might, but for the passing of this*

Act, be required to be taken or made by any person or persons on the doing of any act, matter, or thing, or for the purpose of verifying any book, entry, or return, or for any other purpose whatsoever, it shall be lawful to substitute a declaration in lieu thereof before any Justice; and every such Justice is hereby empowered to take and subscribe the same.” (OCG Emphasis)

Section 7 of the Voluntary Declarations Act provides that, “*In all cases when a declaration in lieu of an oath or affidavit shall have been substituted by this Act, or by virtue of any power or authority hereby given, or when a declaration is directed or authorized to be made and subscribed under the authority of this Act, or of any power hereby given, although the same be not substituted in lieu of an oath, heretofore legally taken, such declaration, unless otherwise directed under the powers hereby given, shall be in the form prescribed in the Schedule.*”

Section 8 of the Perjury Act provides, *inter alia*, that, “Every person who knowingly and willfully makes (otherwise than on oath) a statement false in a material particular and the statement is made-

(a) in a voluntary declaration; or

(b) in any oral declaration or oral answer which he is required to make by, under, or in pursuance of any enactment for the time being in force, shall be guilty of a misdemeanour, and liable on conviction on indictment thereof to imprisonment with hard labour for any term not exceeding two years, or to a fine, or to both such imprisonment and fine”.

The material import of the foregoing, *inter alia*, is that the sworn and written evidence that is provided to a Contractor General, in response to his Statutory Requisitions, during the course of his Investigations, is (a) provided in accordance with certain specified provisions of the Statutory Laws of Jamaica, and (b) provided in such a manner that if any part thereof is materially false, the person who has provided same would have, ***prima facie***, committed the offence of Perjury under Section 8 of the Perjury Act and, as will be

seen, would have also, *prima facie*, committed a criminal offence under Section 29 (a) of the Contractor General Act.

The OCG considers the above-referenced evidence-gathering procedures to be necessary in order to secure, *inter alia*, the integrity and evidentiary cogency of the information which is to be elicited from Respondents. The implications of the subject requirements also serve to place significant gravity upon the responses as well as upon the supporting documents which are required to be provided by Respondents.

It is instructive to note that the OCG, in the conduct of its Investigation, prefers to secure sworn written statements and declarations from Respondents, under the pain of criminal prosecution. This ensures, *inter alia*, that there is no question as to what has been represented to the OCG. Nor will there be any doubt as to the integrity or credibility of the information which is furnished to the OCG and on which its consequential Findings, Conclusions, Referrals and Recommendations will be necessarily based.

The OCG also went to great lengths to ensure that Respondents were adequately and clearly warned or cautioned that should they mislead, resist, obstruct or hinder a Contractor General in the execution of his functions or fail to provide a complete, accurate and truthful response to any of the Requisitions or questions which were set out in its Requisition, they would become liable, *inter alia*, to criminal prosecution under Section 29 of the Contractor-General Act.

Section 29 of the Contractor-General Act provides as follows:

“Every person who -

- (a) willfully makes any false statement to mislead or misleads or attempts to mislead a Contractor-General or any other person in the execution of his functions under this Act; or
- (b) without lawful justification or excuse -

- i. *obstructs, hinders or resists a Contractor-General or any other person in the execution of his functions under this Act; or*
- ii. *fails to comply with any lawful requirement of a Contractor General or any other person under this Act; or*

(c) deals with documents, information or things mentioned in section 24 (1) in a manner inconsistent with his duty under that subsection,

shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.”

Further, in addition to the **sworn** written answers which the Respondents were required to provide, the OCG also requested that in respect of the assertions and/or information which were to be provided, Respondents should submit documentary evidence to substantiate the statements that were made.

Finally, all Respondents were advised, in writing, of their rights under Section 18 (5) of the Contractor General Act. Section 18 (5) of the Act provides that “*No person shall, for the purpose of an investigation, be compelled to give any evidence or produce any document or thing which he could not be compelled to give or produce in proceedings in any court of law.*”

Requisitions/Questionnaires were directed by the OCG to the Public Officers/Officials who are listed below. In addition, comprehensive reviews of certain relevant information were undertaken by the OCG to assist it in its Investigation. Details of these are also summarized below.

1. The following Public Officials were required to provide sworn written responses to formal Requisitions which were directed to them by the OCG:

- (a) Mr. Donovan Stanberry, the Permanent Secretary, MAF;
 - (b) Ambassador Douglas Saunders, Cabinet Secretary, Office of the Cabinet
 - (c) The Hon. Dr. Christopher Tufton, Minister of Agriculture and Fisheries, MAF;
 - (d) Mr. Aubyn Hill, Chairman, SCJ Holdings Ltd.
2. The following individual was required to provide a sworn written response to a formal Requisition which was directed to him by the OCG:
- (a) Mr. Don Wehby, the former Minister without Portfolio, Ministry of Finance and the Public Service (MOFPS).
3. Follow up Requisitions/Questionnaires, requesting clarification on certain issues, were directed by the OCG to the following Public Officials:
- (a) Mr. Donovan Stanberry, the Permanent Secretary, MAF;
 - (b) The Hon. Dr. Christopher Tufton, Minister of Agriculture and Fisheries, MAF;
 - (c) Ambassador Douglas Saunders, Cabinet Secretary, Office of the Cabinet.
 - (d) Mr. Aubyn Hill, Chairman, SCJ Holdings Ltd.
4. A detailed review of the **sworn** certified statements, supporting documents and the records which were provided by the Respondents to the OCG's Requisitions was undertaken.

FINDINGS

Overview of Mr. Aubyn Hill's Involvement in the Divestment of the Government of Jamaica's (GOJ's) Sugar Assets

In 2005 December, the GOJ initiated the process for the divestment of its sugar assets.

In this regard, the Permanent Secretary, in the MAF, Mr. Donovan Stanberry, informed the OCG that *"The GOJ decided to divest itself of the control and/or management of the Sugar Assets as part of its efforts to modernize and diversify the industry and based this decision on the country strategy for the sugar cane industry of Jamaica."*³

With regard to the divestment process, the assets which were being divested included the following:

- Factory Lands – *"...the land on which a sugar factory is located and an area of land not more than 20.234 hectares (50 acres) immediately surrounding the sugar factory, which surrounding lands may include office buildings, housing accommodation for workers, Great Houses, and distilleries, but do not include lands on which sugar cane is cultivated."*⁴
- Related Lands - *"...all lands on an Estate, other than Factory Lands and Sugar Cane Lands and may include office buildings, housing accommodation for workers, distilleries and Great Houses."*⁵
- Equipment and Chattels – *"...means in relation to any Estate, all the equipment and chattels used in the cultivation, processing and production of sugar cane and all furniture and equipment in the administration offices situated on the Estates."*⁶

³ Donovan Stanberry. Response to the OCG's Requisition. 2009 November 19. Question #1

⁴ Donovan Stanberry. Response to the OCG's Requisition. 2009 November 19. Question #1

⁵ Donovan Stanberry. Response to the OCG's Requisition. 2009 November 19. Question #1

- Sugar Cane Lands – “...lands of an Estate on which sugar cane is cultivated and which for the avoidance of doubt do not include Factory Lands.”⁷

Mr. Donovan Stanberry, Permanent Secretary, MAF, in his response to the OCG’s Requisition, which was dated 2009 November 19, also informed the OCG that the “...assets which were to be divested were beneficially owned by the GOJ through a number of companies, including:

- a) Sugar Company of Jamaica Limited (SCJ);
- b) SCJ Holdings Limited;
- c) St. Thomas Sugar Company Limited;
- d) Trelawny Sugar Company Limited;
- e) Duckenfield Sugar Company Limited;
- f) West Indies Sugar Company;
- g) Waterwell Construction & Engineering Limited;
- h) Frome Monymusk Land Company Limited;
- i) Long Pond Sugar Company Limited;
- j) Long Pond Sugar Estates Ltd;
- k) National Sugar Company Limited;
- l) National Sugar Farms Limited, and
- m) Hampden Estates Limited.”⁸

Mr. Donovan Stanberry also noted, *inter alia*, that “During the divestment process, ownership of the Sugar Assets was consolidated into two companies (i.e. National Sugar Company Limited and SCJ Holdings Limited).”⁹ (OCG Emphasis)

⁶ Donovan Stanberry. Response to the OCG’s Requisition. 2009 November 19. Question 1

⁷ Donovan Stanberry. Response to the OCG’s Requisition. 2009 November 19. Question 1

⁸ Donovan Stanberry. Response to the OCG’s Requisition. 2009 November 19. Question 1

⁹ Donovan Stanberry. Response to the OCG’s Requisition. 2009 November 19. Question 1

With regard to the GOJ sugar divestment, the OCG found that there were several teams which were established to manage the process.

Detailed in the table below are the requisite teams which were established to manage and/or carryout the GOJ sugar divestment process since 2005 December.

TEAMS	TENURE	TERMS OF REFERENCE
Sugar Enterprise Team (SET)	2005 December- 2007 September	To oversee the privatization of the Sugar assets owned by the GOJ.
Sugar Cane Industry Negotiating Team (SNT)	2007 October – 2008 June	To identify and negotiate with the preferred bidders & recommend a suitable proposal to the Cabinet.
Sugar Cane Industry Implementation Team (SIT)	2008 June – 2009 January	To guide the implementation of the Heads of Agreement, that was signed with Infinity Bio-Energy, and to ensure a smooth transition from GOJ ownership to private ownership.
Sugar Negotiating Team (SNT)	2009 January – Present (Note- the reactivation of the SNT was approved by the Cabinet on 2009 February 2, by way of Cabinet Decision No. 5/09).	To identify, assess, evaluate and recommend suitable investors to Cabinet.

In his response to the OCG's Requisition, which was dated 2009 November 19, Mr. Donovan Stanberry, Permanent Secretary, MAF, informed the OCG that Mr. Hill, in 2005 December, was appointed the Chairman of the Sugar Cane Industry Enterprise Team (SET), "...at the commencement of the sugar divestment transaction..." and that ***"The mandate of the SET was to oversee the privatisation of the Sugar Assets owned by the GOJ."***¹⁰

¹⁰ Donovan Stanberry. Response to the OCG's Requisition. 2009 November 19. Question 1

Further, the OCG also found that Mr. Aubyn Hill was appointed the Chairman of all the respective teams which were established to manage and/or carryout the GOJ sugar divestment process.

Having regard to the foregoing, the OCG found that Mr. Aubyn Hill was intimately involved in the divestment of the GOJ Sugar Assets since the commencement of the process in 2005.

Contracts which were Awarded to Mr. Aubyn Hill &/or Corporate Strategies Ltd.

The OCG, in its Requisition, which was dated 2009 October 23, that was addressed to the Permanent Secretary, Mr. Donovan Stanberry, asked, *inter alia*, the following question:

“What is the extent of your knowledge of the alleged contract(s) which was/were awarded to Mr. Aubyn Hill and/or his company, Corporate Strategies Ltd. by the SCJ, MAF and/or any other Public Body(ies) acting on its behalf, during the period of the GOJ sugar asset divestment process?”¹¹

In his response to the OCG’s Requisition, which was dated 2009 November 19, Mr. Donovan Stanberry, stated, *inter alia*, as follows:

“Mr. Aubyn Hill was offered a Contract of Employment *by the Ministry of Agriculture on August 18, 2008, pursuant to Cabinet Decision No. 22/08 dated 30/6/2008 to lead the implementation of the Heads of Agreement signed between the Government of Jamaica (GoJ) and Infinity Bio-Energy (IBE). Prior to this, Mr Hill headed the Sugar Enterprise Team (SET), which prepared the asset packages for divestment, and the Sugar Negotiating Team (SNT), which negotiated with the sole bidder, Infinity Bio-Energy...*

¹¹ OCG Requisition to Mr. Donovan Stanberry. 2009 October 23. Question#5

Due to the fact that no deal was completed with Infinity Bio-Energy under the Heads of Agreement and the subsequent reopening of the bidding process by the Cabinet (Decision No. 5/09 dated 2/2/2009, Mr. Hill was offered another contract on the same terms as the previous.¹² (OCG Emphasis)

Based upon the foregoing, the OCG found that Mr. Aubyn Hill was awarded (2) two contracts between 2008 June and 2009 February by the MAF. The circumstances relating to the award of the two (2) contracts are detailed below:

(a) First Contract- 2008 August 18

In his response to the OCG's Requisition, which was dated 2009 November 19, Mr. Donovan Stanberry, Permanent Secretary, MAF, provided the OCG with an overview of the circumstances which led to the award of the first contract to Mr. Aubyn Hill.

In this regard, Mr. Donovan Stanberry informed the OCG that following the commencement of the bidding process on 2007 December 14, ***“One bid was presented on time, from Infinity Bio-Energy Limited/IBE (of Infinity Bio-Energy Brasil Participacoes S.A.).”***¹³

Mr. Donovan Stanberry, in his response to the OCG's Requisition, which was dated 2009 November 19, also stated, *inter alia*, as follows:

“The SNT commenced negotiations with IBE on Monday, 11 March 2008...

Signing of a Heads of Agreement. *The negotiations with IBE culminated in the signing of a Heads of Agreement on Friday, 27 June 2008, and also*

¹² Donovan Stanberry. Response to the OCG's Requisition. 2009 November 19. Question #5

¹³ Donovan Stanberry. Response to the OCG's Requisition. 2009 November 19. Question #1

commenced the process of transition of ownership of the Government-owned assets of the Sugar Cane Industry to IBE. The Heads of Agreement outlined the essential terms of the transaction and the terms and conditions on which the Parties would jointly seek to implement the modernization and diversification of the sugar cane industry. The Heads of Agreement also identified the actions to be taken by GOJ and IBE to give effect to IBE's plan for improvements to the Industry. GOJ and IBE agreed to enter into a joint venture "Newco" – Infinity Bio and Clean Energy Limited (Ownership GOJ: 25%, IBE: 75%) to carry on the Sugar-Related Business and the Dehydration Business.

Implementation Phase. At their meeting held on Monday, 30 June 2008, Cabinet by Decision No. 22/08 approved the appointment of the Sugar Cane Industry Implementation Team (SIT) and the engagement of Mr. Aubyn Hill as Head of the Team to drive the implementation. Pursuant to this, a contract of employment was entered into between the ministry of Agriculture and Mr. Hill. Members included: (OCG Emphasis)

Team Members

- *Amb Derrick Heaven, Sugar Industry Authority*
- *Mr John Gayle, Sugar Company of Jamaica Limited*
- *Ms Stephanie Muir, Development Bank of Jamaica Limited*
- *Mr Archibald Campbell, University of the West Indies*
- *Mr George Callaghan, Sugar Transformation Unit/ Ministry of Agriculture*

★ The mandate of the SIT was to guide the implementation of the Heads of Agreement signed with IBE and ensure the smooth transition from GOJ ownership to private ownership.

The Agreement between the GOJ and IBE was further solidified with supplementary Implementation and Transition Agreements which clearly set out the intricate details of the transaction, inclusive of timelines, deliverables, expectations of both parties, and other information critical to the deal. The drafting of most of these agreements was completed during the implementation phase (July 2008 to December 2008).

***Termination of the Heads of Agreement between GOJ and IBE.** Following protracted delays, unfulfilled commitments and IBE's inability to provide evidence of its financing capability, on Friday, 30 January 2009 the Honorable Prime Minister advised that since an agreement could not be reached with IBE, negotiations with that company would be terminated. This effectively brought the first round of the sugar divestment to an end.”¹⁴*

A copy of the first contract, which was awarded to Mr. Aubyn Hill, was also submitted to the OCG by Mr. Donovan Stanberry, Permanent Secretary, MAF. A review, by the OCG, of the referenced document, revealed, *inter alia*, the following: (NB. A copy of the referenced contract can be found in the Appendices herein).

- (i) The contract was dated 2008 August 18 and was signed by Mr. Aubyn Hill on the said date in his occupational capacity as a “**Consultant**”. (OCG Emphasis)
- (ii) The contract refers to “**the Consultant**” and does not indicate that it is one of an Employment Contract as had been articulated by the Permanent Secretary, Mr. Donovan Stanberry, in his first response to the OCG's Requisition, which was dated 2009 November 19. (OCG Emphasis)

¹⁴ Donovan Stanberry. Response to the OCG's Requisition. 2009 November 19

- (iii) In point of fact, it is very important to record that the word “employment” or “employee” does not appear anywhere in the contract which has a preamble and nineteen (19) numbered clauses. The word “**Consultant**”, however, appears as many as nineteen (19) times in the document.
- (iv) The contract states that “*Cabinet, by its Decision No. 22/08 dated June 30, 2008, has approved the appointment of the Consultant as Head of the Sugar Privatization Implementation Team for the period July 1 to September 30, 2008.*”¹⁵ (OCG Emphasis)
- (v) The contract states that “*The Consultant shall undertake the assignment throughout a period of three (3) months, from July 1 to September 30, 2008 at a remuneration of FIVE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$5,500,000.00) payable in three (3) equal installments. **PROVIDED HOWEVER**, it is hereby understood and agreed that the assignment shall not exceed an aggregate value of FIVE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$5,500,000.00).*”¹⁶ (OCG Emphasis)
- (vi) The contract states that “*...the Consultant shall be provided with a fully maintained motor vehicle and driver throughout the continuance of this Agreement.*”¹⁷ (OCG Emphasis)
- (vii) Most importantly, the contract states that “*The Consultant shall be an independent contractor and not the servant of MOA. In such capacity, the Consultant shall bear exclusive responsibility with regard to discharging all his statutory payments and deductions arising under the term hereby created.*”¹⁸ (OCG Emphasis)

¹⁵ MAF/Hill Contract. 2008 August 18

¹⁶ MAF/Hill Contract. 2008 August 18

¹⁷ MAF/Hill Contract. 2008 August 18

¹⁸ MAF/Hill Contract. 2008 August 18

It is instructive to note that the duties and responsibilities of “*the Consultant*”, which were detailed in the contract, were stated as follows:

- (i) *“Securing the speedy and accurate movement of equipment and material through the Department of Customs;*
- (ii) *Interfacing between Infinity, the Ministries of Agriculture, Energy, Finance and Public Service, Transport & Works, Health and Environment, among others;*
- (iii) *Coordinating the activities of NEWCO among the various government agencies including the National Environment and Planning Agency (NEPA), National Land Agency (NLA), and the National Water Commission (NWC);*
- (iv) *Liaising with the Attorney General, various law firms and attorneys to secure land titles for five (5) factories that will be sold to NEWCO, as well as perfect the leases of the many properties to NEWCO;*
- (v) *Travelling to various sugar estates, as and when necessary;*
- (vi) *Preparing formal statements for the Prime Minister, Minister and Cabinet, as and when required;*
- (vii) *Preparing periodic reports for various stakeholders and relevant authorities.”*¹⁹

It is also instructive to note that the contract, that was awarded to Mr. Aubyn Hill, which was dated 2008 August 18, had a timeframe of 2008 July 1 to 2008 September 30.

¹⁹ MAF/Hill Contract. 2008 August 18

However, Minister, the Hon. Dr. Christopher Tufton, in his sworn response to the OCG's Requisition, which was dated 2010 February 24, stated, *inter alia*, as follows:

*"This Contract was essentially to undertake the implementation of all activities agreed to between the Government of Jamaica (GoJ) and Infinity Bio-Energy (IBE) in the Heads of Agreement dated June 27, 2008. This Heads of Agreement...contemplated completion by September 30, 2008. **To the extent that the Heads of Agreement was extended by both parties, Mr. Hill's contract was similarly extended up to January 31, 2009.**"*²⁰ (OCG Emphasis)

Further, it is instructive to note that Minister, the Hon. Dr. Christopher Tufton, in his response to the OCG's Requisition, which was dated 2010 February 24, referred to the contract with Mr. Aubyn Hill as one of an employment contract.

In this regard, Minister, the Hon. Dr. Christopher Tufton, stated, *inter alia*, that **"Mr. Hill was offered an Employment Contract by the Ministry of Agriculture..."**²¹ (OCG Emphasis)

(b) Second Contract- 2009 March 30

In his response to the OCG's Requisition, which was dated 2009 November 19, Mr. Donovan Stanberry, Permanent Secretary, MAF, provided the OCG with an overview of the circumstances which led to the award of the second contract to Mr. Aubyn Hill.

In this regard, Mr. Donovan Stanberry informed the OCG as follows:

²⁰ Min. the Hon. Dr. Christopher Tufton. Response to the OCG's Requisition. 2010 February 24. Question #1

²¹ Min. the Hon. Dr. Christopher Tufton. Response to the OCG's Requisition. 2010 February 24. Question #1

“THE DIVESTMENT PROCESS - SECOND ROUND

In February 2009 the GOJ decided to re-open the opportunity to all interested parties able to submit an acceptable proposal to purchase all or some of the Government’s Sugar Assets. The GOJ’s re-stated model emphasized a wholistic [sic] approach to the divestment of the Sugar Assets, stating in the Information Memorandum that preference would be given to investors, or groups of investors, seeking to acquire the Sugar Assets en bloc. A Sugar Negotiating Team (SNT) was reactivated and mandated to assess, evaluate and recommend suitable investors. Cabinet also approved the extension of the tenure of the Sugar Cane Industry Privatization Secretariat at DBJ and that of DunnCox, which was retained to provide legal support to the Negotiating Team.

The members of the reactivated SNT were as follows:

Chairman

- *Mr Aubyn Hill, Financial and Strategic Planning Consultant*

Team Members

- *Amb Derrick Heaven, Sugar Industry Authority*
- *Ms Stephanie Muir, DBJ*
- *Mr Archibald Campbell, UWI*
- *Dr Wesley Hughes, PIOJ*
- *Mr Wentworth Charles, Petroleum Corp of Jamaica*
- *Ms Betty-Ann Jones, KPMG*
- *Mrs Sharon Weber, Petro Caribe Fund*
- *Mrs Sharon Weber resigned from the SNT in March 2009*

Note: Mr. Aubyn Hill's contract of employment was renewed to carry on this process further to agreement with Hon. Don Wehby. (OCG Emphasis)

★ In February 2009, a Sugar Negotiating Team was reactivated and mandated to identify, assess, evaluate and recommend suitable investors to Cabinet.”²²

A copy of the second contract, which was awarded to Mr. Aubyn Hill, was also submitted to the OCG by Mr. Donovan Stanberry, Permanent Secretary, MAF. A review, by the OCG, of the referenced document revealed, *inter alia*, the following: (NB. A copy of the referenced contract can be found in the Appendices herein).

- (i) The contract was dated 2009 March 30.
- (ii) Contrary to the assertions of Mr. Donovan Stanberry, the contract refers to **“the Consultant”**, and does not indicate that it is/was an Employment Contract. (OCG Emphasis)
- (iii) In point of fact, it is instructive to note that, very much like the first contract, the word “employment” or “employee” does not appear anywhere in the contract which has a preamble and nineteen (19) numbered clauses. The word **“Consultant”**, however, appears as many as nineteen (19) times in the document.
- (iv) The contract states that **“Cabinet, by its Decision No. 22/08 dated June 30, 2008, has approved the appointment of the Consultant as Head of the**

²² Donovan Stanberry. Response to the OCG's Requisition. 2009 November 19. Question #1

Sugar Privatization Implementation Team for the period July 1 to September 30, 2008.”²³ (OCG Emphasis)

- (v) The contract states that “**The Consultant** shall undertake the assignment throughout a period of Four (4) months, from February 1 to May 31, 2009 at a remuneration of SEVEN MILLION THREE HUNDRED THIRTY-THREE THOUSAND THREE HUNDRED AND THIRTY-THREE DOLLARS AND THIRTY-THREE CENTS (\$7,333,333.33) payable in four (4) equal installments. **PROVIDED HOWEVER**, it is hereby understood and agreed that the assignment shall not exceed an aggregate value of SEVEN MILLION THREE HUNDRED THIRTY-THREE THOUSAND THREE HUNDRED AND THIRTY-THREE DOLLARS AND THIRTY-THREE CENTS (\$7,333,333.33).”²⁴ (OCG Emphasis)
- (vi) The contract states that “The period for negotiating the sale of the Government assets of the Sugar Cane Industry has been extended.”²⁵
- (vii) Most importantly, the contract states that “**The Consultant shall be an independent contractor and not the servant of MOA.** In such capacity, the Consultant shall bear exclusive responsibility with regard to discharging all his statutory payments and deductions arising under the term hereby created.”²⁶ (OCG Emphasis)

The OCG also found that the particulars of the second contract were substantially identical to the first contract, which was dated 2008 August 18.

²³ MAF/Hill Contract. 2009 March 30

²⁴ MAF/Hill Contract. 2009 March 30

²⁵ MAF/Hill Contract. 2009 March 30

²⁶ MAF/Hill Contract. 2009 March 30

Further, the duties and responsibilities that were detailed in the second contract, which was dated 2009 March 30, were substantially the same as that which was detailed in the initial contract, which was dated 2008 August 18.

However, it should be noted that the similarity in the responsibilities were with regard to the general activities which were required for the divestment process and excluded any reference to “NEWCO”, which was the contemplated company under the Heads of Agreement between Infinity-Bio Energy and the GOJ.

In addition, the following was an additional responsibility that was added to the contract, which was dated 2009 March 30:

- (i) *“Inviting, assessing, evaluating and recommending suitable investors to Cabinet.”*²⁷

Procurement Procedures which were Utilised in the Award of the Contracts

The OCG, in its Requisition, which was dated 2009 October 23, that was addressed to the Permanent Secretary, Mr. Donovan Stanberry, asked, *inter alia*, the following questions:

“What services have Mr. Aubyn Hill and or his company, Corporate Strategies Ltd. been contracted and/or is being contracted to provide to the SCJ, MAF and/or any other Public Body(ies) acting on its behalf. Please provide an Executive Summary listing all agreement(s) and/or contract(s), if any, which was/were entered into between the SCJ, MAF and/or any other Public Body(ies) acting on its behalf, Mr. Aubyn Hill and or his company, Corporate Strategies Ltd.

The summary should detail:

²⁷ MAF/Hill Contract. 2009 March 30

- i. All agreement(s) and/or contract(s) which was/were entered into for the purposes of or in regard to the GOJ sugar asset divestment process;
- ii. The rationale and purpose of each agreements(s) and/or contract(s);
- iii. The method of procurement which was utilized in each instance (i.e. Selective Tender etc.);
- iv. If the contract(s) was/were awarded using the Sole Source Methodology please provide the justification for the use of that procurement methodology... ”²⁸

In his response to the OCG’s Requisition, which was dated 2009 November 19, Mr. Donovan Stanberry, stated, *inter alia*, as follows:

“The first Contract with Mr. Hill was entered into pursuant to Cabinet Decision No.22/08. This Contract was essentially to undertake the implementation of all activities agreed to between the GoJ and IBE in the Heads of Agreement dated June 27, 2008. This Heads of Agreement...contemplated completion by September 30, 2008. To the extent that the Heads of Agreement was extended by both parties, Mr. Hill’s contract was similarly extended up to January 31, 2009. (OCG Emphasis)

Consequent on GoJ terminating the Heads of Agreement at the end of January 2009, the Cabinet by Decision No. 5/09 dated 2/2/2009 approved the re-opening of the sugar divestment process. **As a consequence of the re-opening process and further to consultations with and agreement of the Honourable Don Wehby, Mr. Hill was offered another contract by the Ministry on the same terms and conditions, after approval by the Ministry’s Contracts Committee, which has authority to approve such employment contracts...** (OCG Emphasis)

²⁸ OCG Requisition to Mr. Donovan Stanberry. 2009 October 23. Question#6

As explained in 6(iii) above, Mr. Hill's original contract was approved by the Cabinet. The sole sourcing method was employed with respect to his re-engagement, as his long association as Chairman of the SET and SNT, as well as his previous engagement in the implementation of the Heads of Agreement, uniquely qualified him and allowed for continuity."²⁹ (OCG Emphasis)

Mr. Donovan Stanberry also submitted, to the OCG, a copy of a Memorandum, which was dated 2008 July 21, and captioned "***Engagement of Mr. Aubyn Hill as Head of the Sugar Cane Industry Implementation Team.***"

The referenced Memorandum was addressed to Mrs. Yvonne Crawford, Senior Legal Officer, MAF, from Mr. George Callaghan, Head, Sugar Transformation Unit, MAF, and stated, *inter alia*, as follows:

"By Cabinet Decision dated June 30, 2008, Mr. Aubyn Hill was appointed Head of the Sugar Cane Industry Implementation Team effective July 1, 2008

*I am directed by the Permanent Secretary, to see to the arrangements for the contracting of Mr. Hill. Accordingly, I hereby request you to draft a Contract Agreement between Mr. Aubyn Hill and the Ministry of Agriculture..."*³⁰

In response to the foregoing Memorandum, Mrs. Yvonne Crawford, wrote to Mr. George Callaghan, by way of another Memorandum, which was dated 2008 July 25. In the referenced Memorandum, Mrs. Crawford stated, *inter alia*, as follows:

"Attached please find the Contract for the employment of Mr. Aubyn Hill as Head of the Sugar Cane Industry Implementation Team, as required.

²⁹ Donovan Stanberry. Response to the OCG's Requisition. 2009 November 19

³⁰ Memorandum to Mrs. Yvonne Crawford. 2008 July 21

I would ask that you note the following:

*...Government does not pay G.C.T so G.C.T would not be payable. **However, the Contract speaks to Mr. Hill as being an independent contractor and responsible for all taxes due and payable under the contract of employment. Government cannot assume Mr. Hill's taxes...***³¹ (OCG Emphasis)

Based upon the foregoing, the OCG found that the contract, which was awarded to Mr. Hill, which was dated 2008 August 18, and his subsequent contract which was dated 2009 March 30, were awarded via the Sole Source/Direct Contracting Procurement Methodology.

In the first instance, Cabinet approved the appointment of Mr. Aubyn Hill, as Head of the SIT, in order to conclude the Heads of Agreement with Infinity Bio-Energy. Subsequent to the Cabinet granting its approval on 2008 June 30, instructions were given, by the Permanent Secretary, to draft the contract which was later signed on 2008 August 18.

Having regard to Mr. Donovan Stanberry's assertion that "...*Mr. Hill's original employment contract was the subject of a Cabinet approval...*"³², the OCG, by way of a Requisition, which was dated 2010 January 4, that was addressed to the Cabinet Secretary, Ambassador Douglas Saunders, asked, *inter alia*, the following question:

*"Kindly provide copy of all Cabinet Submissions and Decisions regarding the award of the contract(s) which was/were entered into with Mr. Aubyn Hill and/or Corporate Strategies Ltd. by the SCF[sic], the Ministry of Agriculture (MAF) and/or any other Public Body acting on its behalf, in relation to the Government of Jamaica (GOJ) Sugar Divestment Process."*³³

³¹ Memorandum from Mrs. Yvonne Crawford. 2008 July 25

³² Donovan Stanberry. Response to the OCG's Requisition. 2009 November 19. Question #8

³³ OCG Requisition to Ambassador Douglas Saunders. 2010 January 4

In his response to the OCG's Requisition, which was dated 2010 January 15, Ambassador Douglas Saunders stated that "*Whilst the Submission and Decision, copies enclosed, do not speak specifically to an award of contract, they do indicate approval of Mr. Hill's appointment, and the intention of the Ministry of Agriculture to negotiate appropriate negotiation [sic] with regard thereto.*"³⁴ (OCG Emphasis)

Ambassador Saunders provided the OCG with a copy of Cabinet Submission No. 382/MA-21/08 and Decision No. 22/08, which were dated 2008 June 30.

Cabinet Submission No. 382/MA-21/08

In the referenced document, which was dated 2008 June 30 and which was signed by the Minister, the Hon. Dr. Christopher Tufton, the following information, *inter alia*, was detailed:

- (1) *"The Sugar Privatization Implementation Team will be charged to work with a small team from Infinity Bio-Energy to execute the requirements of the Heads of Agreement, signed by the Honorable Prime Minister on Friday 27th June 2008 on behalf of the GOJ with Infinity, with the clear mandate to ensure the completion arrangements in the Heads of Agreement are in place to allow the GOJ and Infinity to sign the completion agreement on September 30th 2008.*
- (2) *The team will commence work on July 1st 2008.*
- (3) *The Ministry Agriculture will negotiate appropriate remuneration for Mr. Aubyn Hill in his capacity as Head of the Sugar Privatization Implementation Team for the period 1st July 2008 to the end of September 2008 or until such time as the handover of assets to infinity is effected.*

³⁴ Ambassador Douglas Saunders. Response to the OCG's Requisition. 2010 January 15

(4) Based upon the aforementioned facts, Cabinet is being asked to approve the appointment of Mr. Aubyn Hill as Head of Sugar Privatization Implementation Team effective 1st July 2008.”³⁵ (OCG Emphasis)

Cabinet Decision No. 22/08, which was dated 2008 June 30

The referenced document stated, *inter alia*, as follows:

“After consideration, the Cabinet gave approval for the appointment of Mr. Aubyn Hill as Head of the Sugar Privatization Implementation Team effective July 1, 2008.”³⁶ (OCG Emphasis)

In the second instance, the Permanent Secretary informed the OCG that the contract, which was dated 2009 March 30, was awarded to Mr. Aubyn Hill, using the Sole Source Procurement Methodology, based upon Mr. Hill’s “...long association as Chairman of the SET and SNT, as well as his previous engagement in the implementation of the Heads of Agreement, uniquely qualified him and allowed for continuity.”³⁷ (OCG Emphasis)

Further, it is instructive to note that by way of Cabinet Decision No.5/09, which was dated 2009 February 2, the Cabinet approved the reactivation of the Sugar Negotiating Team, which was chaired by Mr. Aubyn Hill. The OCG found that the referenced Cabinet Decision was also the basis upon which Mr. Hill’s second contract was awarded.

The OCG in its Requisition, which was dated 2009 October 23, that was addressed to the Permanent Secretary, Mr. Donovan Stanberry, also asked, *inter alia*, the following questions:

³⁵ Cabinet Submission No. 328/MA-21/08

³⁶ Cabinet Decision No.22/08

³⁷ Donovan Stanberry. Response to the OCG’s Requisition. 2009 November 19. Question #6

“Please state whether prior approval was sought from the (a) Procurement Committee and (b) Accounting Officer of the SCJ, MAF and/or any other Public Body(ies) acting on its behalf for the award of the contract(s) to Mr. Aubyn Hill and/or Corporate Strategies Ltd?

- i. If yes, please state the date(s) on which this was done and provide documentary evidence of the same;*
- ii. If no, why was this not done and is it customary for SCJ, MAF and/or any other Public Body(ies) acting on its behalf to bypass the relevant Procurement Committee and the Accounting Officer...”³⁸*

In his response to the OCG’s Requisition, which was dated 2009 November 19, Mr. Donovan Stanberry, stated, *inter alia*, as follows:

*“As explained in 6 above, **Mr. Hill’s original employment contract was the subject of a Cabinet approval, and the subsequent contract was duly approved by the Ministry’s Procurement Committee.**”³⁹ (OCG Emphasis)*

Mr. Donovan Stanberry also provided the OCG with a copy of a Memorandum, which was dated 2009 March 25, that was addressed to Mrs. Paulette Lyons-Dodd, Chairman, Contracts Committee, MAF, from Ms. Judith C. Maloney, Principal Director, MAF, requesting the reengagement of Mr. Aubyn Hill.

Below, is a verbatim extract of the information that was contained in the referenced Memorandum which was dated 2009 March 25:

³⁸ OCG Requisition to Mr. Donovan Stanberry. 2009 October 23. Question#8

³⁹ Donovan Stanberry. Response to the OCG’s Requisition. 2009 November 19

- (i) *“Mr. Aubyn Hill was appointed Head of the Sugar Cane Industry Implementation Team effective July 1, 2008, by Cabinet Decision dated July 21, 2008...”*
- (ii) ***In February, Cabinet took the decision to terminate the operations of the Sugar Cane Industry Privatization Implementation team and to reappoint the Sugar Negotiating Team (SNT) and reappoint Mr. Aubyn Hill, Chairman of the SNT...***
- (iii) *Hon. Don Wehby, in consultation with the Hon. Christopher Tufton agreed to extend the contract with equivalent terms and conditions for a period of four (4) months...*
- (iv) ***Justification***

Mr. Hill has been associated with the privatization of the public sector sugar assets since the inception of the process in 2005 and therefore possesses unique expertise critical to the success of the negotiations. Additionally, it was considered extremely urgent and critical that the process of divestment of the sugar assets should commence immediately following non-completion of the deal with Infinity Bio Energy Ltd and it was deemed necessary to reengage Mr. Hill to continue to carry out this programme. Hence, Cabinet took the decision to reappoint Mr. Hill, Chairman of the SNT.

- (v) *A new contract is now being formulated in respect of Mr. Hill’s new mandate which now focuses on inviting, assessing, evaluating and recommending suitable investors to the Cabinet. However, it should be reiterated that the compensation remains at JMD1.83 million per month.*

- (vi) *It is against this background that the Contracts Committee is requested to approve the reengagement of Mr. Aubyn Hill by the Ministry of Agriculture for a period of four (4) months effective February 1, 2009.*⁴⁰ (OCG Emphasis)

It is also instructive to note that the referenced Memorandum was stamped “APPROVED” on 2009 April 3, and was signed by the Chairman of the Contracts Committee.

Having regard to the foregoing, the OCG found that the approval of the Contracts Committee was sought by way of the referenced Memorandum, which was dated 2009 March 25, for the contract, which was signed on 2009 March 30.

Of import is the fact that the Contracts Committee did not approve the referenced contract until 2009 April 3. Further, it should be noted that the effective date of the contract was 2009 February 1.

It is also instructive to note that the OCG in its Requisition, which was dated 2009 October 23, that was addressed to the Permanent Secretary, Mr. Donovan Stanberry, also asked, *inter alia*, the following questions:

“Please state whether prior approval was sought from the National Contracts Committee (NCC) for the award of the contract(s) to Mr. Aubyn Hill and/or Corporate Strategies Ltd.?”

- i. *If yes, please state the date(s) on which this was done and provide documentary evidence of the same;*

⁴⁰ MAF Memorandum. 2009 March 25

- ii. *If NCC approval was granted, please provide the date(s) on which this was done and provide documentary evidence of the same;*
- iii. *If no, why was this not done and is it customary for the SCJ, MAF and/or any other Public Body(ies) acting on its behalf to bypass the NCC... ”⁴¹*

In his response to the OCG’s Requisition, which was dated 2009 November 19, Mr. Donovan Stanberry, stated, *inter alia*, as follows:

“As explained in number 6, the two (2) contracts awarded to Mr. Hill are Employment Contracts, which do not fall within the purview of the National Contracts Committee [sic].”⁴² (OCG Emphasis)

Based upon the foregoing, the OCG found that Mr. Donovan Stanberry was fully aware of the type of contracts which would have required the approval of the National Contracts Commission (NCC). Of particular import, is/was the fact that Mr. Stanberry noted that the NCC had no jurisdiction over ‘employment contracts’.

Further, it is instructive to note that prior to the foregoing assertion of Mr. Stanberry, the OCG, in its Media Release, which was dated 2009 October 16, had clearly indicated, *inter alia*, that *“Prior to September 22, 2008, sole source contract awards in excess of \$1 Million in value would have required, among other things, the prior evaluation and endorsement of the National Contracts Commission (NCC) as to justification and cost competitiveness. In addition, the prior approval of the Cabinet would have had to be secured if the projected value of the contract was in excess of \$15 Million”.*⁴³ (OCG Emphasis)

⁴¹ OCG Requisition to Mr. Donovan Stanberry. 2009 October 23. Question#9

⁴² Donovan Stanberry. Response to the OCG’s Requisition. 2009 November 19. Question #9

⁴³ OCG Media Release. 2009 October 16

However, contrary to Mr. Donovan Stanberry's assertion of the award of an '*employment contract*' to Mr. Aubyn Hill, the OCG found that both contracts which were signed by the MAF and Mr. Hill stated, *inter alia*, as follows:

(a) "*Cabinet, by its Decision No. 22/08 dated June 30, 2008, has approved the appointment of the Consultant as Head of the Sugar Privatization Implementation Team for the period July 1 to September 30, 2008.*"⁴⁴ (OCG Emphasis)

(b) "*The Consultant shall be an independent contractor and not the servant of MOA.*"⁴⁵ (OCG Emphasis)

Having regard to the foregoing, the OCG found that the contracts which were awarded to Mr. Hill were for consultancy services. (NB. A copy of the referenced contracts can be found in the Appendices). They were not, as the Permanent Secretary had represented, employment contracts.

As such, and notwithstanding the approval from the Cabinet, it is instructive to note that the first contract, which was awarded on 2008 August 18, to Mr. Aubyn Hill, should have been subjected to the GOJ procurement guidelines, which are detailed in the Government Procurement Procedures Handbook (GPPH- 2001 May).

In this regard, the OCG found that the contract which was awarded on 2008 August 18, to Mr. Aubyn Hill, via the Sole Source or Direct Contracting Procurement Methodology, was awarded in breach of Section 2.1.3.4 of the GPPH (2001 May).

Section 2.1.3.4 of the GPPH (May 2001), provides, *inter alia*, that:

⁴⁴ MAF/Hill Contract. 2009 March 30

⁴⁵ MAF/Hill Contract. 2009 March 30

“All Sole Source or Direct Contracting greater than \$1M must receive prior written approval from the NCC through the Accounting Officer.”⁴⁶

At the time of the award of the referenced contract to Mr. Aubyn Hill, in 2008 August, there were no legal and/or penal sanctions which were ascribed to a breach of the GPPH, which was then a mere set of rules and guidelines, without the force of law.

However, and notwithstanding, the OCG has found that by virtue of the fact that the MAF had failed to obtain the prior approval of the NCC, the contract award process was, therefore, both irregular and improper in nature. Consequently, the award of the contract to Mr. Hill was unlawful, having regard to the provisions which are contained in Section 4 (1) of the Contractor General Act which prohibit, among other things, the award of Government contracts in circumstances which *“involve impropriety or irregularity”*.

Further, the second contract, which was awarded to Mr. Aubyn Hill, on 2009 March 30, should have been subjected to the new GOJ Procurement Guidelines, which are detailed in the Revised Government Procurement Procedures Handbook (RPPH-2008 November) which came into force on 2008 December 10.

Consequently, the OCG found that the contract which was awarded on 2009 March 30, to Mr. Aubyn Hill, via the Sole Source Contracting Procurement Methodology, was awarded in breach of Sub-Section S-2040 (D) and (E) of the RPPH.

Sub-Section S-2040 (E) of the RPPH provides, *inter alia*, that:

“The Head of the Procuring Entity may approve sole source/direct contracting up to J\$3M. Contract values above this threshold will require the pre-approval of the NCC.”⁴⁷

⁴⁶ GPPH. Section 2.1.3.4. 2001 May.

⁴⁷ RPPH. Sub-Section S-2040(E). 2008 November

It is also instructive to note that Sub-Section S-2040 (D) and (E) of the RPPH details very specific justifications for the use of the Sole Source and Direct Contracting Procurement Methodologies. In this regard, Sub-Section S-2040 (D) of the RPPH provides, *inter alia*, that:

“D. SOLE SOURCE

Sole Source means there is only one provider of the particular good, service or work.

Use of this method may be justified when:

- i. The procurement is of a “sensitive” nature.*
- ii. A procuring entity receives an unsolicited proposal that it considers meritorious.*
- iii. A particular supplier or contractor has exclusive rights in respect of goods, services or work.*
- iv. Standardizing equipment available only from a single proprietary source; i.e. the procuring entity has procured goods, equipment or technology from a supplier or contractor and additional supply must be procured from that supplier or contractor for reason of standardization (follow-on procurement).*
- v. For the purposes of research, experiment, study or development.”⁴⁸*

Further, Sub-Section S-2040 (E) of the RPPH provides, *inter alia*, that:

*“Direct contracting means only one contractor is invited to participate. **Use of this method may be justified when:***

⁴⁸ RPPH. Sub-Section S-2040(D). 2008 November

- i. In response to a catastrophic event, making it impractical to use other methods of procurement because of the time involved in using those methods.*
- ii. For the purposes of research, experiment, study or development.*
- iii. In emergency circumstances.”⁴⁹(OCG Emphasis)*

In the instant case of the procurement of the consulting services of Mr. Aubyn Hill, the evidence, and the consequential justification, which were provided to the OCG by the MAF did not support any notion or basis upon which the referenced procurement could have reasonably fit within the prescribed justification parameters of either the Sole Source and/or Direct Contracting Procurement Methodologies.

Without prejudice to the aforementioned, it must be clearly noted that despite the assertions of Mr. Donovan Stanberry that the Sole Source Procurement Methodology had been utilized to engage the services of Mr. Aubyn Hill, under the second consultancy contract, the OCG has found that the approval of the NCC was neither sought nor granted for the referenced contract.

Had the MAF, though errant in the use of the Sole Source/Directing Contracting Methodologies, sought the approval of the NCC in the instant matter, as is stipulated by the RPPH, the entity would have had the benefit of being advised by the NCC that the contracting of Mr. Aubyn Hill did not meet the justification criteria which are contemplated by Sub-Section S-2040 (D) and (E) of the RPPH and could have, consequently, obtained the appropriate remedial advice.

In this regard, and taking into consideration the inapplicability of the Sole Source/Direct Contracting Procurement Methodologies, it is instructive to note that Sub-Sections S-3000 and S-3010 of the RPPH, amongst others, prescribes the procurement

⁴⁹ RPPH. Sub-Section S-2040(E). 2008 November

methodologies which are to be utilised by Public Bodies for the procurement of consultancy services.

Sub-Section S-3000 of the RPPH provides as follows:

“III. GENERAL

The process of consultant selection is based on obtaining a limited number of proposals from a shortlist of consultants expressing interest that possess the relevant qualifications. It is too time-consuming and expensive to invite and evaluate proposals from all consultants who want to compete; therefore selection is based on limited competition among qualified firms that, in the Procuring Entity’s view, are capable of delivering the required services at the desired quality level.

From the consultants’ point of view, the use of a shortlist reduces the number of proposals to be prepared, raises proposal quality, and increases the chances for the consultant of winning the competition. For GOJ, it is an effective way of attracting the best candidates for the assignment.

In keeping with the principles of the Procurement Policy, Procuring Entities are required to ensure the following considerations guide the selection process for the engagement of consultants:

(a) high quality services;

(b) economy and efficiency;

(c) fairness and equity;

(d) transparency in the selection process; and

(e) equal opportunity for qualified consultants.⁵⁰ (OCG Emphasis)

Further, given the expressed value of Mr. Hill's 2009 consultancy contract, which was valued at \$7,333,333.33, it is instructive to note Sub-Section S-3010 (III) of the RPPH – "Contract Value Thresholds for Services", which provides, *inter alia*, that:

<u>Threshold</u>	<u>Procurement Method</u>	<u>Procedures</u>
Contracts above J\$ 4million up to J\$ 10 million	Selective Tender	<ul style="list-style-type: none">- The procuring entity issues a general advertisement in daily newspapers inviting appropriately qualified consultants registered with the NCC;- Evaluation is carried on by the Evaluation Committee;- The contract is subsequently approved by the Head of the procuring entity;- Contract is awarded by the Head of the procuring entity-

The referenced provisions of the RPPH would have required some degree of competitive bidding and the consequent evaluation of bids from suitably qualified consultants. However, the MAF undertook no such competitive process but, instead, relied upon the inapplicable Sole Source/Direct Contracting Procurement Methodologies and, even in doing so, did not seek to comply with the stipulated approval requirements.

Consequently, the OCG has found that the MAF has breached the competitive bidding requirements of Sub-Sections S-3000 and S-3010 of the RPPH.

Having regard to the identified breach, it must be noted that the Public Sector Procurement Regulations were promulgated in 2008 December as it was considered desirable to "... *more stringently regulate the procurement of general services, goods*

⁵⁰ RPPH. Sub-Section S-3000(III). 2008 November

and works by making the duty to observe procurement procedures legally enforceable and subject to penal sanction...”⁵¹

It is, therefore, instructive to note Sections 3, 7, 16 and 40 of the referenced Public Sector Procurement Regulations.

Section 3 of the Public Sector Procurement Regulations provides as follows:

“3. These Regulations govern public sector procurement in Jamaica and are applicable to all procurement of goods, works, services and other activities carried out by the Government of Jamaica.”

Section 7 of the Public Sector Procurement Regulations provides as follows:

“7. Tender Proceedings for prospective government contracts shall be conducted according to the procedures outlined in the Handbook, as amended from time to time, and more particularly for the purposes of these Regulations the procedures as regards-

- (a) invitations to tender;*
- (b) qualification of suppliers;*
- (c) requirements for the publicising of bid Opportunities and Contracts;*
- (d) receipt and opening of bids;*
- (e) bid validity; and*
- (f) bid evaluation”*

Section 16 of the Public Sector Procurement Regulations provides, *inter alia*, as follows:

“16. (1) The procuring entity shall select the appropriate method of selection for procurement of consulting services having regard to...

⁵¹ The Public Sector Procurement Regulations, 2008. 2008 December 12

...(d) the established thresholds in the Handbook and in accordance with the circulars issued, from time to time, by the Minister.”

Having regard to the expressed provisions of the Public Sector Procurement Regulations and the legal enforceability and penal sanctions which are now contemplated therein, it is instructive to note Section 40 of the Public Sector Procurement Regulations which provides, in very clear terms, as follows:

“40. A person who-

(a) contravenes these Regulations; or

(b) aids, abets or otherwise knowingly facilitates or is an accessory to the contravention of these Regulations, commit an offence and is liable, on summary conviction in a Resident Magistrate's Court, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three months or to both such fine...”

Contract Extensions

2008 August 18 Contract

The stipulated timeline for this contract was 2008 July 1 to 2008 September 30.

It is instructive to note that in his response to the OCG's Requisition, which was dated 2010 February 24, Dr. Christopher Tufton stated, *inter alia*, as follows:

*"The first Contract with Mr. Hill was entered into pursuant to Cabinet decision No. 22/08. This Contract was essentially to undertake the implementation of all activities agreed to between the Government of Jamaica (GoJ) and Infinity Bio-Energy (IBE) in the Heads of Agreement dated June 27, 2008. This Heads of Agreement...contemplated completion by September 30, 2008. **To the extent that the Heads of Agreement was extended by both parties, Mr. Hill's contract was similarly extended up to January 31, 2009.**"*⁵² (OCG Emphasis)

Further, the OCG was also provided with a copy of a Memorandum, which was dated 2008 October 14, with the captioned "*Extension of Contract for Mr. Aubyn Hill*" which was addressed to Dr. the Hon. Christopher Tufton from Mr. Donovan Stanberry.

In the referenced Memorandum, Mr. Donovan Stanberry stated, *inter alia*, that "*Due to the fact that the completion date has been extended, it is now necessary to extend his contract. I recommend that we extend it on a month by month basis on the same terms and conditions. Grateful for your approval or directive otherwise.*"⁵³

The OCG was also provided with a copy of a Memorandum, which was dated 2008 October 15, with the captioned "*Extension of Contract for Mr. Aubyn Hill, Head of the*

⁵² Dr. Christopher Tufton. Response to the OCG's Requisition. 2010 February 24. Question #1

⁵³ Memorandum from Mr. Donovan Stanberry. 2008 October 14

Sugar Cane Industry Implementation Team”, which was addressed to Mrs. Claudette Martin, Acting Principal Finance Officer, MAF, from Mr. George Callaghan.

In the referenced Memorandum, which was dated 2008 October 15, the following information, *inter alia*, was detailed:

“The period of Mr. Hill’s engagement was based upon the provisions of the Heads of Agreement signed between the Government of Jamaica and Infinity Bio-Energy Limited requiring completion/handover of sugar assets by September 30, 2008.

Handover of the sugar assets has not taken place on September 30, 2008, as expected, since a number of issues including those related to the transfer and operation of Petrojam Ethonal Limited (PEL) were not concluded.

The services of Mr. Aubyn Hill are therefore required. This serves to advise that upon the approval of the Hon. Minister of Agriculture, the Permanent Secretary has endorsed the extension of Mr. Aubyn Hill’s contract for a period of one (1) month from September 30, 2008 to October 31, 2008 subject to the terms and conditions of his current contract.”⁵⁴ (OCG Emphasis)

Having regard to the foregoing, the OCG found that the Accounting Officer, Mr. Stanberry, approved the extension of the first contract, which was awarded to Mr. Hill, on a month by month basis.

Further, it is instructive to note that in Cabinet Submission No. 382/MA-21/08, which was dated 2008 June 30, it was stated that *“The Ministry of Agriculture will negotiate appropriate remuneration for Mr. Aubyn Hill in his capacity as Head of the Sugar Privatization Implementation Team for the period 1st July 2008 to the end of September*

⁵⁴ Memorandum from Mr. George Callaghan. 2008 October 15

2008 or until such time as the handover of assets to Infinity is effected.”⁵⁵ (OCG Emphasis)

2009 March 30 Contract

The stipulated timeline for this contract was 2009 February 1 to 2009 May 31.

In his response to the OCG’s Requisition, which was dated 2009 November 19, Mr. Stanberry submitted, to the OCG, a copy of a Memorandum, which was dated 2009 September 30, that was captioned “*Extension of Contract Agreement No.GOJSUGAR/SERVICE/9071/2008/003 between Mr. Aubyn Hill and the Ministry of Agriculture & Fisheries*”

The referenced Memorandum was addressed to Mrs. Judith Maloney, Principal Director, Policy, Coordination and Administration, MAF, from Mr. Donovan Stanberry, in which he indicated, *inter alia*, as follows:

“By Cabinet Decision No. 5/09 dated February 2, 2009, the Sugar Negotiating Team (SNT) was reappointed with Mr. Aubyn Hill of Corporate Strategies Limited as Chairman. The reappointed SNT was charged by Cabinet to identify and negotiate with investors for the divestment of the Government-owned asset of the sugar industry.

Given the technical nature of the negotiations, it was agreed to contract Mr. Aubyn Hill as Chairman, Sugar Negotiating Team for a period of four (4) months commencing February 1, 2009, with terms and conditions equivalent to his previous contract with this Ministry...

⁵⁵ Cabinet Submission No. 382/MA-21/08. 2008 June 30

Three (3) of the five (3) [sic] GoJ estates remain to be divested and are the subject of proposals from ENERGEN Development Limited and Eridiania Suisse.

While these two (2) short-listed companies continue due diligence and feasibility on Frome, Monymusk and Bernard Lodge estates with the expectation of a conclusion of the divestment of these three (GoJ) estates, the services of the Chairman of the SNT will be required.

*Therefore, please arrange extension of the contract between Mr. Aubyn Hill of Corporate Strategies Limited and the Ministry of Agriculture and Fisheries on a month by month basis until further notice.*⁵⁶ (OCG Emphasis)

The OCG found that, in response to the foregoing Memorandum, another Memorandum was sent to Mr. Donovan Stanberry, from Mrs. Paulette Lyons Dodd, Chairperson of the Contracts Committee, which was captioned: “***Extension of Contract in respect of Mr. Aubyn Hill.***”

In the referenced Memorandum, which was dated 2009 November 5, it was indicated that:

“Your memorandum of September 30, 2009 to the Principal Director was referred to the Contracts Committee for consideration and endorsement of a contract for Mr. Aubyn Hill.

We have reviewed its contents and deliberated on the matter, however, the Committee is proposing that a four month contract be extended to the contractor for the period June to September, 2009 and for the month to month extension for

⁵⁶ Memorandum from Mr. Donovan Stanberry to Mrs. Judith Maloney. 2009 September 30

the period October to January, 2010 subject to a review of the Terms of Reference and the terms and conditions of the contract.⁵⁷ (OCG Emphasis)

Having regard to the foregoing, the OCG found that the Accounting Officer, Mr. Donovan Stanberry, and the Contracts Committee approved the extension of the second contract, which was awarded to Mr. Hill. In this regard, the referenced contract was initially extended for a period of four (4) months, from 2009 June to September and subsequently extended on a month by month basis.

Amounts which have been paid to Mr. Aubyn Hill &/or Corporate Strategies Ltd.

With regard to the value of the contracts, which were awarded to Mr. Aubyn Hill and/or his company, Corporate Strategies Ltd., by the MAF, the OCG found that the expressed provisions which were contained in the contract documents were as follows:

- (a) 2008 August 18 contract - \$5,500,000.00
- (b) 2009 March 30 contract - \$7,333,333.33

In this regard, the total value of both contracts was \$12,833,333.33.

However, it is instructive to note that both contracts were extended on several occasions and, as such, the OCG has found that the amounts which have been paid to Mr. Aubyn Hill have substantially exceeded the initially intended contract sums.

Further, having regard to the allegations that approximately \$27 Million was paid to Mr. Aubyn Hill, the OCG in its Requisition, which was dated 2009 October 23, that was addressed to the Permanent Secretary, Mr. Donovan Stanberry, asked, *inter alia*, the following questions:

⁵⁷ Memorandum from the Contracts Committee Chairperson. 2009 November 5

“What services have Mr. Aubyn Hill and or his company, Corporate Strategies Ltd. been contracted and/or is being contracted to provide to the SCJ, MAF and/or any Public Body(ies) acting on its behalf. Please provide an Executive Summary listing all agreement(s) and/or contract(s), if any, which was/were entered into between the SCJ, MAF and/or any other Public Body(ies) acting on its behalf, Mr. Aubyn Hill and or his company, Corporate Strategies Ltd. The summary should detail: ...

- i. The amount(s) which has/have been paid to date in respect of each of the agreement(s) and/or contract(s)...”⁵⁸*

In his response to the OCG’s Requisition, which was dated 2009 November 19, Mr. Donovan Stanberry stated, *inter alia*, that “Mr. Hill had been paid **J\$27.09 M** so far, consistent with the Terms of his contract.”⁵⁹ (OCG Emphasis)

Based upon the foregoing, the OCG found that \$27.09 Million was paid by the MAF to Mr. Aubyn Hill as at 2009 November 19.

The OCG also found that the amount which were identified by Mr. Donovan Stanberry, as having been paid to Mr. Hill, was approximately \$14.17 Million more than that which was contemplated in the initial award of the contracts, which were dated 2008 August 18 and 2009 March 30.

Further, in an effort to obtain a precise figure for the total amounts which had been paid to Mr. Aubyn Hill, the OCG in its Follow-Up Requisition that was addressed to Mr. Donovan Stanberry, which was dated 2010 April 30, asked, *inter alia*, the following question:

⁵⁸ OCG Requisition to Mr. Donovan Stanberry. 2009 October 23. Question#6

⁵⁹ Donovan Stanberry. Response to the OCG’s Requisition. 2009 November 19. Question #6

*“Kindly provide a breakdown of the **total** amounts which have been paid by the MAF to Mr. Aubyn Hill, pursuant to the contracts which were awarded on August 18, 2008 and March 30, 2009. The breakdown should include the amounts which have been paid pursuant to the extension of the referenced contracts and/or any other cost which has been incurred by the MAF with regard to Mr. Hill’s contracts and/or any other arrangement(s)/agreement(s) which was/were entered into with Mr. Aubyn Hill and/or his company, Corporate Strategies Ltd.”⁶⁰*

In his response, which was dated 2010 June 4, Mr. Donovan Stanberry provided the OCG with a spreadsheet which detailed the total payments, which were made to Mr. Aubyn Hill for the period of 2008 July 1 to 2009 December 31.

⁶⁰ OCG Follow-Up Requisition to Mr. Donovan Stanberry. 2010 April 30. Question 5

Below is an extract of the referenced spreadsheet:

Billing Period	Cheque Number	Fixed Fee \$	Vehicle Expenses \$	Payment for Driver \$	Telephone Expenses \$	Airfare \$	Total \$
July 1-31, 2008	2386	1,833,333.33	61,652.12	50,267.83	0.00	0.00	1,945,253.28
August 1-31, 2008	2386	1,833,333.33	42,937.50	48,924.22	0.00	0.00	1,925,195.05
September 1-30, 2008	2425	1,833,333.33	55,604.54	55,704.69	0.00	0.00	1,944,642.56
October 1-31, 2008	2460	1,833,333.33	51,962.20	47,714.51	0.00	0.00	1,933,010.04
November 1-30, 2008	2484	1,833,333.33	41,262.40	56,142.45	2,106.50	0.00	1,932,844.68
December 1-31, 2008	2524	1,833,333.33	55,690.41	84,371.37	705.31	0.00	1,974,100.42
January 1-31, 2009	2565	1,833,333.33	50,558.02	58,175.24	0.00	0.00	1,942,066.59
January 1-31, 2009	2794	0.00	69,669.22	0.00	0.00	0.00	69,669.22
February 1-28, 2009	2620	1,833,333.33	36,281.56	74,468.64	571.29	0.00	1,944,654.82
March 1-31, 2009	2638	1,833,333.33	49,651.42	71,653.13	34.44	0.00	1,954,672.32
April 1-30, 2009	2665	1,833,333.33	42,607.60	56,924.66	7.20	0.00	1,932,872.79
May 1-31, 2009	2674	1,833,333.33	31,241.50	61,733.29	78.82	0.00	1,926,386.94
May 1-31, 2009	2699	0.00	0.00	0.00	0.00	549,325.00	549,325.00
June 1-30, 2009	2736	1,833,333.33	47,520.20	0.00	21.60	0.00	1,880,875.13
July 1-31, 2009	2776	1,833,333.33	50,534.65	0.00	879.83	0.00	1,884,747.81

Billing Period	Cheque Number	Fixed Fee \$	Vehicle Expenses \$	Payment for Driver \$	Telephone Expenses \$	Airfare \$	Total \$
August 1-31, 2009	2886	1,833,333.33	63,029.48	0.00	396.70	0.00	1,896,759.51
September 1-30, 2009	2904	1,833,333.33	43,022.17	0.00	17.05	0.00	1,876,372.55
October 1-31, 2009	2903	1,833,333.33	57,637.42	0.00	187.81	0.00	1,891,158.56
November 1-30, 2009	2940	1,833,333.33	71,113.20	0.00	0.00	0.00	1,904,446.53
December 1-31, 2009	2969	1,833,333.33	57,393.18	0.00	187.49	0.00	1,890,914.00
TOTAL		32,999,999.94	979,368.79	666,080.03	5,194.04	549,325.00	35,199,967.80

It is instructive to note that the foregoing payments were corroborated by Mr. Aubyn Hill, in his response to the OCG's Requisition, which was dated 2010 June 3.

However, there was one discrepancy with regard to the 2009 May Cheque #2674 Payment. In this regard, the copy of the cheque showed a payment of \$1,926,386.93 and not \$1,926,386.94 as was reported by the Permanent Secretary.

Having regard to the foregoing, the OCG found that a total of \$35,199,967.79 was paid to Mr. Aubyn Hill for the period of 2008 July 1 to 2009 December 31.

Basis of the Payments made to Mr. Aubyn Hill &/or Corporate Strategies Ltd.

The OCG was interested in ascertaining the basis upon which the compensation which was to be paid to Mr. Aubyn Hill and/or his company, Corporate Strategies Ltd., was premised.

In this regard, it is also instructive to note that Minister, the Hon. Dr. Tufton and Mr. Donovan Stanberry, Permanent Secretary, MAF, informed the OCG that there was consultation with the then Minister without Portfolio, in the Ministry of Finance & the Public Service, Mr. Don Wehby.

Consequently, the OCG in its Requisition, which was dated 2010 February 3, asked Mr. Don Wehby, *inter alia*, the following question:

“Please provide an Executive Summary detailing the extent of your involvement in the process which led to the award of the contract(s) to Mr. Aubyn Hill and/or his company, Corporate Strategies Ltd. The summary should detail the following information:...Any other particulars that are pertinent to the negotiation of the contract(s) which was/were consummated with Mr. Aubyn Hill and/or his company, Corporate Strategies Ltd...”⁶¹

In his response to the OCG’s Requisition, which was dated 2010 March 8, Mr. Don Wehby stated, *inter alia*, as follows:

“The following were taken into consideration in assessing the compensation package for Mr. Hill

- *The contract should have lasted for approximately 3 – 4 months as the deal with Infinity Bio-Energy Limited was close to being completed.*
- *The cost of a partner in any of the leading audit/management company varies between \$25,000 - \$30,000 per hour.*
- *The equivalent figure in the United States is approximately US\$400 per hour.*

⁶¹ OCG Requisition to Mr. Don Wehby. 2010 February 3. Question #2

- *Therefore, \$25,000 for 5 hours per day would be equivalent to \$125,000 per day. Assuming that there were 20 working days in the month then that would be equivalent to \$2.5 million per month.*

In addition to the above the following circumstances would have been considered:

- *The Ministry of Finance & the Public Service (MOF&PS) had just taken over approximately \$16 billion in debt from the Sugar Company of Jamaica (SCJ).*
- *The company (SCJ) was accumulating huge losses and needed billions in funding to continue operations.*
- *SCJ's bank overdraft facility at National Commercial Bank was heavily overdrawn and the company was paying millions in overdraft fees.*
- *Mr. Hill was confident that the divestment of SCJ could take place in a reasonable timeframe...*

By my recollection, the compensation negotiated and finally agreed with Mr. Hill was less than \$2.5 million per month.”⁶²

Role of Mr. Aubyn Hill and/or Corporate Strategies Ltd. pursuant to the Contracts

The OCG was also cognizant of the fact that there were several persons, who were on the respective teams, who were involved in the GOJ sugar divestment process. Having regard to this fact, the OCG was interested in finding out (a) the role of Mr. Hill pursuant to the contracts which were awarded and (b) the difference in Mr. Hill's responsibilities and functions as against those of the other individuals and/or teams who were involved in the GOJ sugar divestment process.

⁶² Mr. Don Wehby. Response to the OCG's Requisition. 2010 March 8. Question 2

With respect to the foregoing, it is instructive to note that the OCG, in its Requisition, which was dated 2009 October 23, that was addressed to the Permanent Secretary, Mr. Donovan Stanberry, asked, *inter alia*, the following question:

*“Detail his specific functions as against those of the other individual(s) and/or team(s) who was/were involved in the GOJ sugar asset divestment process..”*⁶³

In his response to the OCG’s Requisition, which was dated 2009 November 19, Mr. Donovan Stanberry stated, *inter alia*, as follows:

“As Chairman, Mr. Hill shoulders the responsibility of ensuring that the often wide spectrum of views voiced by members of the team is guided into a consensus that allows the negotiating work to move forward. Also it is his role to ensure that as investors seek to get the best deal for themselves and their companies and the negotiators focus on getting the best price and deal for the government and people of Jamaica, that balance is achieved by guiding and shaping arguments, assessments, quantitative and qualitative considerations and using plain common sense to keep the process moving to success, while bearing in mind that at the end there are two possible outcomes - a deal or no deal.

Mr. Hill’s specific functions as against those of others in the continuing sugar divestment exercise include the following:

(a) As Chairman of the SNT, Mr. Hill calls and participates in all meetings and ensures that the relevant issues of the divestment process are on the agenda and discussed freely;

⁶³ OCG Requisition to Mr. Donovan Stanberry. 2009 October 23. Question #4(iii)

- (b) As Chairman, Mr. Hill has the responsibility to lead and guide the lawyers and GOJ policymakers to shape and refine GOJ's final positions in the multiplicity of legal agreements which are the binding [sic] documents in the divestment process;*
- (c) Conducts meetings in a manner that allows all members to air their views while keeping to the agenda and maintaining the focus to divest the assets of the Sugar Company of Jamaica (SCJ) as directed by the Cabinet;*
- (d) Prepare documents and information required by prospective investors who seek to secure possession of the sugar cane assets available for divestment;*
- (e) Arrange a great number of meetings between prospective investors, many government ministries and independent agencies and bodies such as PCJ, Petrojam Ethanol Limited (PEL) and executives at various levels at the SCJ;*
- (f) Ensured that the minutes and other administrative activities of the Secretariat are completed as required;*
- (g) Some members, because of their other responsibilities, scheduling and travel conflicts, would miss meetings from time to time, as chairman Mr. Hill ensures he is always present and properly briefed for the negotiations with the bidders/proposers who are interested as investors in the assets on the divestment schedule;*
- (h) Chaired many meetings between prospective investors and relevant stakeholders in the divestment process (such as PEL and Petrojam), arranged and attended meetings with various prospective investors with bodies such as the OUR, JPS and banking institutions;*

- (i) *As Chairman, Mr. Hill meets on various occasions with officials at the Ministry of Finance to work out tax arrangements and exemptions as required in the divestment exercise;*
- (j) *In his capacity as Chairman of the SNT, Mr. Hill prepares a variety of reports regularly to the Ministry of Agriculture (his reporting Ministry) as well as handle correspondence with other ministries and review and approve weekly and other periodic reports that are prepared by the Secretariat for the Ministry of Agriculture and for onward presentation to the Cabinet and Parliament;*
- (k) *As Chairman, Mr. Hill gives regular briefings to the Permanent Secretary and Minister in the Ministry of Agriculture and has had to appear before Cabinet to give presentations and updates on the divestment process;*
- (l) *As Chairman Mr. Hill has given regular briefings to many stakeholders in the sugar industry including other manufacturers, the unions, and cane farmer groups as well as to various contractors who work in the industry;*
- (m) *Various members of the media contact Mr. Hill, in his capacity as Chairman, on a regular basis to seek answers and updates on the sugar divestment process;*
- (n) *Mr. Hill is always on call to prospective investors, to clarify issues that arise in negotiating sessions, and to GOJ officials for regular briefings;”⁶⁴*

The OCG, in its Requisition, which was dated 2010 February 4, also asked Mr. Aubyn Hill to “*Detail your specific functions as against those of the other individual(s) and/or team(s) who was/were involved in the GOJ sugar asset divestment process.*”⁶⁵

⁶⁴ Mr. Donovan Stanberry. Response to the OCG’s Requisition. 2009 November 19

⁶⁵ OCG Requisition to Mr. Aubyn Hill. 2010 February 4. Question #1(iii)

In his response to the foregoing question, Mr. Aubyn Hill stated, *inter alia*, that “*In respect to two (2) contracts, I was responsible to carry out on a day to day basis the deliverables under my contract. The team members served principally as resource persons, who were drawn principally from public servants, who were paid in their substantive positions.*”⁶⁶ (OCG Emphasis)

It is instructive to note that a review of the composition of both the Sugar Cane Implementation Team (SIT), which existed between 2008 June and 2009 January, and the Sugar Negotiating Team (SNT), which existed as at 2009 January, highlighted the following:

- i. Apart from Mr. Aubyn Hill, the only other members of the team who were not Public Officers/Officials, otherwise than by reason of their service to the SNT, were Mr. Archibald Campbell of the University of the West Indies and Ms. Betty-Ann Jones of KPMG.

Having regard to the foregoing, the OCG found that Mr. Hill’s assertion that “*The team members....were drawn principally from public servants, who were paid in their substantive positions*”⁶⁷ was accurate. (OCG Emphasis)

Further, the OCG in its Requisition, which was dated 2009 October 23, asked Mr. Donovan Stanberry the following question:

“*What is/was the difference in the duties and/or roles and functions of Mr. Aubyn Hill and/or Corporate Strategies Ltd., pursuant to the contract(s) which has/have been awarded by the SCJ, MAF and/or any other Public body(ies) acting on its behalf, and*

⁶⁶ Mr. Aubyn Hill. Response to the OCG’s Requisition. 2010 March 16. Question #1(iii)

⁶⁷ Mr. Aubyn Hill. Response to the OCG’s Requisition. 2010 March 16

those of the respective team(s), individual(s) and/or entity(ies) who was/were/are involved in the GOJ sugar divestment process?”⁶⁸

In his response to the OCG’s Requisition, which was dated 2009 November 19, Mr. Donovan Stanberry stated, *inter alia*, that *“In respect to Mr. Hill’s two (2) contracts, Mr. Hill was responsible to carry out on a day to day basis the deliverables under his contract. The team members served principally as resource persons, who were drawn principally from public servants, who were paid in their substantive positions.”⁶⁹*

The OCG also sought to ascertain the mechanism which was used by the MAF to monitor and evaluate Mr. Hill’s contract performance. In this regard, the OCG in its Requisition, which was dated 2009 October 23, asked Mr. Donovan Stanberry the following question:

“Please detail the mechanisms, if any, which have been implemented by the SCJ, MAF and/or any other Public Body(ies) acting on its behalf to (a) monitor and (b) evaluate the performance of Mr. Aubyn Hill and/or Corporate Strategies Ltd. pursuant to the contract(s) which has/have been awarded by the SCJ, MAF and/or any other Public Body(ies) acting on its behalf.”⁷⁰

In his response to the OCG’s Requisition, Mr. Donovan Stanberry stated, *inter alia*, that *“As per the contracts, Mr. Hill provided reports on his deliverables, as well as updates in meetings with the Honourable Minister of Agriculture and the Cabinet and other reports.”⁷¹*

Further, the OCG sought to ascertain whether the other members of the respective teams, which were involved in the divestment process, were being compensated in a similar manner as Mr. Aubyn Hill.

⁶⁸ OCG Requisition to Mr. Donovan Stanberry. 2009 October 23

⁶⁹ Mr. Donovan Stanberry. Response to the OCG’s Requisition. 2009 November 19. Question #18

⁷⁰ OCG Requisition to Mr. Donovan Stanberry. 2009 October 23. Question #21

⁷¹ Mr. Donovan Stanberry. Response to the OCG’s Requisition. 2009 November 19

In this regard, the OCG in its Follow-Up Requisition that was addressed to Mr. Donovan Stanberry, which was dated 2010 April 30, asked the following question:

*“Please state whether the other members of the respective teams, which were involved in the sugar asset divestment process, were/are being paid by the MAF and/or any other Public Body(ies) acting on its behalf. Please provide documentary evidence, where possible, to substantiate your assertions/responses.”*⁷²

In his response to the OCG’s Requisition, which was dated 2010 May 14, Mr. Donovan Stanberry stated “No.”⁷³

Employment vs. Consultancy Contract

During the course of the OCG’s Investigation there have been several conflicting material representations which were made with respect to the nature of the contracts which were awarded to Mr. Aubyn Hill and/or his company, Corporate Strategies Ltd.

In this regard, the documentary evidence which was provided to the OCG has indicated that two (2) consultancy contracts were awarded to Mr. Aubyn Hill and/or his company Corporate Strategies Ltd. by the MAF. This position was earlier substantiated by public utterances in the media, which were made by and/or attributed to the Hon. Dr. Christopher Tufton, Minister of Agriculture and Fisheries, MAF.

In this regard, it was reported in a Radiojamaica article, which was entitled “*OCG involved in divestment process - Tufton*”, which was dated 2009 October 17, that the “*Agriculture Minister Dr. Christopher **Tufton says he is unaware of any breach of Government procurement guidelines in the granting of a multi-million dollar***”

⁷² OCG Follow-Up Requisition to Mr. Donovan Stanberry. 2010 April 30. Question #3

⁷³ Mr. Donovan Stanberry. Response to the OCG’s Requisition. 2010 May 14. Question #3

consultancy contract to the Aubyn Hill led Corporate Strategies Limited which is leading the divestment exercise for the sugar industry.⁷⁴ (OCG Emphasis)

A review, by the OCG, of the contracts which were awarded to Mr. Aubyn Hill and/or his company, Corporate Strategies Ltd. revealed, *inter alia*, the following: (NB. Copies of the referenced contracts can be found in the Appendices herein).

- (i) The contracts refer to “**the Consultant**” and do not indicate that it is one of an Employment Contract. Indeed, and has been pointed out before, the word “employment” or “employee” does not appear anywhere in any of the two contracts, whereas the term “***Consultant***” appears a grand total of thirty-eight (38) times in both documents. (OCG Emphasis)
- (ii) The contracts both state that “*Cabinet, by its Decision No. 22/08 dated June 30, 2008, has approved the **appointment of the Consultant** as Head of the Sugar Privatization Implementation Team for the period July 1 to September 30, 2008.*”⁷⁵ (OCG Emphasis)
- (iii) The first contract, which was dated 2008 August 18, states, *inter alia*, that “**The Consultant shall** undertake the assignment throughout a period of three (3) months, from July 1 to September 30, 2008 at a remuneration of FIVE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$5,500,000.00) payable in three (3) equal installations...”⁷⁶ (OCG Emphasis)
- (iv) The second contract, which was dated 2009 March 30, states, *inter alia*, that “**The Consultant shall** undertake the assignment throughout a period of Four (4) months, from February 1 to May 31, 2009 at a remuneration of SEVEN MILLION

⁷⁴ Radiojamaica website. “OCG involved in divestment process-Tufton”. 2009 October 17.
<http://www.radiojamaica.com/content/view/22418/52/>

⁷⁵ MAF/Hill Contract. 2008 August 18

⁷⁶ MAF/Hill Contract. 2008 August 18

THREE HUNDRED THIRTY-THREE THOUSAND THREE HUNDRED AND THIRTY-THREE DOLLARS AND THIRTY-THREE CENTS (\$7,333,333.33) payable in four (4) equal installations...”⁷⁷ (OCG Emphasis)

(v) The contracts state that “...the Consultant shall be provided with a fully maintained motor vehicle and driver throughout the continuance of this Agreement.”⁷⁸ (OCG Emphasis)

(vi) The contracts state that “The Consultant shall be an independent contractor and not the servant of MOA. In such capacity, the Consultant shall bear exclusive responsibility with regard to discharging all his statutory payments and deductions arising under the term hereby created.”⁷⁹ (OCG Emphasis)

(vii) Both contracts were signed by Mr. Aubyn Hill and Permanent Secretary Donovan Stanberry. Mr. Hill signed in the expressed and unequivocal occupational capacity of “Consultant”. (OCG Emphasis).

Notwithstanding the clear documentary evidence of the existence of a consultancy contract, the OCG received conflicting statements from (a) Mr. Donovan Stanberry, Permanent Secretary, (b) Mr. Aubyn Hill and (c) Dr. Christopher Tufton, Minister of Agriculture and Fisheries, about the nature of Mr. Hill’s engagement by the MAF. In this regard, all three (3) individuals, in their sworn response to the OCG’s Requisition, asserted that an ‘employment contract’ was awarded to Mr. Aubyn Hill.

However, the OCG must note that there are basic and unmistakeable distinctions between an employment contract and a consultancy contract, particularly in so far as the Procurement Rules and Laws of Jamaica are concerned.

⁷⁷ MAF/Hill Contract. 2009 March 30

⁷⁸ MAF/Hill Contract. 2008 August 18

⁷⁹ MAF/Hill Contract. 2008 August 18

These are, *inter alia*, as follows:

(a) Consultancy Contracts

1. As detailed in the OCG's Media Release, which was dated 2009 October 16, prior to 2008 September 22, Sole Source consultancy contract awards in excess of \$1 Million in value would have required, among other things, the prior evaluation and endorsement of the NCC as to justification and cost competitiveness.

Further, as at 2008 September 22, Sole Source contract awards in excess of \$3 Million in value would have required, among other things, the prior evaluation and endorsement of the NCC. Further, under the 2008 November RPPH which came into force on December 10, 2008, specific provisions are stated for the tendering and awarding of contracts to consultants.

2. Prior to 2008 September, the prior approval of the Cabinet would have had to be secured if the projected value of the contract was in excess of \$15 Million. As at 2008 September 22, the prior approval of the Cabinet would have had to be secured if the projected value of the contract was in excess of \$30 Million.
3. The OCG, pursuant specifically to Section 4 (1) of the Contractor General Act, would have jurisdiction over the award of a government consultancy contract. In this regard, the OCG is mandated to ensure that GOJ consultancy contracts are awarded on merit, impartially and in circumstances which do not involve any irregularity or impropriety.
4. The NCC would have full jurisdiction over the award of contracts of this nature. It is instructive to note that the Permanent Secretary, Mr. Donovan Stanberry, in his response to the OCG's Requisition, clearly highlighted his

knowledge of the nature of the contracts which were subject to the NCC's jurisdiction. In this regard, Mr. Stanberry, indicated, *inter alia*, that "...Employment Contracts, ...do not fall within the purview of the National Contracts Committee [sic]."⁸⁰ (OCG Emphasis)

5. In the case of a consultancy contract, the awarding Public Body would not necessarily have responsibility for the payment of the requisite taxes and statutory deductions, that is, the NIS, NHT, Education Tax and Income Tax. This would be the sole responsibility of the Consultant.
6. In the case of a consultancy contract, the consultant would be required to submit invoices with respect of his/her claims for money owed by the awarding Public Body.

(b) Employment Contracts

1. In the case of employment contracts, taxes, namely the NIS, NHT, Education Tax and Income Tax, are deducted at source by the employer.
2. In the case of employment contracts, the employee typically receives a salary and is not required to submit an invoice to claim same.
3. In the case of Central Government Public Sector employees, it is the Public Services Commission (PSC) which has primary responsibility for matters such as appointments, promotions, disciplinary actions and terminations.

In support of the foregoing, it was recently reported that the Prime Minister, the Hon. Bruce Golding, in addressing the Harrison Report on the Armadale Juvenile Correctional Centre, stated that "*...the matter had been referred to the director of public prosecutions, the police commissioner and the Public*

⁸⁰ Donovan Stanberry. Response to the OCG's Requisition. 2009 November 19. Question #9

*Service Commission for action they deem appropriate...Where I have the authority to do so, appropriate action will be taken...*⁸¹

Further, in a Daily Gleaner article, which was entitled “*Reese moved because of Armadale?*”, which was published on 2010 March 13, it was reported that the Minister of National Security, Senator Dwight Nelson stated that “*The disciplining of members of the public service is the prerogative of the Public Service Commission as stipulated in the Constitution.*”⁸²

4. NCC and Cabinet approval is not required in respect of employment contracts.

In this regard, it is instructive to note that the OCG in its Follow-Up Requisition, which was dated 2010 April 30, that was addressed to the Cabinet Secretary, Ambassador Douglas Saunders, asked, *inter alia*, the following question:

*“To the best of your knowledge, has the Cabinet ever been asked and/or required to approve an “Employment Contract” as opposed to a “Consultancy Contract”, in respect of an “Employee” at the MAF during the period of September 2007 to the present.”*⁸³

In his response to the OCG’s Requisition, which was dated 2010 May 12, Ambassador Douglas Saunders stated, *inter alia*, that “*To the best of my knowledge, Cabinet has **not** been asked to approve an “Employment Contract” in respect of an “Employee” at the Ministry of Agriculture & Fisheries (MAF) during the period of September, 2007 to the present. Cabinet would not be required to approve such a contract, as such approvals fall*

⁸¹ Daily Gleaner. “Gov’t accepts ‘ultimate responsibility’ for Armadale” 2010 March 3. <http://www.jamaica-gleaner.com/gleaner/20100303/lead/lead3.html>

⁸² Daily Gleaner. “Reese moved because of Armadale?” 2010 March 13. <http://www.jamaica-gleaner.com/gleaner/20100313/lead/lead2.html>

⁸³ OCG Follow-Up Requisition to Ambassador Douglas Saunders. 2010 April 30. Question #4

within the remit of the Ministry of Finance and the Public Service (MFPS).”⁸⁴ (OCG Emphasis)

5. The OCG and the NCC would have no jurisdiction over an employment contract. This fact was clearly identified by the Permanent Secretary, Mr. Donovan Stanberry, in his response to the OCG’s Requisition, which was dated 2009 November 19, where he stated, *inter alia*, as follows:

*“As explained in number 6, the two (2) contracts awarded to Mr. Hill are Employment Contracts, which do not fall within the purview of the National Contracts Committee [sic].”*⁸⁵ (OCG Emphasis)

In light, *inter alia*, of the foregoing, the OCG believes that it is instructive to detail below the conflicting and sworn representations which were made, to the OCG, by (a) Mr. Donovan Stanberry, Permanent Secretary, (b) Mr. Aubyn Hill and (c) Dr. Christopher Tufton, Minister of Agriculture and Fisheries, with regard to the nature of Mr. Hill’s engagement by the MAF.

(a) Mr. Donovan Stanberry- Permanent Secretary, MAF

In his response to the OCG’s Requisition, which was dated 2009 November 19, Mr. Donovan Stanberry, stated, *inter alia*, that “...the two (2) contracts awarded to Mr. Hill are Employment Contracts...”⁸⁶ (OCG Emphasis)

However, contrary to the assertions of Mr. Donovan Stanberry, the signed and written contracts, which were consummated between Mr. Aubyn Hill and the MAF (with Mr. Stanberry, himself, signing on behalf of the MAF), refers to Mr. Aubyn Hill as “*the Consultant*”.

⁸⁴ Ambassador Douglas Saunders. Response to the OCG’s Requisition. 2010 May 12. Question #4

⁸⁵ Donovan Stanberry. Response to the OCG’s Requisition. 2009 November 19. Question #9

⁸⁶ Donovan Stanberry. Response to the OCG’s Requisition. 2009 November 19

Further, it is instructive to note that the OCG in its Requisition, which was dated 2009 October 23, that was addressed to the Permanent Secretary, Mr. Donovan Stanberry, asked, *inter alia*, about “*The method of procurement which was utilized...*” in the award of the contracts to Mr. Aubyn Hill and/or his company Corporate Strategies Ltd.

In his response to the OCG’s Requisition, which was dated 2009 November 19, Mr. Donovan Stanberry, stated, *inter alia*, that “*The sole sourcing method was employed...*”⁸⁷ (OCG Emphasis)

Of critical import is the fact that Mr. Stanberry, in his foregoing response, acknowledged the use of a procurement methodology to award the contract to Mr. Aubyn Hill. However, the use of a procurement methodology is neither customary nor required for employment contracts.

As such, having regard to the conflicting accounts of the nature of the contracts which were awarded to Mr. Hill and/or his company Corporate Strategies Ltd., the OCG, in its Follow-Up Requisition that was addressed to Mr. Donovan Stanberry, asked, *inter alia*, the following question:

“In your response to the OCG’s Requisition, which was dated November 19, 2009, you asserted that “Employment Contracts” were awarded to Mr. Aubyn Hill by the MAF.

However, the copies of the contracts which were provided by you, to the OCG, make reference to “The Consultant”. Kindly provide a comprehensive statement with regard to the discrepancy in your assertion and that which is detailed in the signed contracts, specifically as it relates to the nature of the contracts which were

⁸⁷ Donovan Stanberry. Response to the OCG’s Requisition. 2009 November 19

*awarded to Mr. Aubyn Hill. Please provide documentary evidence, where possible, to substantiate your assertions/responses.”*⁸⁸

In his response to the OCG’s Requisition, which was dated 2010 May 14, Mr. Donovan Stanberry stated, *inter alia*, as follows:

“In my response to your previous requisition dated November 19, 2009, I did, in fact, characterize Mr. Hill’s contract as an Employment Contract. This was a mistake on my part, as in my mind the nature of Mr. Hill’s assignment was consistent with the role of a contract employee of the Ministry. In actuality, however, Mr. Hill’s contract was formatted as a contract for a Consultant, providing short term consultancy service, as against an Employment Contract, in the classic sense. This was a genuine mistake on my part and I, therefore, withdraw all reference to “Employment Contract” in my previous letter of November 19, 2009, to be substituted with “Contract for Short Term Consultancy Services”.”

The truth is, Mr. Hill’s assignment is really a hybrid one, as the contract itself was constructed as a Contract for Consultancy Services, but in terms of its execution, it was more consistent with an Employment Contract, in terms of my daily interaction with him and the nine-to-five nature of his assignment. I apologize for the confusion that this inadvertently may have caused. Additionally, in my response to another question, I stated that the said contract was approved by the Ministry’s Procurement Committee. This was also a mistake, it should have read the “Ministry’s Contract Committee”.⁸⁹ (OCG Emphasis)

⁸⁸ OCG Requisition to Mr. Donovan Stanberry. 2010 April 30. Question 8

⁸⁹ Mr. Donovan Stanberry. Response to the OCG’s Requisition. 2010 May 14. Question 8

(b) Mr. Aubyn Hill

Mr. Aubyn Hill, in his response to the OCG's Requisition, which was dated 2010 March 16, stated, *inter alia*, that "...a contract of employment was entered into between the Ministry of Agriculture and me."⁹⁰ (OCG Emphasis)

Having regard to the foregoing, the OCG in its Follow-Up Requisition that was addressed to Mr. Hill, which was dated 2010 April 30, asked, *inter alia*, the following question:

"You have asserted that you were awarded "Employment Contracts" by the MAF. As such, kindly state whether the applicable taxes, namely NIS, NHT, Education Tax and Income Tax, were deducted from your 'employment income' at source by the MAF.

*If not, why were the required statutory deductions, from your 'employment income', not taken at source by the MAF given that you were awarded "Employment Contracts"? Please provide documentary evidence, where possible, to substantiate your assertions/responses."*⁹¹

In his response to the OCG's Requisition, which was dated 2010 June 3, Mr. Aubyn Hill stated *"No. This question can best be answered by my former employer the MAF."*⁹²

It is instructive to note that in the event that Mr. Hill's response to the foregoing question was *"No"*, the OCG also asked the following question:

⁹⁰ Mr. Aubyn Hill. Response to the OCG's Requisition. 2010 March 16. Question 1

⁹¹ OCG Follow-up Requisition to Mr. Aubyn Hill. 2010 April 30. Question #4

⁹² Mr. Aubyn Hill. Response to the OCG's Requisition. 2010 June 3. Question #4

*“If your answer to Question 4 above is ‘No’, kindly state how you have accounted to the GOJ with respect of your statutory obligations. In providing your answers please detail in a spreadsheet (a) the emoluments which have been received, by you, from the MAF under and pursuant to your “Employment Contract”; (b) the date(s) of your receipt of the said ‘employment income’; and (c) the required NIS, NHT, Education Tax and Income Tax amounts which have been paid to the GOJ, by you, with regard to the said sums of ‘employment income’ which you have received pursuant to the said “employment contracts” which were awarded by the MAF. Please provide documentary evidence, where possible, to substantiate your assertions/responses.”*⁹³

In his response to the OCG’s Requisition, which was dated 2010 June 3, Mr. Aubyn Hill stated, *inter alia*, that “My company, Corporate Strategies Limited, paid the statutory amounts that were due on my behalf.”⁹⁴

It is also instructive to note that both contracts were signed by Mr. Hill. In the said documents, it was clearly stated that “**The Consultant shall be an independent contractor and not the servant of MOA.**”⁹⁵

Further, it is instructive to reiterate that there are basic and unmistakeable distinctions between an employment contract and a consultancy contract. In point of fact, as was previously highlighted herein, a consultant, unlike an employee, would be required to submit invoices to facilitate payments of money which are owed by the awarding Public Body. An employee on the other hand, receives a fixed salary and is not required to submit invoices to claim the same.

Consequently, the OCG, in its Requisition, which was dated 2010 April 30, asked Mr. Aubyn Hill the following

⁹³ OCG Follow-Up Requisition to Mr. Aubyn Hill. 2010 April 30. Question 5

⁹⁴ Mr. Aubyn Hill. Response to the OCG’s Requisition. 2010 June 3. Question 5

⁹⁵ MAF/Hill Contract. 2008 August 18

“Kindly provide a copy of all invoices which have been submitted to the MAF by you and/or your company, Corporate Strategies Ltd., pursuant to the contracts which have been awarded to you.”⁹⁶(OCG Emphasis)

In response to the OCG’s foregoing request, Mr. Aubyn Hill submitted invoices for the period of 2008 August 27 to 2010 January 7. (NB. The 2010 January 7 invoice was with respect of work done in 2009 December).

Of substantial import is that each of the respective invoices stated, *inter alia*, that “*In accordance with Cabinet Decision No. 22/08 dated June 30, 2008 approving “the appointment of the Consultant...”* and provided the particulars with respect to the “**Remuneration for consultancy service**”. (OCG Emphasis)

Therefore, the OCG found that for the entire contract period (i.e. 2008 August to 2009 December), Mr. Hill acknowledged, in writing, that he was in fact awarded contracts for ‘consultancy services’. It is also a documented fact that Mr. Hill had duly made claims in respect of the rendering of the said ‘consultancy services’ on invoices which he had submitted to the MAF.

Having regard, among other things, to (a) the foregoing, (b) the academic and professional credentials which Mr. Hill had presented of himself as a Harvard Business School graduate, the former CEO of the National Bank of Oman and the former Group Managing Director of the National Commercial Bank of Jamaica Ltd., (c) the fact that Mr. Hill had appended his signature to the referenced contracts certifying that he was indeed entering into same in the occupational capacity of a “consultant” and not as an employee, and (d) the fact that Mr. Hill had consistently acknowledged in writing, on the very invoices which were submitted by him to the MAF for the period of 2008 August 27 to 2010 January 7, that he was claiming compensation for ‘consultancy services’ rendered, the OCG has now found Mr. Hill’s

⁹⁶ OCG Follow-Up Requisition to Mr. Aubyn Hill. 2010 April 30. Question 2

sworn representation of his contract as an “*employment contract*” to be nothing less than disingenuous and an affront to the lawful authority of the Commission of the Contractor General, which is a quasi-judicial independent anti-corruption Commission of the Parliament of Jamaica.

(c) **Dr. Christopher Tufton- Minister of Agriculture & Fisheries, MAF**

Minister the Hon. Dr. Christopher Tufton, in his response to the OCG’s Requisition, which was dated 2010 February 24, stated, *inter alia*, that “*Mr. Hill was offered an Employment Contract by the Ministry of Agriculture...*”⁹⁷ (OCG Emphasis)

However, in an article which was published in the Jamaica Observer newspaper, which was entitled “*Tufton defends \$1.9m monthly fee*”, which was dated 2009 October 17, it was reported that “*Tufton, in an early morning press conference at the agriculture ministry's Old Hope Road office, told journalists that the Jamaican taxpayer was no longer subsidising the Sugar Company of Jamaica (SCJ), and returns to Jamaica justified the former banker's consultancy fees.*”⁹⁸ (OCG Emphasis)

The article went further to report that “*... the ministry did not have the required expertise, Tufton told journalists yesterday that the alternatives to having a consultant conduct the negotiations to sell the SCJ assets were to either close operations at the five sugar estates or continue using taxpayers' money to fund the estates.*”⁹⁹ (OCG Emphasis)

⁹⁷ Min. the Hon. Dr. Christopher Tufton. Response to the OCG’s Requisition. 2010 February 24

⁹⁸ Jamaica Observer. ““*Tufton defends \$1.9m monthly fee*”.2009 October 17.

https://www.jamaicaobserver.com/news/161953_Tufton-defends--1-9m-monthly-fee

⁹⁹ Jamaica Observer. ““*Tufton defends \$1.9m monthly fee*”.2009 October 17.

https://www.jamaicaobserver.com/news/161953_Tufton-defends--1-9m-monthly-fee

Further, in another article which was published on the Jamaica Information Services (JIS) website on 2009 October 17, which was entitled “*Dr. Tufton Responds To Criticisms of Sugar Consultancy Fees*”, it was reported, *inter alia*, as follows:

*“Minister of Agriculture and Fisheries, Hon. Dr. Christopher Tufton, has said that the country has received “value for money” **in contracting the services of consultancy firm, Corporate Strategies Limited**, to assist with the divestment of its five sugar estates.”*¹⁰⁰ (OCG Emphasis)

Having regard to the foregoing, the OCG in its Follow-Up Requisition that was addressed to Dr. Tufton, which was dated 2010 April 30, asked, *inter alia*, the following:

“In your response to the OCG’s Requisition, which was dated February 24, 2010, you asserted that “Employment Contracts” were awarded by the MAF to Mr. Aubyn Hill.

However, the copies of the contracts which were provided by you, to the OCG, make reference to “The Consultant”. Further, in a Jamaica Information Service (JIS) article, that was dated October 17, 2009, with regard to the contracts which were awarded to Mr. Hill, statements were attributed to you, in which you made reference to Mr. Hill and/or his company, Corporate Strategies Ltd. as “Consultants”.

Kindly provide a comprehensive statement with regard to the discrepancy in your assertion and that which is detailed in the signed contracts and the referenced JIS article, specifically as it relates to the nature of the contracts which were awarded to Mr. Hill and/or his company, Corporate Strategies Ltd. by the MAF. Please

¹⁰⁰ JIA Article.”Dr. Tufton Responds to Criticism of Sugar Consultancy Fees”. 2009 October 17.
http://www.jis.gov.jm/minagrifish/html/20091017t010000-0500_21544_jis_dr_tufton_responds_to_criticisms_of_sugar_consultancy_fees.asp

provide documentary evidence, where possible, to substantiate your assertions/responses.”¹⁰¹

In his response to the OCG’s Requisition, which was dated 2010 June 2, Dr. Christopher Tufton stated, *inter alia*, as follows:

*“In my previous response to you, **I did in fact refer to Mr. Hill’s contracts as “Employment Contracts”, as in preparing my answers I was so advised by the Permanent Secretary. I have since been advised by the Permanent Secretary that he made an error in so designating the contracts, and this has been communicated to you with an appropriate apology from him.** The truth is, people are employed by the Ministry either as normal employees or as Consultants. Either way, these people are accountable to the Ministry on a day to day basis for their deliverables. If indeed I referred to Mr. Hill’s engagement in my discourse with the JIS as “Consultant”, I was simply using the terms interchangeably. In actuality, I am advised that the proper designation for **Mr. Hill’s contracts is “Short-term Contract for Consultancy Services”**.”¹⁰² (OCG Emphasis)*

Based upon the foregoing representations the OCG found, *inter alia*, the following:

1. Both Mr. Stanberry and Dr. Tufton have retracted their initial statements, given to the OCG under the pain of criminal prosecution, in which they asserted that Mr. Hill’s consultancy contracts were employment contracts.
2. In respect of the compensation that was paid to Mr. Hill under the said consultancy contracts, Mr. Hill, himself, has conceded that his taxes and other statutory deductions were handled and paid by his company Corporate Strategies Ltd.. They were not deducted at source by the MAF.

¹⁰¹ OCG Requisition to Dr. Christopher Tufton. 2010 April 30. Question 4

¹⁰² Dr. Christopher Tufton. Response to the OCG’s Requisition. 2010 June 2. Question 4

3. Mr. Aubyn Hill has also acknowledged that he was a 'consultant'. Additionally, the documented evidence which was presented to the OCG proves that Mr. Hill had also made written claims in each of the invoices which had been submitted by him to the MAF, for the period of 2008 August to 2009 December, for "consultancy service" rendered.
4. The contracts which were awarded to Mr. Hill were in fact for the performance of 'consultancy services'.
5. Mr. Donovan Stanberry, Mr. Aubyn Hill and Dr. Christopher Tufton have all provided the OCG with written and sworn statements which include materially false representations which have not and cannot be substantiated by the written and signed contracts which were consummated between Mr. Hill and the MAF, nor by the Cabinet approvals which were granted in relation to same.
6. It is also instructive to note that the written and sworn statements that were submitted to the OCG, by Mr. Donovan Stanberry, Mr. Aubyn Hill and Dr. Christopher Tufton, and in which the referenced false representations were made, were provided by them under the pain of criminal prosecution and were solemnly declared by them, before a Justice of the Peace, to be '*complete, accurate and truthful*'.

Is there a Conflict of Interest in the Award of the Contracts to Mr. Aubyn Hill &/or Corporate Strategies Ltd.?

Mr. Aubyn Hill was appointed the Chairman of the Board of Directors of the SCJ Holdings Ltd. and a member of the Board of Director of the SCJ in 2009 July. The SCJ Holdings Ltd. and the SCJ were, at all material times, the owners and/or operators of the then remaining GOJ sugar assets which were/are the subject of the referenced divestment process.

Further, Mr. Aubyn Hill, at the time of his appointment to the Board of Directors of the SCJ Holdings Ltd. and the SCJ in 2009 July, had an existing contract with the MAF, which was dated 2009 March 30.

The referenced contract, which was awarded to Mr. Aubyn Hill, appointed him as the Chairman of the Sugar Negotiating Team (SNT), which was mandated “...by Cabinet to identify and negotiate with investors for the divestment of the Government- owned asset of the sugar industry.”¹⁰³

The referenced contract, which was awarded on 2009 March 30, was initially extended up to 2009 September, and the Contracts Committee of the MAF subsequently recommended a “... month to month extension for the period October to January, 2010 subject to a review of the Terms of Reference and the terms and conditions of the contract.”¹⁰⁴

With regard to the roles and functions of the SCJ Holding Ltd., Mr. Donovan Stanberry, in his response to the OCG’s Requisition, which was dated 2009 November 19, informed the OCG, *inter alia*, as follows:

“SCJH which was formed for the purpose of acquiring controlling interests in the following companies and avoiding the delinquency of the inactive landholding companies:

- 1. Trelawny Sugar Company Limited*
- 2. Saint Thomas Sugar Company Limited*
- 3. Sugar Company of Jamaica Limited*
- 4. West Indies Sugar Company Limited*
- 5. Frome Monymusk Land Company*

¹⁰³ Memorandum from Mr. Donovan Stanberry to Mrs. Judith Maloney. 2009 September 30

¹⁰⁴ Memorandum from the Contracts Committee Chairperson. 2009 November 5

6. *Jamaica Sugar Holdings Limited*
7. *Water Wells Engineering Limited*
8. *Jamaica Plantation Tours and Attractions Limited*
9. *Jamaica Cogen Limited*
10. *National Farms Limited*
11. *The Clarendon Sugar Company Limited*

To date SCJH has not formally acquired the controlling interests in the foregoing sugar companies and thus SCJ and SCJH remain separate entities.

SCJH is also the Company which the Government has consented to allow all the sugar lands to be transferred to in order to allow for ease in the divestment of the Sugar Assets. The transfer of the lands to SCJH commenced in or about 2008 and is well underway.

SCJH is now the Company that pursuant to said Cabinet Decision that has been mandated to produce a minimum of Seventy Nine Thousand (79,000) tonnes of sugar for sale to Eridania Suisse. This mandate ensures that SCJH (t/a the Sugar Divestment Enterprise) will oversee and carry on the operations of the Frome, Monymusk and Bernard Lodge Estates pending the possible hand over of the remaining assets to an invertor [sic].”¹⁰⁵

It is instructive to note that by way of a letter, which was dated 2010 June 3, the SCJ informed the OCG, *inter alia*, as follows:

“This letter serves to inform and confirm that the assets of the Sugar Company of Jamaica Limited (SCJ) have been divested and/or transferred as of July 31, 2009. The assets of SCJ and the operations of the sugar factories previously owned by that

¹⁰⁵ Donovan Stanberry. Response to the OCG’s Requisition. 2009 November 19

company are now the responsibility of SCJ Holdings Limited trading as Sugar Divestment Enterprise (SDE).

During the period following closure to the end of December 2009, SCJ continued to facilitate the operations of SCJ Holdings Limited to enable that company to put in place proper purchasing systems, including the issuing of purchase orders. SCJ Limited has therefore signed and submitted its last Quarterly Report which covers the period October 1, 2009 to December 31, 2009 and the company is now in the process of being wound up.”¹⁰⁶ (OCG Emphasis)

Having regard to the foregoing, the contract, which was awarded to Mr. Aubyn Hill, in 2009 March 30, and which subsisted until 2009 December, raised several concerns as to the possible conflicts of interest that were bound to arise given the fact that Mr. Aubyn Hill was also appointed, in 2009 July, as (a) the Chairman of the Board of Directors of the SCJ Holdings Ltd. and (b) a Member of the Board of Directors of the SCJ.

Of critical import is the fact that both the SCJ and SCJ Holdings Ltd. held and/or are/were responsible for the assets which were/are being divested by the GOJ. Further, the disposal of the said assets was also the basis upon which the referenced consultancy contracts had been awarded to Mr. Aubyn Hill.

Therefore, Mr. Aubyn Hill, by all accounts, would have been representing the interests of three (3) distinct entities in the GOJ sugar divestment process. The three (3) entities being (a) the SCJ, (b) the SCJ Holdings Ltd. and (c) Corporate Strategies Ltd. and/or himself.

In point of fact, in an article, which was published on the Radiojamaica website, that was entitled “*No conflict of interest - Tufton*”, which was dated 2009 October 16, it was reported, *inter alia*, that “*Agriculture Minister Dr. Christopher Tufton has admitted that the contract that engages the services of Aubyn Hill's consultancy company Corporate*

¹⁰⁶ SCJ. Letter to the OCG. 2010 June 3

*Strategies Limited is silent on the dual and possibly conflicting roles he plays in the sugar divestment process.*¹⁰⁷ (OCG Emphasis)

The article further reported that Dr. Tufton had asserted that *“We don't see a conflict of interest at all given the fact that Mr. Hill is Chairman of the company that is now running these three remaining public owned sugar factories and also contracted to conclude negotiations for divestment.* The decision to appoint him as chairman was based on the fact that we felt he complimented efforts to negotiate a final sale agreement...”¹⁰⁸ (OCG Emphasis)

In the premises, the OCG sought to ascertain whether Mr. Aubyn Hill, upon his appointment to the Board of Directors of the SCJ Holdings Ltd. and the SCJ, in 2009 July, had declared his interest in a contract (namely, his consultancy contract) which existed with the MAF, with respect to his leading the divestment process for the assets which were controlled by both entities, to the other Members of the Board of Directors of the SCJ Holdings Ltd. and SCJ.

Mr. Hill's declaration of his interest in a prevailing GOJ contract would have been mandated by law pursuant to **Section 17 (2) of the Public Bodies Management Act.**

Section 17 (2) (a) and (b) of the Public Bodies Management & Accountability Act, provides as follows:

“A director who is directly or indirectly interested in any matter which is being dealt with by the board-

(a) shall disclose the nature of his interest at a board meeting;

¹⁰⁷ Radiojamaica. “No conflict of interest- Tufton” 2009 October 16.
<http://www.radiojamaica.com/content/view/22410/26/>

¹⁰⁸ Radiojamaica. “No conflict of interest- Tufton” 2009 October 16.
<http://www.radiojamaica.com/content/view/22410/26/>

(b) shall not take part in any deliberation of the board with respect to that matter”..

Having regard to the foregoing, the OCG in its Follow-Up Requisition that was addressed to Mr. Aubyn Hill, which was dated 2010 April 30, asked, *inter alia*, the following questions:

“Did you disclose the existence of the contracts between yourself and the MAF to the Board of Directors of the Sugar Company of Jamaica Ltd. (SCJ) and/or the SCJ Holdings Ltd.? If yes, kindly provide the following information:

- i. The date(s) on which your interest in a Government of Jamaica (GOJ) contract was declared;*
- ii. To whom and/or what entity was the declaration made?*
- iii. The manner in which your interest was disclosed.*

Please provide documentary evidence, where possible, to substantiate your assertions/responses.”¹⁰⁹

In his response to the OCG’s Requisition, which was dated 2010 June 3, Mr. Aubyn Hill stated “No.”¹¹⁰

It is instructive to note that the OCG was also interested in finding out what exactly constitutes a conflict of interest. Black’s Law Dictionary (8th Edition) defines a ‘Conflict of Interest’ as meaning “*a real or seeming incompatibility between one’s private interests and one’s public and fiduciary duties*”. Additionally, the Oxford Law Student’s

¹⁰⁹ OCG Follow-Up Requisition to Mr. Aubyn Hill. 2010 April 30. Question 1

¹¹⁰ Mr. Aubyn Hill. Response to the OCG’s Requisition. 2010 June 3. Question 1

Dictionary defines a ‘Conflict of Interest’ as a situation in which a person’s own interest, conflicts with his duty to act in the best interest of his principal.¹¹¹

Further, according to the *Conflict of Interest Statement for Inclusion in the GPPH*, a Conflict of Interest “arises where a public officer has a private or personal interest sufficient to appear to influence or to appear to be capable of influencing, the objective exercise of his official duties.”¹¹²

It is noted in the referenced statement that a conflict of interest may be deemed to exist, *inter alia*, under any of the following circumstances:

1. Engagement in private activity similar to official functions;
2. Using information and/or any material gained from an official position for private gain of relatives or family members or an organization in which relatives or family members have interest;
3. Exploiting the status and privilege of one’s position for private gain;
4. Conducting private business during work hours and/or on government property;
5. Engaging in transactions with relatives or family members, or an organization in which the officers’ relatives or family members have interest;
6. Ownership of investment or shares in any company or undertaking.¹¹³

The GPPH (2001 May), further mandates that “A public officer shall not enter into or knowingly remain in a situation of a conflict of interest. A public officer who is aware or is unsure whether he is in a conflict of interest situation shall report the situation at the

¹¹¹ J.E. Penner. *The Law Student’s Dictionary*. Oxford University Press. 2008

¹¹² NCC Conflict of Interest Statement for Inclusion in the GPPH. 2006 January 23

¹¹³ NCC Conflict of Interest Statement for Inclusion in the GPPH. 2006 January 23

earliest opportunity to the Head of the Ministry, Department or other Government Agency to which he is engaged.”¹¹⁴

Having regard to the foregoing, it is clear that a conflict of interest refers to a situation in which a person has a competing professional or personal interest which prevents him/her from carrying out his/her public or fiduciary duties fairly and/or impartially.

A conflict of interest exists even if no unethical and/or improper act results from the association. However, a conflict of interest can create an appearance of impropriety which undermines confidence in the person, profession, company and/or the procurement process.

A conflict of interest can be mitigated by removing the interested party from the deliberations on matters where that party has a conflict of interest. However, notwithstanding the removal of an interested party from the deliberations, a conflict of interest may still exist.

It is also instructive to note that the OCG, during the course of its Investigation, was presented with additional documentation which have unequivocally established the manifestation of a real conflict of interest on the part of Mr. Aubyn Hill, who was party to a GOJ contract which was, in turn, directly connected to the divestment of assets which were controlled and/or held by the SCJ Holdings Ltd. and the SCJ of which he was a Board Director.

The conflict of interest, on the part of Mr. Aubyn Hill, was highlighted, in glaring terms, in five (5) documents which were entitled “***SUPPORT FOR INVOICE...:CONTRACT NO. GOJSUGAR/SERVICE/9071/2008***”, for the months of 2009 August, September, October, November and December. These documents were either signed by Mr. Hill,

¹¹⁴ NCC Conflict of Interest Statement for Inclusion in the GPPH. 2006 January 23

himself, and/or on his behalf, and were presented on the letter head of his company, Corporate Strategies Ltd.

In the referenced documents, certain reasons or justifications were provided for the invoices which were submitted by Corporate Strategies Ltd., to the MAF, in respect of the consultancy contract which was awarded to Mr. Aubyn Hill on 2009 March 30.

Of significant import, is the fact that on all five (5) documents, reasons pertaining to Mr. Hill's role as Chairman of the Board of Directors of the SCJ Holdings Ltd. and/or as a Member of the Board of Directors of the SCJ were included among the justifications which were provided to substantiate the legitimacy of the invoices for the claims which were submitted to the MAF pursuant to Mr. Hill's consultancy contract.

The table below highlights the particulars which were detailed on the referenced five (5) documents:

DOCUMENT	JUSTIFICATION PRESENTED FOR INVOICE
SUPPORT FOR INVOICE FOR AUGUST 2009	<p>(a) <u><i>“As new Chairman of SCJ Holdings Limited (SCJH) and new board member of SCJ- Legacy, I spend long hours with the new SCJH General Manager working on detailed cash flows, personnel matters and farm and factory issues in order to ensure the GOJ and SCJH can keep their commitments to Eridania, Italy, to produce and ship at least 79,000 tonnes of sugar by end of crop 2010.”</i></u>¹¹⁵ (OCG Emphasis)</p> <p>(b) Attended formal board meetings of SCJH and SCJ.</p>
SUPPORT FOR INVOICE FOR SEPTEMBER 2009	<p>(a) “Attended many meetings of the Sugar Manufacturers Corporation of Jamaica (<u><i>in my capacity as chairman of SCJH</i></u>) to:</p> <ol style="list-style-type: none"> 1. Decide on the policy recommendations to forward to the SIA as the policy document which will provide review and recommendations to the MOA/GOJ on the new sugar policy and the ways in which the SIA, SIRI, JCPS and other SIA-related institutions will change under the new policy. 2. Agree on a pooling and pricing mechanism for sugar and sugar cane for the 2009/10 crop given the GOJ/Eridania contract on the 79,000 tons of sugar...
SUPPORT FOR INVOICE FOR SEPTEMBER 2009	<p>(b) <u><i>Attended SCJ (Legacy) board meeting</i></u></p> <p>(c) <u><i>With the GM, John Gayle, prepared for and chaired the board meeting of the SCJH.</i></u>¹¹⁶ (OCG Emphasis)</p>
SUPPORT FOR INVOICE FOR OCTOBER 2009	<p><u><i>“Attended and participated in board meetings of SCJH (as Chairman), JCPS and SMCI.”</i></u> (OCG Emphasis)</p>

¹¹⁵ Corporate Strategies Ltd. “SUPPORT FOR INVOICE FOR AUGUST 2009” 2009 September 16

¹¹⁶ Corporate Strategies Ltd. “SUPPORT FOR INVOICE FOR SEPTEMBER 2009” 2009 October 26

DOCUMENT	JUSTIFICATION PRESENTED FOR INVOICE
SUPPORT FOR INVOICE FOR NOVEMBER 2009	<u>“Chaired board meeting of SCJH and attended board meeting for SCJ (Legacy). (OCG Emphasis)</u>
SUPPORT FOR INVOICE FOR DECEMBER 2009	(a) “Worked with subcommittee of SCJH’s board to finalize staff Productivity Based Incentive Scheme.” (b) <u>“Chaired board meeting of SCJH and attended board meeting for SCJ (Legacy). (OCG Emphasis)</u>

It is also instructive to note that the OCG in its Follow-Up Requisition, which was dated 2010 April 30, asked Mr. Donovan Stanberry the following question:

“Has Mr. Aubyn Hill been paid for his services as a Member of the Board of Directors of the Sugar Company of Jamaica (SCJ) Holdings Ltd. and the SCJ? If yes, kindly provide the particulars relating to the same and state whether this remuneration is included in the sums which have been paid pursuant to the contracts which were awarded to Mr. Aubyn Hill.”¹¹⁷

In his response to the OCG’s Requisition, Mr. Donovan Stanberry stated, *inter alia*, that **“As a Member of both Boards, Mr. Hill would have been paid the normal Board Fee to which all Board Members are entitled, consistent with the Ministry of Finance and the Public Service’s Circular No. 1, reference number 11358^{vi} dated January 15, 2007.”**¹¹⁸ (OCG Emphasis)

In light of the foregoing, the OCG has found that the Mr. Hill was already being duly compensated for his role and functions as a Member and/or Chairman of the Board of Directors of the SCJ and the SCJ Holdings Ltd.

¹¹⁷ OCG Follow-Up Requisition to Mr. Donovan Stanberry. 2010 April 30. Question 16

¹¹⁸ Mr. Donovan Stanberry. Response to the OCG’s Requisition. 2010 May 14. Question 16

Further, the OCG found that, by his inclusion of the particulars with respect to his role as the Chairman of the Board of Directors of the SCJ Holdings Ltd. and/or as a Member of the Board of Directors of the SCJ, among the other justifications which were provided to substantiate the invoices for the compensation claims which he made pursuant to his consultancy contract, Mr. Hill had demonstrated a clear conflict of interest.

In point of fact, Mr. Hill was clearly unable to distinguish between his role as a Member of the Board of Directors of SCJ Holdings Ltd. and the SCJ, on the one hand, and his role as a consultant, on the other.

Consequently, the OCG has found that (a) Mr. Hill's inclusion of particulars relating to his role as a Member of the Board of Directors of the SCJ and the SCJ Holdings Ltd. in the documents which were submitted in support of his invoices for his consultancy contract, and (b) Mr. Hill's failure to disclose his interest in a prevailing GOJ contract, pursuant to Section 17 (2) (a) and (b) of the Public Bodies Management was not only highly irregular and improper but have also flagrantly contravened, *inter alia*, Sections 17 (1) and 6 of the Public Bodies Management and Accountability Act.

Section 17 (1) of the Public Bodies Management and Accountability Act provides as follows:

17- (1) "Every director and officer of a public body shall, in the exercise of his powers and the performance of his duties-

(a) act honestly and in good faith in the best interests of the public body; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances including, but not limited to the general knowledge, skill and experience of the director or officer.

Section 6 of the Public Bodies Management and Accountability Act provides as follows:

“6. Every board shall-

(a) take such steps as are necessary-

(i) for the efficient and effective management of the public body;

(ii) to ensure the accountability of all persons who manage the resources of the public body;

(b) develop adequate information, control, evaluation and reporting systems within the body;

(c) develop specific and measurable objectives and performance targets for that body”.

TIMELINE OF KEY EVENTS

TIMELINE	OCCURRENCE	OCG OBSERVATION
2005 December – 2007 September	<p>The Sugar Enterprise Team (SET) had responsibility to oversee the divestment process and to ensure that the privatisation framework which was employed was guided by considerations of modernisation and diversification of the sugar cane industry. The Cabinet approved the appointment of the SET in 2005 December.</p> <p>The SET operated until 2007 September.</p>	Mr. Aubyn Hill was the Chairman of the SET.
2007 October – 2008 June	<p>The Sugar Cane Industry Negotiating Team (SNT) came into being in 2007 October, when the Minister of Agriculture, Dr. the Hon. Christopher Tufton, advised of Cabinet's approval of the SNT.</p> <p>The SNT was mandated to negotiate with the preferred bidder(s) and recommend a suitable proposal to Cabinet.</p> <p>The SNT operated until 2008 June.</p>	Mr. Aubyn Hill was the Chairman of the SNT.
2008 June – 2009 January	<p>On 2008 June 30, the Cabinet approved the appointment of the Sugar Cane Industry Implementation Team (SIT).</p> <p>The role of the SIT was to guide the implementation of the Heads of Agreement which was signed with Infinity Bio Energy Ltd. The SIT operated until 2009 January.</p>	Mr. Aubyn Hill was the Chairman of the SIT & was also awarded a consultancy contract to steer the divestment process.

TIMELINE	OCCURENCE	OCG OBSERVATION
2008 June 30	Cabinet approved the appointment of Mr. Hill as the Head of the SIT effective 2008 July 1.	The Cabinet Secretary, Ambassador Douglas Saunders, stated, <i>inter alia</i> , that “ <i>Whilst the Submission and Decision...do not speak specifically to an award of contract, they do indicate approval of Mr. Hill’s appointment, and the intention of the Ministry of Agriculture to negotiate appropriate negotiation [sic] with regard thereto.</i> ” ¹¹⁹
2008 July 1	The effective date of the first consultancy contract which was awarded to Mr. Aubyn Hill.	The written contract is dated 2008 August 18, and was also signed by Mr. Hill on the said date.
2008 August 18	The first consultancy contract between the MAF and Mr. Aubyn Hill was signed.	The contract refers to Mr. Hill as “ <i>The Consultant</i> ” and clearly states that “ <i>The Consultant shall be an independent contractor and not the servant of MOA.</i> ” ¹²⁰

¹¹⁹ Ambassador Douglas Saunders. Response to the OCG’s Requisition. 2010 January 15.

¹²⁰ MAF/Hill Contract. 2008 August 18

TIMELINE	OCCURENCE	OCG OBSERVATION
2009 February	<p>A Sugar Negotiating Team (SNT) was reactivated and mandated to assess, evaluate and recommend suitable investors for the sugar industry.</p> <p>The SNT was initiated following the failure of the negotiations with Infinity Bio Energy Ltd.</p>	Mr. Aubyn Hill was appointed the Chairman of the SNT & awarded another consultancy contract to steer the divestment process.
2009 February 1	The effective date of the second consultancy contract which was awarded to Mr. Aubyn Hill.	This consultancy contract was not approved by the MAF Contracts Committee until 2009 April 3 and was dated 2009 March 30.
2009 March 25	The Contracts Committee of the MAF was asked to approve the contract for the reengagement of Mr. Aubyn Hill.	
2009 March 30	The second consultancy contract reengaging Mr. Aubyn Hill was signed	
2009 April 3	The Contracts Committee of the MAF approved the consultancy contract for the reengagement of Mr. Aubyn Hill.	
2009 July	Mr. Aubyn Hill was appointed to the Board of Directors of the SCJ and Chairman of the Board of Directors of the SCJ Holdings Ltd.	The consultancy contract which was dated 2009 March 30 was still in effect.

TIMELINE	OCCURENCE	OCG OBSERVATION
2009 October 16	The OCG issued a Media Release in which it announced the commencement of its Investigation into the consultancy contract, which was awarded to Mr. Aubyn Hill and/or his company Corporate Strategies Ltd.	The OCG clearly stated in the media release that <i>“Prior to September 22, 2008, sole source contract awards in excess of \$1 Million in value would have required, among other things, the prior evaluation and endorsement of the National Contracts Commission (NCC) as to justification and cost competitiveness.”</i> ¹²¹
2009 October 17	An article was published in the Jamaica Observer newspaper, which was entitled <i>“Tufton defends \$1.9m monthly fee”</i> , reported that <i>“Tufton, in an early morning press conference...told journalists that the Jamaican taxpayer was no longer subsidising the Sugar Company of Jamaica (SCJ), and returns to Jamaica justified the former <u>banker's consultancy fees...</u> the ministry did not have the required expertise, <u>Tufton told journalists yesterday that the alternatives to having a consultant conduct the negotiations...</u>”</i> ¹²² (OCG Emphasis)	Notwithstanding the representations in the Media, about the award of a consultancy contract, Mr. Donovan Stanberry, Mr. Aubyn Hill and Dr. Christopher Tufton, subsequently asserted in their sworn written statements, to the OCG, that the contract which was awarded to Mr. Hill was one of an <u>employment contract.</u>

¹²¹ OCG Media Release. 2009 October 16

¹²² Jamaica Observer. *““Tufton defends \$1.9m monthly fee”*. 2009 October 17.
https://www.jamaicaobserver.com/news/161953_Tufton-defends--1-9m-monthly-fee

TIMELINE	OCCURENCE	OCG OBSERVATION
2009 October 17	An article, which was entitled “ <i>Dr. Tufton Responds To Criticisms of Sugar Consultancy Fees</i> ”, was published on the JIS website in which it was reported that “ <i>Minister of Agriculture and Fisheries, Hon. Dr. Christopher Tufton, has said that the country has received "value for money" in contracting the services of consultancy firm, Corporate Strategies Limited...</i> ” ¹²³	
2009 November 19	Mr. Donovan Stanberry, in his response to the OCG’s Requisition stated, <i>inter alia</i> , that “...the <u>two (2) contracts awarded to Mr. Hill are Employment Contracts...</u> ” ¹²⁴ (OCG Emphasis)	However, the written contracts, which were awarded to Mr. Aubyn Hill refers to Mr. Hill as “ <i>The Consultant</i> ”.
2010 February 24	Minister the Hon. Dr. Christopher Tufton, in his response to the OCG’s Requisition, stated, <i>inter alia</i> , that “...Mr. Hill was offered an <u>Employment Contract</u> by the Ministry of Agriculture...” ¹²⁵ (OCG Emphasis)	However, the written contracts, which were awarded to Mr. Aubyn Hill refers to Mr. Hill as “ <i>The Consultant</i> ”. Further, it was previously reported in several media articles that Dr. Tufton asserted that a consultancy contract was awarded to Mr. Hill.

¹²³ JIA Article.”Dr. Tufton Responds to Criticism of Sugar Consultancy Fees”. 2009 October 17. http://www.jis.gov.jm/minagrifish/html/20091017t010000-0500_21544_jis_dr_tufton_responds_to_criticisms_of_sugar_consultancy_fees.asp

¹²⁴ Donovan Stanberry. Response to the OCG’s Requisition. 2009 November 19

¹²⁵ Min. the Hon. Dr. Christopher Tufton. Response to the OCG’s Requisition. 2010 February 24

TIMELINE	OCCURENCE	OCG OBSERVATION
2010 March 16	Mr. Aubyn Hill, in his response to the OCG's Requisition stated, <i>inter alia</i> , that "... <u>a contract of employment</u> was entered into between the Ministry of Agriculture and me." ¹²⁶ (OCG Emphasis)	The written contracts, which were awarded to Mr. Aubyn Hill, refer to " <i>The Consultant</i> ". Of import is the fact that Mr. Hill duly signed the contracts and it clearly stated that " <u>The Consultant shall be an independent contractor and not the servant of MOA.</u> " ¹²⁷ (OCG Emphasis)
2010 May 14	Mr. Donovan Stanberry, in his response to the OCG's Requisition stated, <i>inter alia</i> , that "... <u>I did, in fact, characterize Mr. Hill's contract as an Employment Contract. This was a mistake on my part, as in my mind the nature of Mr. Hill's assignment was consistent with the role of a contract employee of the Ministry. In actuality, however, Mr. Hill's contract was formatted as a contract for a Consultant, providing short term consultancy service, as against an Employment Contract, in the classic sense.</u> This was a genuine mistake on my part and I, therefore, withdraw all reference to "Employment Contract" in my previous letter of November 19, 2009, to be substituted with "Contract for Short Term Consultancy Services". ¹²⁸ (OCG Emphasis)	

¹²⁶ Mr. Aubyn Hill. Response to the OCG's Requisition. 2010 March 16. Question 1

¹²⁷ MAF/Hill Contract. 2008 August 18

¹²⁸ Mr. Donovan Stanberry. Response to the OCG's Requisition. 2010 May 14. Question 8

TIMELINE	OCCURENCE	OBSERVATION
2010 June 2	Minister the Hon. Dr. Christopher Tufton, in his response to the OCG's Requisition stated, <i>inter alia</i> , that, "... <u>I did in fact refer to Mr. Hill's contracts as "Employment Contracts", as in preparing my answers I was so advised by the Permanent Secretary. I have since been advised by the Permanent Secretary that he made an error in so designating the contracts, and this has been communicated to you with an appropriate apology from him...Mr. Hill's contracts is [sic] "Short-term Contract for Consultancy Services"</u> . ¹²⁹ (OCG Emphasis)	
2010 June 3	Mr. Aubyn Hill stated, <i>inter alia</i> , that "My company, Corporate Strategies Limited, paid the statutory amounts that were due on my behalf." ¹³⁰	Mr. Hill's response was given to the OCG in respect of questions which were posed about his payment, to the GOJ, of income tax and other statutory liabilities, having regard to his previous assertion that his contract was an "Employment Contract".

¹²⁹ Dr. Christopher Tufton. Response to the OCG's Requisition. 2010 June 2. Question 4

¹³⁰ Mr. Aubyn Hill. Response to the OCG's Requisition. 2010 June 3. Question 5

KEY CONCLUSIONS

Based upon the documents which have been reviewed as well as the sworn testimonies which have been received from the representatives of the MAF, other Public Officials and persons of interest, the OCG has arrived at the following considered Conclusions:

1. The GOJ initiated the divestment of its sugar assets in 2005 December. During this process, the SCJ and the SCJ Holdings Ltd. controlled the GOJ sugar assets which were being divested.

Mr. Aubyn Hill has been involved in the GOJ sugar divestment process since its inception in 2005, when he was appointed the Chairman of the Sugar Cane Industry Enterprise Team (SET). The OCG has found and concluded that Mr. Aubyn Hill has also chaired all the teams which have been involved in the GOJ sugar divestment process.

2. Mr. Aubyn Hill was appointed the Chairman of the SCJ Holdings Ltd. and a Member of the Board of Directors of the SCJ in 2009 July.
3. The OCG has concluded that two (2) consultancy contracts were awarded to Mr. Aubyn Hill.

In the first instance, a consultancy contract was awarded to Mr. Aubyn Hill pursuant to Cabinet Decision No. 22/08, which was dated 2008 June 30. This contract was awarded to Mr. Aubyn Hill for him to conclude the negotiations with Infinity Bio-Energy Ltd.

It is instructive to note that with regard to Cabinet Decision No. 22/08, the Cabinet Secretary, Ambassador Douglas Saunders stated that “*Whilst the Submission and Decision...do not speak specifically to an award of contract, they*

do indicate approval of Mr. Hill's appointment, and the intention of the Ministry of Agriculture to negotiate appropriate negotiation [sic] with regard thereto.”¹³¹

In point of fact, Cabinet Decision No. 22/08 stated that “...the Cabinet gave approval for the appointment of Mr. Aubyn Hill as Head of the Sugar Privatization Implementation Team effective July 1, 2008.” (OCG Emphasis)

Having regard to the foregoing, a consultancy contract which was dated 2008 August 18 was signed by Mr. Aubyn Hill and the MAF. The referenced contract was for the period of 2008 July 1 to 2008 September. However, Cabinet Submission No. 328/MA-21/08 also made provision for a longer time span of the contract as it stated, *inter alia*, that the contract would last “*...until such time as the handover of assets to Infinity is effected.*”¹³²

Further, the contract value was \$5,500,000.00 and the terms of the contract provided, *inter alia*, that “*...the Consultant shall be provided with a fully maintained motor vehicle and driver throughout the continuance of this Agreement.*”¹³³

4. In the second instance, Mr. Aubyn Hill was awarded a consultancy contract, which was dated 2009 March 30, to lead the Sugar Negotiating Team (SNT) that was mandated to assess, evaluate and recommend suitable investors to the Cabinet. This consultancy contract was awarded pursuant to Cabinet Decision No. 5/09, which was dated 2009 February 2. (OCG Emphasis)

The referenced consultancy contract was scheduled to cover the period of 2009 February 1 to 2009 May 31. The contract value was \$7,333,333.33. The

¹³¹ Ambassador Douglas Saunders. Response to the OCG's Requisition. 2010 January 15.

¹³² Cabinet Submission No. 328/MA-21/08

¹³³ MAF/Hill Contract. 2008 August 18

referenced contract had similar terms and conditions as the first consultancy contract which was awarded to Mr. Aubyn Hill.

5. With regard to the first consultancy contract, the OCG has concluded that the approval of the NCC was not sought and/or granted. The 2008 August 18 contract, which was awarded to Mr. Aubyn Hill, was awarded pursuant to Cabinet Decision No. 22/08 which was dated 2008 June 30.
6. The OCG has also concluded that the award of the first consultancy contract to Mr. Aubyn Hill, on 2008 August 18, was done in an irregular and improper manner. This is premised upon the fact that the Contracts Committee of the MAF and the NCC were bypassed in the approval process.
7. The OCG has also concluded that the first consultancy contract, which was awarded to Mr. Aubyn Hill via the Sole Source/Direct Contracting Procurement Methodology, on 2008 August 18, was unlawfully awarded in breach of Section 2.1.3.4 of the GPPH (2001 May). Section 2.1.3.4 of the GPPH (May 2001), provides, *inter alia*, that:

“All Sole Source or Direct Contracting greater than \$1M must receive prior written approval from the NCC through the Accounting Officer.”¹³⁴ (OCG Emphasis)

8. The 2009 March 30 contract, which was awarded to Mr. Aubyn Hill, was awarded pursuant to Cabinet Decision No. 5/09, which was dated 2009 February 2. With respect to this second consultancy contract, which was awarded to Mr. Aubyn Hill, the OCG has concluded that the MAF inappropriately used the Sole Source/Direct Contracting Procurement Methodologies to procure the services of Mr. Aubyn Hill.

¹³⁴ GPPH. Section 2.1.3.4. 2001 May.

In so doing, the MAF failed to fully subscribe to the requirements of the Procurement Methodology which it had purported to utilize in the award of the consultancy contract since neither the approval of the NCC was sought nor received.

9. The OCG has also concluded that the award of the second consultancy contract to Mr. Aubyn Hill, on 2009 February 2, was executed in an irregular and improper manner. This is premised upon the fact that the MAF did not undertake a competitive tender process as is required by Sub-Section S-3000 and S-3010 of the RPPH, which details the procedures for the procurement of all services and consulting services, respectively.

Sub- Section S-3000 of the RPPH requires that the selection process for consultants be guided, *inter alia*, by the principles of transparency, equity and fairness, whereas Sub-Section S-3010 requires that the procurement opportunity should be advertised in daily newspapers. None of these criteria was complied with by the MAF in its award of the second contract to Mr. Hill.

10. The OCG has further concluded that the award of the second consultancy contract to Mr. Aubyn Hill was irregular because (a) it was executed prior to its approval by the MAF Contracts Committee on 2009 April 3 and (b) the effective date of the contract preceded the actual contract date.

In the foregoing regard, the OCG has found that the consultancy contract, which was dated 2009 March 30, was expressed to become effective on 2009 February 1. Further, Cabinet approval was not granted until 2009 February 2, one day after the effective date of the contract. In consequence, an economic benefit was being directly derived by Mr. Aubyn Hill before the contract was lawfully approved.

11. The OCG has also concluded that the second consultancy contract, which was awarded to Mr. Aubyn Hill, via the Sole Source/Direct Contracting Procurement

Methodology, on 2009 March 30, was inappropriately and unlawfully awarded in breach of Sub-Section S-2040 (D) and (E) of the RPPH. Sub-Section S-2040 (E) of the RPPH provides, *inter alia*, that:

“The Head of the Procuring Entity may approve sole source/direct contracting up to J\$3M. Contract values above this threshold will require the pre-approval of the NCC.”¹³⁵

12. Additionally, the OCG has concluded that the provisions, which are detailed in Sub-Section S-2040 (D) and (E) of the RPPH, for the use of the Sole Source/Direct Contracting Procurement Methodology, were not applicable to the consultancy services contract, which was awarded to Mr. Hill on 2009 March 30.

In this regard, Sub-Section S-2040 (D) and (E) of the RPPH provides, *inter alia*, that:

“D. SOLE SOURCE

Sole Source means there is only one provider of the particular good, service or work. Use of this method may be justified when:

- i. The procurement is of a “sensitive” nature.*
- ii. A procuring entity receives an unsolicited proposal that it considers meritorious.*
- iii. A particular supplier or contractor has exclusive rights in respect of goods, services or work.*
- iv. Standardizing equipment available only from a single proprietary source; i.e. the procuring entity has procured goods, equipment or technology from a supplier or contractor and additional supply must*

¹³⁵ RPPH. Sub-Section S-2040(E). 2008 November

be procured from that supplier or contractor for reason of standardization (follow-on procurement).

- v. *For the purposes of research, experiment, study or development.*

E. DIRECT CONTRACTING

*Direct contracting means only one contractor is invited to participate. **Use of this method may be justified when:***

- i. *In response to a catastrophic event, making it impractical to use other methods of procurement because of the time involved in using those methods.*
- ii. *For the purposes of research, experiment, study or development.*
- iii. *In emergency circumstances.*¹³⁶(OCG Emphasis)

The OCG is of the considered opinion that the above-referenced consultancy contract which was awarded to Mr. Hill, on 2009 March 30, cannot be justified in either of the eight (8) areas identified in Sub-Sections S-2040 (D) and (E) of the RPPH.

13. The OCG has further concluded that the award of the second consultancy contract to Mr. Aubyn Hill in 2009 should have been undertaken pursuant to Sub-Section S-3000 and S-3010 of the RPPH. However, this was not done by the MAF and there was no competitive award of the consultancy contract to Mr. Aubyn Hill.

¹³⁶ RPPH. Sub-Section S-2040(E). 2008 November

In this regard, the OCG has been led to conclude that the MAF has breached Sub-Section S-3000 and S-3010 of the RPPH. Consequently, the MAF has also breached the provisions of the Public Sector Procurement Regulations which were promulgated in December 2008. Section 40 of the Public Sector Procurement Regulations stipulates as follows:

“40. A person who-

(a) contravenes these Regulations; or

(b) aids, abets or otherwise knowingly facilitates or is an accessory to the contravention of these Regulations, commit an offence and is liable, on summary conviction in a Resident Magistrate's Court, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three months or to both such fine...”

14. The OCG has also concluded that the award of the two (2) consultancy contracts to Mr. Aubyn Hill lacked transparency. None of them was subjected to the prior scrutiny of the Contracts Committee of the MAF and the first one was awarded without the required prior approval of the NCC.

Further, the lack of a competitive tender process in the award of the second contract, inclusive of the failure of the MAF to adhere to the advertisement requirements of the RPPH, is also indicative of the lack of transparency which has characterized the award of the two consultancy contracts.

15. The OCG has concluded that the total amount which has been paid to Mr. Aubyn Hill and/or his company, Corporate Strategies Ltd. was \$35,199,967.79 for the period of 2008 July 1 to 2009 December 31, in respect of both consultancy contracts.

16. The OCG has concluded that certain of the terms of the consultancy contracts which were awarded to Mr. Aubyn Hill appear to have been performed. The

Permanent Secretary, Mr. Donovan Stanberry, in his response to the OCG's Requisition, which was dated 2009 November 19, stated, inter alia, that "*As per the contracts, Mr. Hill provided reports on his deliverables, as well as updates in meetings with the Honourable Minister of Agriculture and the Cabinet and other reports.*"¹³⁷

17. The OCG has concluded that a conflict of interest arises, among other things, when a public officer has a private or personal interest which is sufficient to appear to influence or to appear to be capable of influencing the objective exercise of his official duties.

It has also been noted that a conflict of interest may be deemed to exist under any of the following circumstances:

- (a) Engagement in private activity similar to official functions;
- (b) Using information and/or any material gained from an official position for private gain of relatives or family members or an organization in which relatives or family members have an interest; or
- (c) Exploiting the status and privilege of one's position for private gain.

Given the conceptualization of a conflict of interest, and the circumstances under which it may occur, it is the OCG's considered view that the actions of Mr. Aubyn Hill, in the matters which are the subject of this Investigation Report, could be equated to that of a perceived conflict of interest, at the very minimum.

When the instant conflict of interest is considered and juxtaposed with the principles of good governance, the OCG has been led to infer and consequently conclude the following:

¹³⁷ Mr. Donovan Stanberry. Response to the OCG's Requisition. 2009 November 19. Question #21

- (i) Dr. Christopher Tufton, the Minister of Agriculture and Fisheries, and the State, by appointing Mr. Aubyn Hill as a Member of the Board of Directors of the SCJ and the SCJ Holdings Ltd., while Mr. Hill was, himself, a party to a GOJ contract which involved the divestment of the very assets which were being held and/or operated by the said entities of which he was a Director, created an unavoidable conflict of interest situation for Mr. Hill. The referenced conflict of interest situation served to gravely undermine the very principles of good governance which should have been upheld by Minister Tufton and the State in the administration and management of the affairs of two (2) major Public Bodies which fell within the Minister's portfolio of responsibilities.
- (ii) Consequently, the OCG has concluded that the actions of the portfolio Minister, Dr. Christopher Tufton, in sanctioning the appointment of Mr. Hill as the Chairman of the Board of Directors of the SCJ Holdings Ltd. and as a Member of the Board of Directors of the SCJ, while he, Mr. Hill, had an active contract for consultancy services which was directly related to the divestment process, exhibited, at the very minimum, either a basic lack of judgement on the part of the Minister and/or his disregard for the principles of good corporate governance in Public Sector management.
- (iii) Mr. Aubyn Hill also knowingly placed himself in a clear conflict of interest situation when he accepted the referenced appointments as (a) the Chairman of the Board of Directors of the SCJ Holding Ltd. and (b) a Member of the Board of Directors of the SCJ, the very companies which then held and/or operated the assets which were the subject of the GOJ's Sugar Divestment Process, while he, Mr. Hill, was a party to a GOJ/MAF contract which was directly linked to the divestment of the said assets.

- (iv) The above conflict of interest situation was glaringly manifested in a number of documents which were submitted by Mr. Hill, to the MAF, in support of certain invoices in which claims were made by him, under his consultancy contract, for compensation for services which were rendered in his dual capacities as Board Chairman of SCJ Holdings Ltd. and Director of SCJ.

In the referenced documents, while Mr. Hill provided a justification for his billing, pursuant to his performance of his consultancy contracts, he also included particulars which were related to his role as a Member of the Board of Directors of the SCJ and SCJ Holdings Ltd.

Of significant import is the fact that the Permanent Secretary, Mr. Donovan Stanberry has stated, *inter alia*, that **“As a Member of both Boards, Mr. Hill would have been paid the normal Board Fee to which all Board Members are entitled, consistent with the Ministry of Finance and the Public Service’s Circular No. 1, reference number 11358^{vi} dated January 15, 2007.”**¹³⁸ (OCG Emphasis)

Given (a) that Mr. Hill was already being paid as a Member of both Boards of Directors, and (b) that Mr. Hill’s role as a “consultant” under his consultancy contracts was distinct and separate from that of his role as a Member of both Boards of Directors, he should not have included particulars with respect to his Director’s role in the claims which he had submitted to the MAF for the payment of compensation for the performance of his consultancy contracts.

- (v) The foregoing, at a minimum, has disclosed the evident impropriety and irregularity of the situation which existed in which Mr. Hill was party to a

¹³⁸ Mr. Donovan Stanberry. Response to the OCG’s Requisition. 2010 May 14. Question 16

prevailing GOJ/MAF contract while being an active Member of the Boards of Directors of the SCJ and SCJ Holdings Ltd., the very companies which then held and/or operated the assets which he was engaged under his consultancy contract to divest.

In point of fact, Mr. Hill, by his documented actions, has conclusively demonstrated that his dual roles, as the consultant and as an active Member of the Boards of Directors of the SCJ and SCJ Holdings Ltd., were so close and inextricably linked that he himself had an obvious and practical difficulty in delineating same.

18. The OCG has concluded that, in light of the existence of Mr. Hill's consultancy contract, and the obvious conflict of interest situations which would have clearly arisen, the Minister, Dr. Christopher Tufton, should not have appointed Mr. Hill as the Chairman of the Board of Directors of the SCJ Holdings Ltd., nor as a Member of the Board of Directors of the SCJ in 2009 July.

19. The OCG has also concluded that the situation, at best, which existed as a result of Mr. Hill's positions as (a) the Chairman of the Board of Directors of the SCJ Holding Ltd., (b) a Director of SCJ and (c) Consultant to head the SNT, is one which raises several questions and concerns regarding the issue of poor corporate governance.

The OCG is of the considered opinion that the situation could be characterized, among other things, as one in which too much power and authority was concentrated in the hands of a single individual. There was no allowance made for sufficient, appropriate or effective checks and balances, nor for transparency and accountability, within the GOJ's sugar asset divestment process and the overall governance structures of the MAF. It is the OCG's considered opinion that the Boards of Directors of the SCJ and SCJ Holdings Ltd. should have acted as a

check and a balance and as an oversight body with respect of the divestment process, pursuant to the provisions which are contained in the Public Bodies Management and Accountability Act, and, in particular, Section 6 of the referenced Act, which mandates that a Board of Directors shall ensure good corporate governance in the operations and activities of the Public Body which it administers.

With respect to the consulting contracts which existed between the MAF and Mr. Aubyn Hill, while Mr. Donovan Stanberry stated, *inter alia*, that “*As per the contracts, Mr. Hill provided reports on his deliverables, as well as updates in meetings with the Honourable Minister of Agriculture and the Cabinet and other reports*”¹³⁹, it is also the OCG’s considered opinion that Mr. Hill would have been required to report to two (2) GOJ Public Bodies which had a pecuniary interest in the assets which he had been contracted, as a consultant, to divest.

In consequence, and as a matter of practicality, Mr. Hill, at the very minimum, would have been required to report to the Boards of Directors of the SCJ and SCJ Holdings Ltd. with respect, *inter alia*, to the asset divestments. In essence, it is, therefore, self-evident that Mr. Hill, as the Consultant, would have been reporting to himself in his capacity as the Chairman and/or member of both Boards of Directors.

What is even more troubling, however, is that, in an article, which was published on the Radiojamaica website, that was entitled “*No conflict of interest -Tufton*”, and which was dated 2009 October 16, it was reported, *inter alia*, that “*Agriculture Minister Dr. Christopher Tufton has admitted that **the contract that engages the services of Aubyn Hill's consultancy company Corporate Strategies***”

¹³⁹ Mr. Donovan Stanberry. Response to the OCG’s Requisition. 2009 November 19. Question #21

Limited is silent on the dual and possibly conflicting roles he plays in the sugar divestment process.¹⁴⁰ (OCG Emphasis)

Having regard to the foregoing, critical questions must, therefore, be raised as to the following:

- (i) How did Mr. Hill, the MAF and/or the Cabinet of Jamaica guarantee that Mr. Hill's personal interest, as exercised pursuant to his performance of his consultancy contracts, would not have conflicted with the fiduciary duties and responsibilities which he owed by law to the SCJ and SCJ Holdings Ltd. as a Board Director of both Public Bodies? or
- (ii) How did the situation as it existed (i.e. Mr. Hill in his dual role as a consultant while being an active Member of the Boards of Directors of the SCJ and SCJ Holdings Ltd.) ensure that the pursuit, by Mr. Hill, of his personal interests as the Consultant did not undermine the interests of the SCJ, the SCJ Holdings Ltd., the MAF and the GOJ?

20. The OCG has concluded that Mr. Hill has breached his fiduciary duties to the SCJ and SCJ Holdings Ltd. and has also acted in breach of Section 17 (2) of the Public Bodies Management and Accountability Act. Mr. Hill failed to comply with the requirements of the law when he failed to disclose his interest in a prevailing GOJ/MAF contract to the Board of Directors of the SCJ and the SCJ Holdings Ltd. at the time of his appointment to the respective Boards of Directors in 2009 July.

At the very least, Mr. Hill should have declared his interest in his consultancy contract in light of the fact that he had a pecuniary interest in a contract with the

¹⁴⁰ Radiojamaica. "No conflict of interest- Tufton" 2009 October 16.
<http://www.radiojamaica.com/content/view/22410/26/>

GOJ/MAF which had to do with a matter in which the SCJ and SCJ Holdings Ltd. also had a pecuniary interest.

It is instructive to note that Mr. Hill was also cited and formally referred by the OCG, in its 2008 October Report of Investigation, into the Lease of Properties by the Development Bank of Jamaica (DBJ) to the Hon. Mr. Michael Hylton, OJ, QC, the former Solicitor General of Jamaica, and to NationGrowth MicroFinance Ltd., a company of which Mr. Aubyn Hill, a former Director of DBJ, was then a Director.

In that instance, Mr. Hill was cited and referred for irregular and improper conduct and for abuse of office and breach of his fiduciary responsibilities in the discharge of his public functions as a Director of two (2) GOJ Public bodies, the DBJ and the Jamaica Development Bank (JDB).

21. The OCG has also concluded that Mr. Hill has (a) acted negligently in the discharge of his responsibilities as a SCJ and SCJ Holdings Ltd. Director, and/or (b) abused his authority and offices and/or (c) breached his respective duties of trust to the SCJ and SCJ Holdings Ltd. and/or (d) breached his respective fiduciary or statutory duties to SCJ and SCJ Holdings Ltd.

The foregoing conclusions are premised, *inter alia*, upon (a) Mr. Hill's inclusion of particulars relating to his role as a Member of the Board of Directors of the SCJ and the SCJ Holdings Ltd. in the documents which he submitted in support of his invoices for his consultancy contract, despite his being already compensated as a Director of both Boards; and (b) Mr. Hill's failure to disclose his interest in a prevailing GOJ contract, in direct contravention of Section 17 (2) (a) and (b) of the Public Bodies Management and Accountability Act.

In the premises, the OCG is of the considered view that the situation, at best, was not only highly irregular and improper, but was one which flagrantly contravened, *inter alia*, Sections 17 and 6 of the Public Bodies Management and Accountability Act.

22. Throughout the course of the OCG's Investigation, sworn, material and conflicting statements were made to the OCG, in writing, concerning the nature of Mr. Hill's consultancy contracts. In this regard, Mr. Donovan Stanberry, Mr. Hill and Dr. Christopher Tufton all initially provided written and sworn statements to the OCG in which they referred to Mr. Hill's contracts as 'employment contracts'.

However, contrary to their assertions, the written contracts, between Mr. Hill and the MAF, were far from being 'employment contracts'. They were both, in form, law and function, 'consultant contracts'. Both contracts were replete with multiple references to the term "Consultant". Indeed, the term "Consultant", which is a technical term, was utilized as many as thirty-eight (38) times in the two (2) contracts, whereas the word "employee" or "employment" appears nowhere in the documents. Further, both contracts had been formally signed by Mr. Donovan Stanberry and by Mr. Hill in Mr. Hill's occupational capacity as "Consultant".

Of even greater significance, however, was the fact that both contracts had recited (a) that "*Cabinet, by its Decision No. 22/08 dated June 30, 2008, has approved the appointment of the Consultant*" and (b) that "... *The Consultant shall be an independent contractor and not the servant of MOA*" – meaning that the consultant shall not be considered to be an 'employee' of the MOA.

In consequence, the OCG was constrained to direct a follow-up Requisition to each of the three (3) men in an effort to resolve what was clearly a very worrying and material discrepancy in the initial sworn and written representations which they had made to the OCG under the pain of criminal prosecution.

In his answer to the OCG's follow-up Requisition, Mr. Donovan Stanberry informed the OCG that “...I did, in fact, characterize Mr. Hill's contract as an Employment Contract. This was a mistake on my part, as in my mind the nature of Mr. Hill's assignment was consistent with the role of a contract employee of the Ministry. In actuality, however, Mr. Hill's contract was formatted as a contract for a Consultant, providing short term consultancy service, as against an Employment Contract, in the classic sense...”.¹⁴¹ (OCG Emphasis)

Dr. Christopher Tufton also informed the OCG that “...I did in fact refer to Mr. Hill's contracts as “Employment Contracts”, as in preparing my answers I was so advised by the Permanent Secretary. I have since been advised by the Permanent Secretary that he made an error in so designating the contracts, and this has been communicated to you with an appropriate apology from him...”¹⁴² (OCG Emphasis)

Mr. Aubyn Hill, on the other hand, deliberately side-stepped the OCG's attempt to have him provide a clarification to the earlier sworn statements which he had given to the OCG regarding the nature of his contracts. He, instead, directed the OCG to the MAF by stating “...This question can best be answered by my former employer the MAF.”¹⁴³ It is the OCG's opinion that this was a disingenuous but futile attempt on the part of Mr. Hill to divest himself of culpability in the matter.

Notwithstanding Mr. Hill's questionable evasiveness, it is also instructive to note that, he, Mr. Hill, on the invoices which he had submitted to claim monies from the MAF for his performance of his two (2) contracts, had unequivocally stated that the claimed remuneration was for “...consultancy service.” (OCG Emphasis)

¹⁴¹ Mr. Donovan Stanberry. Response to the OCG's Requisition. 2010 May 14. Question 8

¹⁴² Dr. Christopher Tufton. Response to the OCG's Requisition. 2010 June 2. Question 4

¹⁴³ Mr. Aubyn Hill. Response to the OCG's Requisition. 2010 June 3. Question 4

Based, among other things, upon the foregoing, and the fact that the contracts were not approved by the NCC, the OCG is constrained to question whether the earlier classifications of Mr. Hill's two (2) contracts as one of 'employment', rather than 'consultancy', was done in light of the OCG's Media Release, which was issued on 2009 October 16. In the referenced Media Release, the OCG had publicly stated that "...sole source contract awards in excess of \$1 Million in value would have required, among other things, the prior evaluation and endorsement of the National Contracts Commission (NCC) as to justification and cost competitiveness."¹⁴⁴ (OCG Emphasis)

It is instructive to note also that the Permanent Secretary, Mr. Donovan Stanberry, in his response to the OCG's Requisition, which was dated 2009 November 19, stated, *inter alia*, as follows:

*"As explained in number 6, the two (2) contracts awarded to Mr. Hill are Employment Contracts, which do not fall within the purview of the National Contracts Committee [sic]."*¹⁴⁵ (OCG Emphasis)

It is, therefore, evident, from the representations of Mr. Stanberry, that there was an acute awareness that the classification of Mr. Hill's contracts would have been a critical factor in the determination of issues of compliance and culpability.

23. Further, the OCG has concluded that Mr. Donovan Stanberry, on 2009 November 19, Dr. Christopher Tufton on 2010 February 24, and Mr. Aubyn Hill on 2010 March 16, provided the OCG with statements which were manifestly and materially false in that they had unequivocally asserted in the said statements, which were sworn before a Justice of the Peace to be true, accurate and complete, that 'employment contracts' were awarded by the MAF to Mr. Aubyn Hill.

¹⁴⁴ OCG Media Release. 2009 October 16

¹⁴⁵ Donovan Stanberry. Response to the OCG's Requisition. 2009 November 19. Question #9

However, the documentary evidence and the subsequent sworn statements which were provided to the OCG by (a) Mr. Donovan Stanberry on 2010 May 14 and (b) Dr. Christopher Tufton on 2010 June 2, have, comprehensively and unequivocally contradicted the initial responses, to the OCG's Requisitions, which were submitted by the three (3) men.

It is for this reason, as well as having regard to the numerous other considerations which are outlined in the Findings of this Report of Investigation, that the OCG has been led to the Conclusion that there is sufficient evidence which has been presented herein which would suggest that Mr. Donovan Stanberry, Dr. Christopher Tufton and Mr. Aubyn Hill have acted in contravention of Section 29 (a) of the Contractor General Act and Section 8 of the Perjury Act.

Section 29 (a) of the Contractor General Act provides, *inter alia*, as follows:

“Every person who –

(a) wilfully makes any false statement to mislead or misleads or attempts to mislead a Contractor- General or any other person in the execution of his functions under this Act;...

shall be guilty of an offence ...”

Section 8 of the Perjury Act provides, *inter alia*, as follows:

“Every person who knowingly and willfully makes (otherwise than on oath) a statement false in a material particular and the statement is made-

(a) in a voluntary declaration; or

(b) in any oral declaration or oral answer which he is required to make by, under, or in pursuance of any enactment for the time being in force,

shall be guilty of a misdemeanour, and liable on conviction on indictment thereof to imprisonment with hard labour for any term not exceeding two years, or to a fine, or to both such imprisonment and fine”.

REFERRALS

The OCG, in the conduct of its Investigation, is required to be guided by Section 21 of the Contractor-General Act.

Section 21 of the Contractor-General Act provides as follows:

“If a Contractor-General finds, during the course of his Investigations or on the conclusion thereof that there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body, he shall refer the matter to the person or persons competent to take such disciplinary or other proceeding as may be appropriate against that officer or member and in all such cases shall lay a special report before Parliament.”¹⁴⁶ (OCG Emphasis)

1. Pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor General Act, the OCG is hereby formally referring a copy of this Report to the Learned Director of Public Prosecutions (DPP) for such further action as she may deem to be appropriate.

The OCG has found that there is sufficient evidence which is contained herein and, more particularly and importantly, in the sworn statements that were furnished to the OCG by the relevant Respondents, to suggest that Dr. Christopher Tufton, Mr. Donovan Stanberry and Mr. Aubyn Hill wilfully attempted to mislead a Contractor General in contravention of Section 29 (a) of the Contractor General Act, and/or knowingly and wilfully made a false statement to a Contractor General in a material particular, contrary to Section 8 of the Perjury Act.

The OCG has found that (a) Dr. Christopher Tufton, in his 2010 February 24 response to the OCG’s Requisition, (b) Mr. Donovan Stanberry, in his 2009

¹⁴⁶ Contractor-General Act. 1983

November 19 response to the OCG's Requisition and (c) Mr. Aubyn Hill, in his 2010 March 16 response to the OCG's Requisition, have all stated that the contracts under which Mr. Hill was engaged by the MAF were 'employment contracts'.

However, the documentary evidence and the subsequent sworn witness statements of (a) Mr. Donovan Stanberry, given on 2010 May 14 and (b) Dr. Christopher Tufton, given on 2010 June 2, which were provided to the OCG, have comprehensively contradicted the sworn representations which were initially made by the three (3) men to the effect that the contracts which were awarded to Mr. Aubyn Hill were 'employment contracts'.

In point of fact, and to place the matter beyond any doubt, Mr. Donovan Stanberry on 2010 May 14, and Dr. Christopher Tufton on 2010 June 2, did assert and did concede, in their subsequent sworn testimonies given to the OCG, that the contracts that were awarded to Mr. Aubyn Hill were not 'employment contracts', as they had previously testified, but were indeed 'consultancy contracts'.

Section 29 of the Contractor General Act provides, *inter alia*, as follows:

"Every person who –

(a) wilfully makes any false statement to mislead or misleads or attempts to mislead a Contractor-General or any other person in the execution of his functions under this Act; or

(b) without lawful justification or excuse –

(i) obstructs, hinders or resists a Contractor-General or any other person in the execution of his functions under this Act; or

(ii) fails to comply with any lawful requirement of a Contractor-General or any other person under this Act,

shall be guilty of an offence ...”.

Section 8 of the Perjury Act provides, *inter alia*, as follows:

“Every person who knowingly and willfully makes (otherwise than on oath) a statement false in a material particular and the statement is made-

(a) in a voluntary declaration; or

(b) in any oral declaration or oral answer which he is required to make by, under, or in pursuance of any enactment for the time being in force,

shall be guilty of a misdemeanour, and liable on conviction on indictment thereof to imprisonment with hard labour for any term not exceeding two years, or to a fine, or to both such imprisonment and fine”.

The OCG is firmly grounded and convicted in its Referral above as it considers it to be highly questionable and ludicrous that such highly qualified, educated and experienced public servants, in the face, among other things, of written contracts which have lucidly specified the unequivocal nature of Mr. Hill’s consultancy engagements, could have mistakenly misconstrued same, *in sworn but separate statements*, to be that of an ‘employment contract’. The very thought of the suggestion is an affront to the Commission of the Contractor General which, as has been previously emphasized, is a quasi-judicial independent anti-corruption Commission of the Parliament of Jamaica whose authority must be respected.

Given the Findings and Conclusions which are detailed in this Report of Investigation and the sworn evidence which has been adduced, inclusive of (a) the clearly suspect and/or disingenuous conduct of the three (3) men, and (b) the derisory explanations which have been rendered by them for the glaring discrepancies in the sworn statements which they gave to the OCG, the OCG is of the considered opinion that seemingly deliberate attempts were in fact made by all

three (3) parties to materially mislead the Contractor General as regards the classification, import and nature of Mr. Aubyn Hill's engagement by the MAF.

The grave and serious implications, and legal consequences, of the misrepresentations which were initially made by the three (3) men, to the OCG, under the pain of criminal prosecution, should not be underestimated or trivialized. Had their sworn representations to the effect that Mr. Hill's contracts were 'employment contracts' been accepted by the OCG as factual without any further enquiry, the said representations would have served to sanitize Mr. Hill's two (2) 'consultancy contracts' by holding them to be fully above board when in fact any such OCG Finding would have been the furthest from the truth.

Once the OCG had established that the three (3) men had in fact materially misled it and that the referenced contracts were not 'employment contracts' but were in point of fact 'consultancy contracts', it became immediately evident that the Government Procurement Rules, the Government Procurement Regulations and Section 4 (1) of the Contractor General Act had been flagrantly breached by the MAF and its Permanent Secretary in the award of the said consultancy contracts to Mr. Hill. Among the material breaches which were, in consequence, uncovered, was that the MAF had awarded the referenced consultancy contracts to Mr. Hill without first securing the prior approval and endorsement of the MAF's Contracts Committee and the National Contracts Commission.

Had the sworn statements which had been previously given by the three men been allowed to stand as they had clearly intended for them to, then the OCG could not have possibly made such adverse Findings, at least one of which, as it will be seen, will impose criminal culpability by virtue of the applicable Regulations.

2. Pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor General Act, the OCG is

hereby formally referring a copy of this Report to the Learned Director of Public Prosecutions (DPP) for such further action as she may deem to be appropriate.

The OCG has found that there is sufficient evidence which is contained herein and, more particularly and importantly, in the sworn statements that were furnished to the OCG by the relevant Respondents, to suggest that the MAF and, more precisely, its lawful Accounting Officer, Mr. Donovan Stanberry, irregularly and unlawfully awarded a contract to Mr. Aubyn Hill in contravention of the tendering requirements of the RPPH and, consequently, the Public Sector Procurement Regulations which make such breaches a criminal offence.

It is instructive to note that the Public Sector Procurement Regulations were promulgated with the approval of the Cabinet of the Government of Jamaica, effective 2008 December, with the intent of giving legal force to, and imposing criminal sanctions for breaches of, the GOJ's Procurement Rules.

The OCG has found that the 2009 March contract which was awarded to Mr. Aubyn Hill, by the MAF, was awarded in breach of Subsections S-3000 and S-3010 of the RPPH. These are the applicable provisions which govern the award of consultancy contracts and, which, given the value of Mr. Aubyn Hill's second consultancy contract, required competitive tendering, demonstrable transparency and equity, amongst other things, in the consultant's selection process.

The evidence which was provided to the OCG indicates that the MAF, instead, relied upon the Sole Source/Direct Contracting Procurement Methodologies which were inapplicable to the referenced procurement and, even then, failed to secure the necessary prior approvals of the NCC which would have been required by the Sole Source/ Direct Contracting Procurement Methodologies.

Section 7 of the Public Sector Procurement Regulations provides as follows:

“7. Tender Proceedings for prospective government contracts shall be conducted according to the procedures outlined in the Handbook, as amended from time to time, and more particularly for the purposes of these Regulations the procedures as regards-

- (a) invitations to tender;*
- (b) qualification of suppliers;*
- (c) requirements for the publicising of bid Opportunities and Contracts;*
- (d) receipt and opening of bids;*
- (e) bid validity; and*
- (f) bid evaluation”*

Section 40 of the Public Sector Procurement Regulations provides as follows:

“40. A person who-

- (a) contravenes these Regulations; or*
- (b) aids, abets or otherwise knowingly facilitates or is an accessory to the contravention of these Regulations, commit an offence and is liable, on summary conviction in a Resident Magistrate's Court, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three months or to both such fine...”*

3. Pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor General Act, the OCG is also hereby formally referring a copy of this Report to the Learned and Honourable Attorney General for such further action as the Attorney General may deem appropriate having regard to all of the circumstances of the case.

More particularly, however, the Report is being referred to the Attorney General for a formal determination to be made as to what civil and/or administrative sanctions may be imposed upon the Permanent Secretary in the MAF, Mr.

Donovan Stanberry, for the role which he has played, in his capacity as the Accounting Officer of the MAF, in the MAF's award of the referenced consultancy contracts to Mr. Hill in breach, *inter alia*, of the Government's Procurement Rules and Regulations and Section 4 (1) of the Contractor General Act.

Secondly, the OCG is referring its Report of Investigation to the Attorney General as it has found that there is evidence which is recorded herein and, more particularly and importantly, in the sworn statements that were furnished to the OCG by the relevant Respondents, which would suggest that there was, *inter alia*, a breach of duty on the part of Mr. Aubyn Hill, the then Chairman of SCJ Holdings Ltd. and a Member of the Board of Directors of SCJ, in contravention, *inter alia*, of Sections 17(1) (a) and (b), 17 (2) and 6 of the Public Bodies Management and Accountability Act.

The foregoing is premised, *inter alia*, upon (a) Mr. Hill's inclusion of particulars relating to his role as a Member of the Board of Directors of the SCJ and the SCJ Holdings Ltd. in the documents which were submitted in support of his invoices for his consultancy contract, despite the fact that he was already being compensated as a Director of both Boards; and (b) Mr. Hill's failure to disclose, to the Members of the Board of Directors of the SCJ and the SCJ Holdings Ltd., his interest in a prevailing GOJ contract, contrary to the requirements which are mandated by Section 17 (2) (a) and (b) of the Public Bodies Management and Accountability Act.

Mr. Hill has (a) acted negligently in the discharge of his responsibilities as a SCJ and SCJ Holdings Ltd. Director, and/or (b) abused his authority and offices and/or (c) breached his respective duties of trust to the SCJ and SCJ Holdings Ltd. and/or (d) breached his respective fiduciary or statutory duties to SCJ and SCJ Holdings Ltd.

Section 17 (2) of the Public Bodies Management and Accountability Act provides that, “A director who is directly or indirectly interested in any matter which is being dealt with by the board- (a) *shall disclose the nature of his interest at a board meeting; (b) shall not take part in any deliberation of the board with respect to that matter.*” (OCG Emphasis)

Further, it is instructive to record that Sections 6 and 17 of the Public Bodies Management and Accountability Act impose certain specific responsibilities upon the Board of Directors of Public Bodies as well as Board Members themselves.

Had these and other responsibilities been fully discharged in the instant matter, the affairs of the SCJ and the SCJ Holdings Ltd. would not have been shrouded in the appearance of unethical and/or improper practices.

It is particularly important to record that Boards of Directors of Public Bodies are appointed, *inter alia*, to efficiently and effectively manage the affairs of Public Bodies and to ensure the accountability of all individuals who manage and administer the affairs and resources of the said Public Bodies.

Section 6 of the Public Bodies Management and Accountability Act provides, *inter alia*, as follows:

“6. Every board shall-

(a) *take such steps as are necessary-*

(i) *for the efficient and effective management of the Public Body;*

(ii) *to ensure the accountability of all persons who manage the resources of the Public Body;*

(b) *develop adequate information, control, evaluation and reporting systems within the body;*

(c) *develop specific and measurable objectives and performance targets for that body;*

(d) advise the responsible Minister on matters of general policy relating to the management of the body”.

Section 17 (1) of the Public Bodies Management and Accountability Act provides, *inter alia*, as follows:

17- (1) “Every director and officer of a Public Body shall, in the exercise of his powers and the performance of his duties-

(a) act honestly and in good faith in the best interests of the Public Body; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances including, but not limited to the general knowledge, skill and experience of the director or officer.

Section 25 of the Public Bodies Management and Accountability Act provides, *inter alia*, as follows:

25. (1) If the Court is satisfied on an application by the Attorney-General that any person has contravened any of the provisions of-

(a) section 4 (acquisition of shares and payment of dividends);

(b) section 5 (exercise of borrowing powers);

(c) section 6 (corporate governance);

(d) section 14 (general duties of auditors);

(e) section 15 (failure to furnish information to auditor);

(f) section 20 (levels of emoluments);

(g) section 21 (restriction on formation of new companies),

the Court may exercise any of the powers referred to in subsection (2).

(2) The Court may-

(a) order the person concerned to pay to the Crown such pecuniary penalty not exceeding one million dollars; or

(b) grant an injunction restraining that person from engaging in conduct described in subsection (1).

(3) In exercising its powers under this section the Court shall have regard to

a) the nature and extent of the default;

(b) the nature and extent of any loss suffered by any person as a result of the default;

(c) the circumstances of the default;

(d) any previous determination against the person concerned.

(4) If in the opinion of the Attorney General there is a contravention of section 7, 8 or 9, he may make an application to the Court and the provisions of subsections (1), (2) and (3) shall apply in relation thereto

Finally, the Report is also being conveyed to the Learned Attorney General for a formal determination to be made as to what sanctions, if any, may be imposed upon the Minister of Agriculture and Fisheries, Dr. Christopher Tufton, for his conduct in the matter of the sanctioning of the appointment of Mr. Aubyn Hill, in 2009 July, as the Chairman of the Board of Directors of SCJ Holdings Ltd. and as a Member of the Board of Directors of the SCJ. These actions placed Mr. Hill in a clear conflict of interest situation, viz.-a-viz. his fiduciary duties as a Director of the referenced companies and his functions as a GOJ/MAF Consultant, and thus in a situation which threatened the interests of SCJ Holdings Ltd and the SCJ.

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 therefor 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 considered Findings, Conclusions and Referrals that are detailed herein, the OCG now respectfully makes the following Recommendations:

1. The OCG recommends that the portfolio Permanent Secretary takes a more proactive and aggressive role in developing, implementing and enforcing effective risk management systems, checks and balances and other appropriate management systems at the MAF, in an effort to mitigate against any possibility of deviations from the RHPP by the institution’s management and procurement staff.
2. The OCG recommends that the MAF should ensure scrupulous compliance with the RHPP, particularly with respect to securing the requisite approvals from its Procurement Committee, its Accounting Officer/Head of Entity, the NCC, and the Cabinet, as applicable, in full conformance with the requirements of Sub-Section S-1020 (B) - 1, 3 and 5 and Sub-Section S-2040 (E) of the RHPP;
3. Contracts which are awarded by the MAF should be awarded in compliance with the applicable Procurement Guidelines and must be, and appear to be, awarded fairly, impartially on merit and without any form of irregularity or impropriety.

4. The OCG is recommending that Public Officers/Officials and Consultants, who are engaged by the GOJ, adhere to the strictest practices of professional ethics and conduct whilst in the employ of the GOJ.
5. The OCG also respectfully recommends that all Appointees to the Board of Directors of any Public Body are duly and fully made aware of their responsibilities and obligations under the provisions that are contained, *inter alia*, in the Public Bodies Management and Accountability Act.
6. The Cabinet should move to immediately develop and implement a comprehensive and overriding policy that is to be applicable to all Public Body Boards, to govern, restrict or prohibit, as the case may be, the award of Government contracts (or the divestment of publicly-owned assets), by a Public Body, to members of their respective Board of Directors, or to any entity in which a Board member or a close family relative may have a pecuniary interest.
7. The OCG recommends that in accordance with, *inter alia*, the Public Bodies Management and Accountability Act and the Financial Administration and Audit Act, the Cabinet, Accounting and Accountable Officers and Members of the Board of Directors of Public Bodies should, at all times, ensure that the principles of good corporate governance are adhered to and promoted within the Public Sector.

In this regard, the OCG is of the considered opinion that within the respective organizations of the Public Sector, there should be adequate checks and balances mechanisms which are designed to promote transparency, integrity and probity in the management and administration of the affairs of the State.

Further, at all times the highest ethical standards should be promoted and where a conflict of interest is likely to occur and/or appears to have occurred, the Public Body should promptly take the requisite corrective actions to mitigate such conflicts and/or the consequences of same.

8. The OCG hereby recommends that appropriate steps should be immediately taken to ensure that Mr. Aubyn Hill is barred from serving on the Board of Directors of any Public Body in the future.

The OCG's recommendation in the foregoing regard is premised upon the fact that Mr. Hill has been previously cited and formally referred by the OCG, in one of the OCG's anti-corruption Investigation Reports, which was dated 2008 October, for irregular and improper conduct. Mr. Hill was cited by the OCG for abuse of office and breach of his fiduciary responsibilities in the discharge of his public functions as a Director of a GOJ Public Body – conduct which is similar to the very conduct for which he has been found culpable in the instant matter.

In the OCG's 2008 October Report of Investigation into the Lease of Properties by the Development Bank of Jamaica (DBJ) to the Hon. Mr. Michael Hylton, OJ, QC, the former Solicitor General of Jamaica, and to NationGrowth MicroFinance Ltd., a company of which Mr. Aubyn Hill was then a Director, it was a formal Finding of the OCG that Mr. Hill, whilst serving as a Director of both the Jamaica Development Bank (JDB) and the DBJ, flagrantly violated his fiduciary duties to both Public Bodies when, with the irregular and improper permission of the then Chairman of the Board of Directors of the DBJ, Dr. the Hon. Carlton Davis, he was allowed to make a formal presentation, concerning two matters in which he had a personal interest, to the Board of Directors of the DBJ, in direct contravention of Section 17 (2) of the Public Bodies Management and Accountability Act and Section 4 (4) of the Jamaica Development Bank Act.

It must be recalled that Section 17 (2) of the referenced Act provides, *inter alia*, that “A director who is directly or indirectly interested in any matter which is being dealt with by the board- (a) shall disclose the nature of his interest at a board meeting; (b) **shall not take part in any deliberation of the board with respect to that matter.**” (OCG emphasis)

Section 4 (4) of the Jamaica Development Bank Act provides that “A *director who is directly or indirectly interested in a contract made or proposed to be made by the Bank (a) shall disclose the nature of his interest; and (b) shall not take part in any deliberation or decision of the Bank with respect to that contract.*” (OCG Emphasis).

The un-refutable and documented facts of the matter were that the referenced Special Board Meeting of the DBJ, which was convened, “*at short notice*”, on Friday, 2007 August 31, the final working day before the country’s last General Political Elections of Monday, 2007 September 3, was convened primarily to create an opportunity for Mr. Hill to improperly bypass the management of the DBJ (a) to enable him, Mr. Hill, to make a presentation directly to the DBJ Board regarding his personal Expression of Interest to build a business partnership agreement between his own proposed company and the DBJ; and (b) for him, Mr. Hill, to make an additional presentation to the DBJ Board of Directors to secure, to his own company, a lease of a property over which the DBJ then had administering control.

The documented facts will show that the referenced Presentations, which were made by Mr. Hill and his colleague, were also made in contravention of the DBJ’s own internal procedures. Additionally, the presentations were made despite the strong objections which were registered at the Board Meeting by at least one management representative of the DBJ, as well as by certain members of the Board, regarding, *inter alia*, the obvious impropriety of the actions of the Chairman of the Board and Mr. Hill.

In the referenced OCG DBJ Report of Investigation, which was formally tabled in the House of Representatives on 2008 October 31, and in the Senate on 2008 November 7, and which is posted on the OCG’s website at www.ocg.gov.jm, six (6) formal Recommendations were made by the OCG.

The fifth (5th) of these Recommendations reads verbatim as follows:

“The OCG further respectfully recommends that Parliament should implement legislation to ensure that Directors of Public Body Boards who flagrantly abuse their office and/or authority and/or who fail substantially in the discharge of their fiduciary and statutory responsibilities to their Boards and, by extension, to the Taxpayers of Jamaica, are effectively barred from serving in any like capacity in the future”.

It is crystal clear that, despite the foregoing Findings and Recommendations, Mr. Aubyn Hill has not been deterred from engaging in conduct which contravenes, *inter alia*, the provisions of the Public Bodies Management and Accountability Act. He has continued to display a surprising lack of respect for the referenced Law and has, by his conduct, in both the DBJ and the instant matters, demonstrated what appears to be an unsavoury and cavalier disregard for some of the most fundamental rules of good corporate governance.

It is on the foregoing bases, therefore, that the OCG’s considered Recommendation herein is now being made. Having regard to the circumstances of the matter, the OCG is also obliged to repeat, herein, the formal Recommendation which was made by it, and which was numbered five (5), in the referenced DBJ Investigation Report.

9. Finally, the OCG is obliged to repeat a Recommendation which it has previously made on occasions which are now too many to count. The Recommendation is that immediate steps should be taken by the Legislature to significantly strengthen the sanctions which are currently provided for in Section 29 of the Contractor General Act, Section 40 of Public Sector Procurement Regulations and Section 15 of the Corruption Prevention Act. The OCG would respectfully propose the following:

- (a) Increase the penalty under Section 29 of the Contractor General Act for (i) making a false statement to mislead a Contractor General, (ii) misleading a Contractor General, (iii) attempting to mislead a Contractor General, (iv) obstructing, hindering or resisting a Contractor General in the execution of his functions and/or (v) failing to comply with a lawful requirement of a Contractor General, to a mandatory minimum fine of \$3 Million or to imprisonment for a mandatory minimum term of 3 years, or both. The current penalty is a fine not exceeding \$5,000 or imprisonment for a term not exceeding 12 months, or both.
- (b) Increase the penalty for offences involving a criminal breach of the Government's Procurement Rules and Regulations to a fine not exceeding \$10 Million or to imprisonment for a term not exceeding 10 years or to both such fine and imprisonment. The current penalty is a fine not exceeding \$1,000 or imprisonment not exceeding three months, or both. Consideration must also be given to the imposition of civil and/or administrative sanctions, whether in addition to, or in lieu of, the recommended criminal sanctions, depending upon the nature and gravity of the breach.
- (c) Increase the penalty for offences under the Corruption Prevention Act to a mandatory minimum fine of \$10 Million or to imprisonment for a mandatory minimum term of 10 years, or both such fine and imprisonment. If the offence is committed by a Public Official, the mandatory minimum fine should be set at \$15 Million or imprisonment for a mandatory minimum term of 15 years, or both. In addition, the Public Official's retirement and employment benefits should be forfeited to the State. In both instances, the proceeds of the corrupt act should also be forfeited to the State. The current minimum penalty for corruption offences under the Corruption Prevention Act is a fine not exceeding \$1 Million or imprisonment for a term not exceeding 2 years, or

both. The maximum penalty is a fine not exceeding \$10 Million or imprisonment for a term not exceeding 10 years, or both.

Until and unless powerful sanctions are promulgated for criminal breaches of the Contractor General Act, the Government's Procurement Regulations and the Corruption Prevention Act, and until and unless those who transgress these laws are vigorously and relentlessly investigated and prosecuted by the relevant State Agencies without regard to their social, political or economic standing, Public Officers and their Private Sector co-conspirators will obviously continue to pay scant regard to the due observance of the said Laws to the certain detriment of the Public Purse and the People and Taxpayers of Jamaica.

Special Recommendation

Having regard to the Recommendations which are contained herein, the OCG has deemed it prudent to detail, hereunder, a Special Recommendation which reiterates a formal Recommendation that was previously made by the OCG in its 2009 July Special Report of Investigation Concerning the Allegation of the Award of Contracts to be Performed in the North East St. Catherine Constituency by the National Works Agency (NWA) and Rural Agricultural Development Authority (RADA).

The OCG feels compelled to reiterate the referenced Recommendation having regard to the challenges which it has yet again faced in its attempt to clearly and unequivocally apply the rules of the RPPH and the attendant Public Sector Procurement Regulations.

In the instant case, the Rules, which would have applied to the second consultancy contract which was awarded to Mr. Aubyn Hill, under the current RPPH, stipulate, for example, that the procuring entity should invite "*appropriately qualified consultants registered with the NCC.*" However, the OCG is fully aware that the NCC, at the current time, does not register or require Consultants to be registered with it. The foregoing,

therefore, underscores one of the further ambiguities which the OCG has identified in the current Procurement Rules.

Consequently, it is with grave concern and with a renewed sense of urgency that the OCG must again repeat, in verbatim terms, the Recommendation which is detailed hereunder and which it has previously brought to the formal attention of the Executive and the Houses of Parliament in its above-referenced 2009 July Report of Investigation.

“The ambiguities which are referenced in this Report of Investigation have made it difficult to definitively establish breaches of the Procurement Guidelines and/or to recommend any of the applicable sanctions which are embodied in the new and interim Public Sector Procurement Regulations of 2008.

The OCG is obliged to reiterate, at this juncture, that the Ministry of Finance and the Public Service’s Circular No.46, which was dated 2008 December 10, and through which the Revised Handbook of Public Sector Procurement Procedures was issued, advised specifically as follows:

*“Permanent Secretaries, Chief Executive Officers and Heads of Entities are hereby advised that via **Cabinet Decision No: 43 dated December 10, 2008** approval has been granted for the use of the Revised Handbook of Public Sector Procurement Procedures for an interim period pending revision by the team and final approval by the Cabinet.” (OCG Emphasis)*

The ambiguities, anomalies and contradictions which have been identified by the OCG in the interim Procurement Guidelines, underscore those of the OCG’s prior documented representations which have been formally made to the Government of Jamaica, that the Guidelines are in a “draft, rudimentary and widely admitted gestative state” and that steps should, therefore, be urgently taken, inter alia, to:

1. *Speedily complete the revision process.*
2. *Make the guidelines simple in construct, easy to read and easy to interpret; and*
3. *Ensure that the guidelines are so structured and are easily identified by chronological numeric assignment to facilitate, inter alia, their promulgation as regulations.*

The OCG believes that it is untenable, unacceptable and unjust that Procurement Guidelines which are rudimentary in nature, ambiguous in import and which have been formally classified by the State as having been put into force “for an interim period pending revision by the team and final approval by the Cabinet”, should constitute the basis upon which criminal sanctions can be imposed upon unsuspecting Public Officers should the said Guidelines be deemed to have been “contravened” by them.

Further, given the fact that more than seven (7) months have elapsed since the interim Guidelines have been promulgated, the OCG is now gravely concerned about the negative and adverse impact that the said ambiguities, anomalies and contradictions, which are contained in the Guidelines, could potentially pose – not just for Public Sector procurements – but for the many well meaning and well intentioned Public Servants who are called upon each day to administer the rules.

It is primarily for these reasons, therefore, that the OCG is now obliged to respectfully call upon the Cabinet, and the Parliament of Jamaica, to urgently prosecute the outstanding revisions to the Guidelines to give effect, inter alia, to the prior recommendations of the OCG and, by so doing, to make the Guidelines complete, lucid, intelligible, certain and more congruent with the 1983 Contractor General Act and the new 2008 Public Sector Procurement Regulations.

Finally, the OCG feels constrained to express, again, its dissatisfaction with the unbelievably paltry and relatively infinitesimal criminal sanction of “a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three”

months or to both...”, which has been imposed by Section 40 of the new 2008 Public Sector Procurement Regulations, to deter and to criminally punish breaches of the Procurement Guidelines.

The OCG would respectfully submit that the referenced criminal sanction has made a mockery of the attempts by the State to curtail breaches of its Procurement Guidelines.

Consequently, the OCG recommends that, in completing the revision to the interim Guidelines – a process which is now long over-due, every effort should be made to ensure that the subject sanction is significantly strengthened both in terms of its provisions for the imposition of a monetary fine as well as in respect of its provisions regarding incarceration.”

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Special Report of Investigation

**Conducted into the Award of a Multi-Million Dollar Consultancy Contract to Mr.
Aubyn Hill and/or his company, Corporate Strategies Ltd.**

Ministry of Agriculture & Fisheries

APPENDICES

First Contract- 2008 August 18

AGREEMENT

This Agreement is made the 18th day of August TWO THOUSAND and EIGHT B E T W E E N the MINISTRY OF AGRICULTURE for and on behalf of the Government of Jamaica with offices situate at Hope Gardens, Kingston 6 in the Parish of Saint Andrew (hereinafter called "MOA") of the ONE PART and the party described in the Schedule hereto (hereinafter called "the Consultant") of the OTHER PART.

WHEREAS:

- (a) MOA is a Government Ministry with responsibility for the policies, technical, advisory and regulatory services of the Agricultural Sector and is committed to the privatization of the Government - owned assets of the Sugar Cane Industry.
- (b) Infinity Bio-Energy Limited (hereinafter called "Infinity") was the sole bidder for the public sector sugar assets and a Heads of Agreement was signed with Infinity on June 27, 2008.
- (c) The execution of the Heads of Agreement will be managed by a high-level Implementation Team.
- (d) Although the Heads of Agreement has been executed, the formal handing over of the assets is expected to take place on or about Tuesday, September 30, 2008.
- (e) The Heads of Agreement outlines the essential terms of the sugar transaction and the terms and conditions on which the Parties shall jointly seek to implement modernization and diversification of the Sugar Cane Industry.
- (f) The Heads of Agreement also identifies the actions to be taken by the Government of Jamaica and Infinity to give effect to Infinity's plan for improvements to the Industry.



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(g) The key elements of the Heads of Agreement with Infinity include the following:

(a) GOJ and Infinity effectively entering into a Joint Venture to carry on business through a company to be established (hereinafter called "NEWCO") with Government's equity in NEWCO being 25%.

(b) GOJ leasing to NEWCO the sugar cane lands for a term of not less than fifty (50) years, with an option to renew for a further term of not less than twenty five (25) years;

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(c) The Factory lands being sold to Infinity, the lands on the estates comprising the Factory compound including the sugar factories and an additional area of land of not more than 100 acres immediately surrounding the sugar factories.

(d) GOJ entering into an Implementation Agreement with Infinity within thirty (30) days of the Transition Date, being June 27, 2008, confirming its commitment to support and ensure the smooth implementation of the Transaction.

(h) Cabinet, by its Decision No. 22/08 dated June 30, 2008, has approved the appointment of the Consultant as Head of the Sugar Privatization Implementation Team for the period July 1 to September 30, 2008.

In **CONSIDERATION** of the foregoing premises, it is hereby understood and agreed as follows:

1. The Consultant shall be Head of the Sugar Privatization Implementation Team.
2. The Consultant shall undertake the assignment throughout a period of three (3) months, from July 1 to September 30, 2008 at a remuneration of FIVE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$5,500,000.00) payable in three (3) equal installations. **PROVIDED HOWEVER**, it is hereby understood and agreed that the assignment shall not exceed an aggregate value of FIVE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$5,500,000.00).

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3. The Consultant shall also be responsible for working closely with Infinity executives and the various stakeholders in the current sugar industry to assist in the transition to an expanded and successful sugar cane industry.
4. Reporting to the Permanent Secretary, MOA, the Consultant shall liaise with Infinity, cane farmers, government authorities and agencies, sugar manufacturers, unions and workers.
5. The duties and responsibilities shall include but not be limited to:
 - (a) Securing the speedy and accurate movement of equipment and material through the Department of Customs;
 - (b) Interfacing between Infinity, the Ministries of Agriculture, Energy, Finance and Public Service, Transport & Works, Health and Environment, among others;
 - (c) Coordinating the activities of NEWCO among the various government agencies including the National Environment and Planning Agency (NEPA), National Land Agency (NLA) and the National Water Commission (NWC);
 - (d) Liaising with the Attorney General, various law firms and attorneys to secure land titles for the five (5) factories that will be sold to NEWCO, as well as perfect the leases of the many properties to NEWCO;
 - (e) Travelling to various sugar estates, as and when necessary;
 - (f) Preparing formal statements for the Prime Minister, Minister and Cabinet, as and when required;
 - (g) Preparing periodic reports for various stakeholders and relevant authorities.
6. It is agreed that the Consultant shall continue to be housed at the Development Bank of Jamaica which shall continue to provide an office and secretarial assistance throughout the continuance of this Agreement.

7. It is also agreed that the Consultant shall be provided with a fully maintained motor vehicle and driver throughout the continuance of this Agreement.
8. All reports and data compiled or prepared throughout the term hereby created shall be confidential and the exclusive property of MOA and shall not be used by the Consultant for his benefit. **PROVIDED HOWEVER** it is hereby understood and agreed that the terms of this Clause shall survive the expiration of this Agreement.
9. The Consultant shall, upon the completion of this Agreement, deliver up to MOA all reports, correspondence, other documents or property belonging to MOA that may be in his possession or control.
10. The Consultant shall not delegate any duties or obligations arising under this Agreement.
11. The Consultant shall be an independent contractor and not the servant of MOA. In such capacity, the Consultant shall bear exclusive responsibility with regard to discharging all his statutory payments and deductions arising under the term hereby created. **CONFIDENTIAL**
12. If, at any time during the performance of this Agreement, the Consultant should encounter conditions impeding the timely delivery of the services, the Consultant shall promptly notify MOA in writing of the fact of the delay, its likely duration and its cause. As soon as practicable after receipt of the Consultants' notice, MOA shall evaluate the situation and may, at its discretion, extend the Consultants' time for performance in which case the extension shall be ratified by the parties in writing.
13. The failure by either party to perform any of the terms and conditions hereof as a result of any force majeure, that is to say any Acts of God, the country's enemies, not or civil commotion or any natural or unnatural causes whatsoever beyond either party's control, shall not be considered to be a breach or default of this Agreement **PROVIDED THAT** the party affected by such an event has taken all reasonable precaution, due care

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and reasonable alternative measures in the performance of this Agreement and in conformity with its terms and conditions. Accordingly, it is hereby agreed that the party affected shall take all reasonable measures to remove such party's inability to fulfil its obligations hereunder with a minimum delay and shall notify the other party of that delay as soon as possible but not later than fourteen (14) days following the occurrence of the event.

The affected party shall provide evidence of the nature and cause of the event and shall give notice to the other party of the restoration of normal conditions as soon as possible. It is also expressly agreed that the party affected shall take all reasonable measures to mitigate the consequences or any event of force majeure.

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14. This Agreement may be determined by effluxion of time, notice, breach or otherwise. Either party shall be entitled to exercise any one or more of the rights and remedies given to it under the terms hereof and the determination of this Agreement shall not affect nor prejudice such rights and remedies and each party shall be and remain liable to perform all outstanding liabilities under this Agreement, notwithstanding that the other may have exercised one or more of the rights and remedies against it.
15. The failure by either party to enforce at any time or for any period one or more of the terms and conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.
16. Each party acknowledges that this Agreement and the conditions hereof contain the whole agreement between the parties and supersedes any prior agreement between the parties.
17. Each party shall give to the other notice of any change of address, telephone, telex, facsimile number within forty-eight (48) hours of such change.
18. Any notice to be served on either of the parties by the other shall be sent by hand prepaid or registered post, telex, facsimile or electronic mail and shall

be deemed to have been received by the addressee within four (4) days of posting or 24 hours, if sent by telex, facsimile or electronic mail to the correct telex number, facsimile or correct electronic mail number of the addressee.

19. This Agreement shall be governed by Jamaican Law in every particular including formation and interpretation.

SCHEDULE

Name of Consultant : **AUBYN HILL**
Occupation : **CONSULTANT**
Address : **85A DUKE STREET**
KINGSTON

IN WITNESS WHEREOF the Parties hereto have hereunto set their hands and seal the day and year first hereinbefore written.

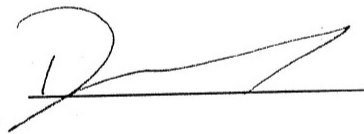
SIGNED for and on behalf of)

MINISTRY OF AGRICULTURE)

by Donovan Stanberry, Permanent)

Secretary in the presence of:-)

DONOVAN STANBERRY





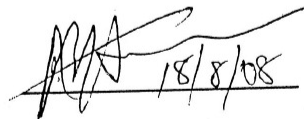
Witness

SIGNED by the said AUBYN)

HILL in the presence of:-)

PRINCENE NELSON

AUBYN HILL





Witness

Second Contract- 2009 March 30

AGREEMENT

This Agreement is made the 30th day of MARCH TWO THOUSAND and NINE B E T W E E N the **MINISTRY OF AGRICULTURE** for and on behalf of the Government of Jamaica with offices situate at Hope Gardens, Kingston 6 in the Parish of Saint Andrew (hereinafter called "MOA") of the **ONE PART** and the party described in the Schedule hereto (hereinafter called "the Consultant") of the **OTHER PART**.

WHEREAS:

- (a) MOA is a Government Ministry with responsibility for the policies, technical, advisory and regulatory services of the Agricultural Sector and is committed to the privatization of the Government - owned assets of the Sugar Cane Industry.
- (b) Cabinet, by its Decision No. 22/08 dated June 30, 2008, has approved the appointment of the Consultant as Head of the Sugar Negotiating Team for the period July 1 to September 30, 2008.
- (c) The period for negotiating the sale of the Government assets of the Sugar Cane Industry has been extended.

In **CONSIDERATION** of the foregoing premises, it is hereby understood and agreed as follows:

- 1. The Consultant shall be Chairman of the Sugar Negotiating Team.
- 2. The Consultant shall undertake the assignment throughout a period of Four (4) months, from February 1 to May 31, 2009 at a remuneration of SEVEN MILLION THREE HUNDRED THIRTY-THREE THOUSAND THREE HUNDRED AND THIRTY-THREE DOLLARS AND THIRTY-THREE CENTS (\$7,333,333.33) payable in four (4) equal installations. **PROVIDED HOWEVER,** it is hereby understood and agreed that the assignment shall not exceed an aggregate value of SEVEN MILLION THREE HUNDRED THIRTY-



THREE THOUSAND THREE HUNDRED AND THIRTY-THREE DOLLARS
AND THIRTY-THREE CENTS (\$7,333,333.33).

3. The Consultant shall also be responsible for working closely with the various stakeholders in the current sugar industry to assist in the transition to an expanded and successful sugar cane industry.
4. Reporting to the Permanent Secretary, MOA, the Consultant shall liaise with cane farmers, government authorities and agencies, sugar manufacturers, unions and workers.
5. The duties and responsibilities shall include but not be limited to:
 - (a) Inviting, assessing, evaluating and recommending suitable investors to Cabinet;
 - (b) Securing the speedy and accurate movement of equipment and material through the Department of Customs;
 - (c) Interfacing between the Ministries of Agriculture, Energy, Finance and Public Service, Transport & Works, Health and Environment, among others;
 - (d) Coordinating activities among the various government agencies including the National Environment and Planning Agency (NEPA), National Land Agency (NLA) and the National Water Commission (NWC);
 - (e) Liaising with the Attorney General, various law firms and attorneys to secure land titles for the five (5) factories that will be sold as well as to perfect the leases of the many properties;
 - (f) Travelling to various sugar estates, as and when necessary;
 - (g) Preparing formal statements for the Prime Minister, Minister and Cabinet, as and when required;
 - (h) Preparing periodic reports for various stakeholders and relevant authorities.



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6. It is agreed that the Consultant shall continue to be housed at the Development Bank of Jamaica which shall continue to provide an office and secretarial assistance throughout the continuance of this Agreement.
7. It is also agreed that the Consultant shall be provided with a fully maintained motor vehicle and driver throughout the continuance of this Agreement.
8. All reports and data compiled or prepared throughout the term hereby created shall be confidential and the exclusive property of MOA and shall not be used by the Consultant for his benefit. **PROVIDED HOWEVER** it is hereby understood and agreed that the terms of this Clause shall survive the expiration of this Agreement.
9. The Consultant shall, upon the completion of this Agreement, deliver up to MOA all reports, correspondence, other documents or property belonging to MOA that may be in his possession or control.
10. The Consultant shall not delegate any duties or obligations arising under this Agreement.
11. The Consultant shall be an independent contractor and not the servant of MOA. In such capacity, the Consultant shall bear exclusive responsibility with regard to discharging all his statutory payments and deductions arising under the term hereby created.
12. If, at any time during the performance of this Agreement, the Consultant should encounter conditions impeding the timely delivery of the services, the Consultant shall promptly notify MOA in writing of the fact of the delay, its likely duration and its cause. As soon as practicable after receipt of the Consultants' notice, MOA shall evaluate the situation and may, at its discretion, extend the Consultants' time for performance in which case the extension shall be ratified by the parties in writing.
13. The failure by either party to perform any of the terms and conditions hereof as a result of any force majeure, that is to say any Acts of God, the country's enemies, not or civil commotion or any natural or unnatural causes whatsoever beyond either party's control, shall not be considered to be a

P.O. BOX 900
KINGSTON 5, JAMAICA, W.I.

breach or default of this Agreement **PROVIDED THAT** the party affected by such an event has taken all reasonable precaution, due care and reasonable alternative measures in the performance of this Agreement and in conformity with its terms and conditions. Accordingly, it is hereby agreed that the party affected shall take all reasonable measures to remove such party's inability to fulfil its obligations hereunder with a minimum delay and shall notify the other party of that delay as soon as possible but not later than fourteen (14) days following the occurrence of the event.

The affected party shall provide evidence of the nature and cause of the event and shall give notice to the other party of the restoration of normal conditions as soon as possible. It is also expressly agreed that the party affected shall take all reasonable measures to mitigate the consequences or any event of force majeure.

14. This Agreement may be determined by effluxion of time, notice, breach or otherwise. Either party shall be entitled to exercise any one or more of the rights and remedies given to it under the terms hereof and the determination of this Agreement shall not affect nor prejudice such rights and remedies and each party shall be and remain liable to perform all outstanding liabilities under this Agreement, notwithstanding that the other may have exercised one or more of the rights and remedies against it.
15. The failure by either party to enforce at any time or for any period one or more of the terms and conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.
16. Each party acknowledges that this Agreement and the conditions hereof contain the whole agreement between the parties and supersedes any prior agreement between the parties.
17. Each party shall give to the other notice of any change of address, telephone, telex, facsimile number within forty-eight (48) hours of such change.



18. Any notice to be served on either of the parties by the other shall be sent by hand prepaid or registered post, telex, facsimile or electronic mail and shall be deemed to have been received by the addressee within four (4) days of posting or 24 hours, if sent by telex, facsimile or electronic mail to the correct telex number, facsimile or correct electronic mail number of the addressee.
19. This Agreement shall be governed by Jamaican Law in every particular including formation and interpretation.

SCHEDULE

Name of Consultant : AUBYN HILL
Occupation : CONSULTANT
Address : 85A DUKE STREET
KINGSTON

IN WITNESS WHEREOF the Parties hereto have hereunto set their hands and seal the day and year first hereinbefore written.

SIGNED for and on behalf of)

MINISTRY OF AGRICULTURE)

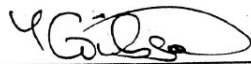
by Donovan Stanberry, Permanent)

Secretary in the presence of:)

DONOVAN STANBERRY



OFFICE OF THE CONTRACTOR-GENERAL
1ST FLOOR, PIOJ BUILDING
16 OXFORD ROAD
P.O. Box 540
KINGSTON 5, JAMAICA, W.I.



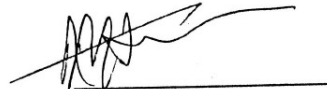
Witness

SIGNED by the said AUBYN HILL)

in the presence of:)

PRINCENE NELSON)

AUBYN HILL



Witness

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