



OFFICE OF THE CONTRACTOR GENERAL OF JAMAICA

Special Report of Investigation

Conducted into the Circumstances Surrounding the Award of a Contract to Cable and Wireless Jamaica Limited, for the Procurement of Wide Area Network (WAN) Connectivity to Support the Ministry of Education's Education Management Information System (EMIS)

The Ministry of Education

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EXECUTIVE SUMMARY

On September 3, 2013, the Office of the Contractor General (OCG), acting on behalf of the Contractor General, and pursuant to the provisions which are contained in Sections 15(1) and 16 of the Contractor General Act, initiated an Investigation into the alleged irregularities surrounding the award of a Government contract by the Ministry of Education (MOE) to Cable and Wireless Jamaica Limited, for the provision of a Wide Area Network (WAN) Connectivity to support the Ministry of Education's Education Management Information Systems (EMIS).

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 license;*
- (f) *the practice and procedures relating to the grant, issue, suspension or revocation of prescribed licenses.”*

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

The OCG’s decision to commence a formal Investigation into the subject matter followed upon the Office’s receipt of an allegation on July 23, 2013. The allegations related to irregularities in the tender procedures and procurement process utilized by the MOE in the award of a contract to Cable and Wireless Jamaica Limited in the aforementioned regard. The complainant further suggested, *inter alia*, that the procurement process which was undertaken by the MOE was irregular, improper and/or lacking in transparency and fairness.

The allegations and comments, which were expressed by the complainant, stated, *inter alia*, as follows:

- (a) “*Neither the Bidding Data Sheet nor Instructions To Bidders... specified the period the Tender should cover.*”¹;
- (b) The company, Cable and Wireless Jamaica Limited, had “*...submitted an incomplete bid and only one area was assessed...*”² by the Tender Evaluation Committee;

¹ Letter dated July 23, 2013, which was sent to the OCG by Michele English, President and Chief Executive Officer, Columbus Communication Jamaica Limited.



- (c) *“The NCB comprised a single lot with three line items and, whereas it is open to the Purchaser to make separate awards where there are multiple lots; there is no known precedent for making separate awards where there are multiple lots; there is no known precedent for making separate awards in respect of each line item where there is only (1) lot.”;*
- (d) *“Lime’s submission was incomplete, as it did not provide a quotation in respect of the supply of the fibre link.”;*
- (e) *“Flow had a legitimate expectation that its Bid would have been fairly evaluated. Based on the evidence, a fair evaluation would have resulted in an award to Flow, particularly as its only competitor had submitted an incomplete bid.*

Flow was severely prejudiced by the manner in which the process was handled by the Ministry of Education in that the process was irregular and flawed especially as separate awards were made in respect of a single lot.”³

The aforementioned allegations and inferences, amongst others, raised several concerns for the OCG, especially in light of the perceived absence of fairness and equity which goes against the longstanding principles held in public procurement, as well as those enshrined in Section 4 (1) of the Contractor General Act.

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

The OCG’s Investigation primarily sought to determine, *inter alia*, whether (a) there were any alterations to the tender specifications, (b) any Public Official/Officer of the MOE had any

² Ibid.

³ Letter dated July 23, 2013, which was sent to the OCG by Michele English, President and Chief Executive Officer, Columbus Communication Jamaica.



pecuniary and/or undisclosed interest with respect to the referenced award of the contract, (c) there were any breaches of the GOJ Public Sector Procurement Guidelines (GHPPP, October 2010) and/ or any level of impropriety and/or irregularity in the award of the contract.

The foregoing objectives formed the basis of the OCG's Terms of Reference for its Investigation and 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.

The OCG was also 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.

At the commencement of its Investigation on September 3, 2013, the OCG, by way of a letter of even date, wrote to the Hon. Rev. Ronald Thwaites, Minister of Education, Mrs. Elaine Foster-Allen, the Permanent Secretary in the MOE, and Ms. Jean Hastings, the Program Director of the Education System Transformation Programme in the Ministry of Education (EMIS), to inform them of the OCG's decision to launch an Investigation into the circumstances surrounding the alleged irregularities as it regards the award of a Government contract by the MOE to Cable and Wireless Jamaica Limited, for the provision of WAN Connectivity to support the MOE's EMIS.

The Findings of the OCG's Investigation into the circumstances surrounding the aforementioned matter are premised primarily upon an analysis of the statements and the documentary evidence which were provided by the Respondents, who were requisitioned by the OCG, during the course of the Investigation.



TERMS OF REFERENCE

Primary Objectives

The primary objectives of the OCG's Investigation into the circumstances surrounding the alleged irregularities as it regards the award of the subject Government contract, by the Ministry of Education (MOE), to Cable and Wireless Jamaica Limited, are to determine, *inter alia*, the following:

1. Whether there was compliance, on the part of the MOE with the provisions of the Contractor General Act (1983) and the then applicable GHPPP (October 2010).
2. Whether there was compliance with the requirement(s) of the Inter-American Development Bank (IDB).
3. The merits of the allegations, which have been made, as follows:
 - (a) That the entity "LIME" had submitted an incomplete bid, "*...as it did not provide a quotation in respect of the supply of the fibre link*".
 - (b) That the "*...NCB comprised a single lot with three line items...*" and that the MOE had made "*...separate awards in respect of each line item where there is only (1) lot.*"
 - (c) That the evaluation process was not conducted in a fair and equitable manner, and that "*...Flow was severely prejudiced by the manner in which the process was handled by the Ministry of Education in that the process was irregular and flawed especially as separate awards were made in respect of a single lot.*"⁴
4. The propriety of the process which was undertaken by the MOE in the procurement of WAN to support the EMIS.

⁴ Letter dated July 23, 2013, which was sent to the OCG by Michele English, President and Chief Executive Officer, Columbus Communication Jamaica.



Specific Objectives

The specific objectives were:

1. To determine whether there was evidence to suggest that any irregularity on the part of any Officer(s) and/or Official(s) of the MOE, led to the unfair award of a contract to Cable and Wireless Jamaica Limited.
2. To determine whether any Official(s) and/or Officer(s) of the MOE who is/was directly involved in the referenced procurement has/had any pecuniary and/or undisclosed interest in the entity, Cable and Wireless Jamaica Limited.
3. To identify the procurement and contract award process which was utilized by the MOE, or by anyone acting on its behalf, which led to the award of a contract to Cable and Wireless Jamaica Limited.
4. To ascertain whether there were breaches of the then applicable GPPH (October 2010) on the part of any Officer(s) and/or Official(s) at the MOE and/or anyone acting on their behalf, in the award of the contract to Cable and Wireless Jamaica Limited.
5. To ascertain whether the contract award process was fair, impartial, transparent, and devoid of irregularity and/or impropriety.



JURISDICTION

Detailed below is the legal basis upon which the Contractor General has enquired into the award of a contract for the provision of Wide Area Network (WAN) Connectivity to support the Ministry of Education's (MOE's) Education Management Information System (EMIS).

The OCG's decision to undertake an Investigation into this matter is predicated upon the apparent breaches of the applicable GOJ Procurement Guidelines, as it regards the awarding of the contract to Cable and Wireless Jamaica Limited by the MOE. The jurisdiction of the Contractor General enables the Office to enquire into the circumstances surrounding the said award of contract to Cable and Wireless Jamaica Limited.

It is instructive to note that Section 2 of the Act provides as follows:

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

"prescribed licence" means any licence, certificate, quota, permit or warrant issued or granted pursuant to any enactment by a public body or an officer thereof;

"public body" means -

- (a) a Ministry, department or agency of government;
- (b) a statutory body or authority;



(c) any company registered under the Companies Act, being a company in which the Government or an agency of Government, whether by the holding of shares or by other financial input, is in a position to influence the policy of the company.

Based upon the definition of a Public Body, noted above, it is held that the MOE is, in fact, a Public Body as defined by the Act.

Consequently, the matters concerning the procurement process undertaken by the MOE is the reason for the OCG's Investigation. In particular, the OCG has sought to ascertain the level of compliance, on the part of the MOE, with the provisions of the Contractor General Act (1983), the then applicable GOJ Handbook of Public Sector Procurement Procedures (GHPPP, October 2010) and other relevant Legislations governing the procurement process.



METHODOLOGY

The Requisitions/Questionnaires, which formed a part of the OCG's investigative methodology, were directed by the OCG to the Public Officials/Officers and other persons of interest who are listed below. In addition, comprehensive reviews of certain relevant information were undertaken by the OCG to assist in the investigation. Details of these are also summarized below.

1. A letter of initiation, which was dated September 3, 2013, was sent by the OCG to the Hon. Rev. Ronald Thwaites M.P., Minister of Education, Mrs. Elaine Foster-Allen, Permanent Secretary in the MOE, and Ms. Jean Hastings, Programme Director, Education System Transformation Programme (ESTP), Ministry of Education.
2. A Requisition/Questionnaire was also directed on September 3, 2013 to Mrs. Elaine Foster Allen, Permanent Secretary in the MOE, and Ms. Jean Hastings, Programme Director, ESTP. Requisitions were prepared by the OCG and sent on November 6, 2013 to (a) Mr. Caswell Brown, Information Technology Administrator, MOE, (b) Mr. Shaun Lee, Director of Human Resource Management, MOE, (c) Mr. Tyrone Anderson, System Administrator, MOE, and (d) Mr. Warren Vernon, Director, Technical and User Support, MOE.

The OCG again sent its Requisition of November 6, 2013, to Mr. Caswell Brown on November 25, 2013⁵.

3. Additionally, a Requisition/Questionnaire was sent by the OCG, on January 3, 2014 to Mr. Andre Henry, the then Procurement Manager, MOE, Mr. Garry Sinclair, Chief Executive Officer, LIME Jamaica, on March 13, 2014, Mr. Debon Panton, Former MIS

⁵ The OCG was made aware that Mr. Caswell Brown did not receive the OCG's initial Requisition of November 6, 2013, due to the fact that he was on vacation leave. Given the urgency of the matter, the OCG, on November 25, 2014, sent its Requisition to another address that was provided by Mr. Brown.



Director, MOE on January 6, 2014, and Dr. Grace McLean on August 12, 2014. Follow-up Requisitions were also sent by the OCG to Mr. Warren Vernon, Mr. Caswell Brown, Mr. Debon Panton, Ms. Jean Hastings and Mrs. Elaine Foster-Allen.

The responses which were received, in relation to the aforementioned Requisitions/Questionnaires, from the above stated Public Officers were comprehensively reviewed by the OCG in addition to certain other relevant information which were deemed pertinent by the OCG.



FINDINGS OF FACT

Based upon a comprehensive review of, *inter alia*, the written statements and enclosed documentary evidence which were provided to the OCG by certain Public Officials/Officers in the MOE, the OCG is detailing, hereunder, a list of certain key Findings of the Investigation:

1. Ms. Jean Hastings, as the Director of the Education System Transformation Programme (ESTP), the programme under which the procurement for the provision of WAN Connectivity to support the MOE's EMIS was done, had the responsibility to, *inter alia*, provide oversight to the procurement.
2. The award of a Government contract by the MOE to Cable and Wireless Jamaica Limited, for the provision of WAN Connectivity to support the MOE's EMIS required adherence to both the provisions of the Inter-American Development Bank Policy Guidelines and the GOJ Public Sector Procurement Guidelines.
3. Even though the referenced procurement received the approval and/or "no objection" of the Inter-American Development Bank on October 11, 2010, and on April 27, 2011, respectively, the said procurement was not subjected to the review and/or scrutiny of neither the MOE's Central Procurement Committee nor the National Contracts Commission (NCC).
4. Two (2) entities responded to the subject tender, namely Cable and Wireless Jamaica Limited and Columbus Communications Jamaica Limited. Both Cable and Wireless Jamaica Limited and Columbus Communications Jamaica Limited submitted bids for the aspect of the tender which related to the provision of WAN to Regions 2, 3, 4, 5, 6 to Head Office.
5. In relation to the aspect of the tender which related to the provision of Fiber Link between Caenwood and Duke Street, it was stated that "*LIME had made no submission*



for this lot".⁶ The OCG's review of the Proposal which was submitted by Cable and Wireless Jamaica Limited indicated that, in relation to the '1100 Meters Single Mode Fiber Run from Caenwood to 56 Duke Street', Cable and Wireless Jamaica Limited had proposed a cost of US\$1,330.38 for the provision of the Single Mode Fibre and not the installation of same.

6. The MOE's Evaluation Committee comprising of Mr. Debon Panton, then Director, MIS, Mr. Warren Vernon, Director Technical & User Support, Mr. Tyrone Anderson, System Administrator, Mr. Caswell Brown, IT Administrator, met and recommended the award of the WAN Link to Regional Offices and the Fibre Link Caenwood to Cable and Wireless Jamaica Limited and Columbus Communications Jamaica Limited, respectively.
7. Based upon a March 2, 2011 Memorandum, which was signed by all four (4) members of the MOE's Evaluation Team, Cable and Wireless Jamaica Limited, had "*... submitted an incomplete bid and only one area was assessed*".
8. Based upon the information stated in the MOE's Bidding Document and, specifically, that which was noted in Clause 1.1, as well as the information contained in the Bidding Data Sheet, the OCG has found that the referenced tender comprised of one (1) lot with certain specified line items.
9. The Director, ESTP, MOE, Ms. Jean Hastings, wrote to both Cable and Wireless Jamaica Limited and Columbus Communications Jamaica Limited on May 5, 2011, advising of the award of contract to both entities, in respect of the provision of WAN Connectivity to Regional Offices and the Fiber Link Caenwood, respectively.
10. A contract was awarded to Cable and Wireless Jamaica Limited, in the amount of US\$204,120.00, for the provision of 'Wide Area Network to Link all Regional Offices'.

⁶ Response received from Mrs. Elaine Foster- Allen, dated September 16, 2013.



The said contract was duly signed by both parties; however, the contract was not appropriately dated. In fact, the said contract indicates as follows:

“This AGREEMENT is made the day of July, 2011”

11. The recommendation of the Evaluation Committee for the award of the contracts to Cable and Wireless Jamaica Limited and Columbus Communications Jamaica Limited for the supply of the WAN Link to the Regional Offices and the Fiber Link from Caenwood was not submitted to and approved by the Central Procurement Committee of the MOE.
12. In relation to the allegation that *“Neither the Bidding Data Sheet nor Instructions to bidders, specified the period the tender should cover”*⁷, the OCG’s review of the Bidding Documents did not reveal that such a period was outlined and/or articulated by the MOE in the requisite tender document(s) that was/were prepared and provided to prospective Bidders in respect of the referenced Tender.
13. Mr. Andre Henry, the then Procurement Manager, MOE, admitted to failing to submit the Tender Report to the Procurement Committee for review and approval. Mr. Henry indicated that same was *“... an oversight. I prepared the Report and assumed it [sic] had sent it to the Procurement Committee as would have been done with all other Tender Reports”*.
14. The GHPPP (October 2010) provides no requirements for the approval of the Procurement Committee, as per Appendix 6 and the provisions stipulated for the Local Competitive Bidding procurement methodology for contracts which fall within the value threshold of above \$10 million to \$30 million. Accordingly, the MOE was not required to obtain the approval of its Central Procurement Committee.

⁷ Letter dated July 23, 2013, which was sent to the OCG by Michele English, President and Chief Executive Officer, Columbus Communication Jamaica.



In point of fact, the MOE's internal procedures required that the Procurement Committee review procurement procedures for goods, services and works from a minimum of \$501,000.00 to a maximum of \$15 million.

15. In light of the fact that both the IDB policies and the GOJ procurement procedures were required, in respect of the subject procurement, the award of a contract to Cable and Wireless Jamaica Limited in July 2011, in the amount of US\$204,120.00, required the approval and endorsement of the NCC.
16. The OCG's review of NCC Endorsed Contracts Database, as well as the NCC's Correspondence Database, has revealed no evidence that the subject procurement received the endorsement and/or approval of the NCC. The failure of the MOE to secure the said endorsement and/or approval, therefore, amounts to a breach of Section 2.4 of the GHPPP.
17. Cable and Wireless Jamaica Limited proposed a cost of US\$5,670.00 per month, for the provision of the WAN Link to the Regions and proposed the amount of US\$1,330.00 for the sale of 1100 meters Single Mode Fiber Run.
18. Columbus Communications Jamaica Limited proposed a cost of US\$13,494.00 per month for the provision of the WAN Link to the Regions and proposed the amount of US\$3,300.00 for the sale and installation of 1100 meters Single Mode Fiber Run.
19. Clauses 14.8 and 36.6 of the MOE's Bidding Document allows for the award of contract based upon multiple lots. However, in respect of the subject tender, the MOE did not identify and/or separate the tender into clearly defined lots. In point of fact, Clause 1.1 of the said Bidding Document only identifies one lot. In this regard, the MOE could not have reasonably communicated the award of contract based upon multiple lots to prospective Bidders.
20. Columbus Communications refused to accept the offer to contract as proposed by the MOE, through its letter of May 5, 2011, on the basis of its objections to, *inter alia*, the



procurement process undertaken by the MOE, which resulted in the ‘splitting’ of the Tender into lots. Consequently, no contract was awarded to Columbus Communications Jamaica Limited.

21. There is a discrepancy between the rationale provided by Ms. Jean Hastings and Dr. Grace McLean, as it regards the award of separate contracts in respect of the subject Tender. Ms. Jean Hastings, referencing Clause 14.8, outlined the view that, *inter alia*, the Bid Document allowed for evaluation by items and that the IDB had endorsed this view.

Au contraire, the then Acting Permanent Secretary in her letter to Columbus Communication Jamaica Limited stated, *inter alia*, that “*Attempting to get the best possible pricing for the Ministry was the basis on which this [the splitting of the tender] was done and while well intentioned, in hindsight, was not the prudent route to have taken.*”

22. The amount of \$15,916,020.22 was made payable by the MOE to Cable and Wireless Jamaica Limited on December 12, 2011, in respect of the referenced contract. The outstanding amount is to be paid upon the completion of the link connecting the Ministry’s offices at Duke Street, Heroes Circle and Caenwood and upon the testing and certification of the entire WAN by the Ministry’s MIS.



DISCUSSION OF FINDINGS

The Circumstances that led to the Award of Contract to Cable and Wireless Jamaica

The OCG, in keeping with the scope of its Investigation, sought to ascertain the circumstances which led to the procurement of Wide Area Network (WAN) Connectivity to support the Ministry of Education's Education Management Information System (EMIS) by the Ministry of Education (MOE).

In an effort to ascertain the circumstances and the processes which were employed by the MOE in the pre-contract stages of the referenced procurement, the OCG thought it prudent to requisition the relevant Officers of the MOE, with respect to the extent of their knowledge of the contract which was awarded to Cable and Wireless Jamaica Limited in the aforementioned regard.

Having regard to the foregoing, by way of a Statutory Requisition, which was dated September 3, 2013, the OCG requested that Mrs. Elaine Foster-Allen, Permanent Secretary, MOE, respond to the following question:

“What is the extent of your knowledge of the circumstances surrounding the award of a contract to Cable and Wireless Jamaica Limited, for the provision of Wide Area Network (WAN) Connectivity to support the Ministry of Education's (MOE) Education Management Information System (EMIS) in July 2011?”⁸

⁸ Office of the Contractor General Requisition dated September 3, 2013, which was sent to Mrs. Elaine Foster-Allen. (Question #1.)



Mrs. Elaine Foster-Allen, in her response, which was dated September 16, 2013, stated, *inter alia*, as follows:

*“My knowledge of the circumstances surrounding the award of the contract referred to...is limited to reports received and documents perused since my appointment as Permanent Secretary in the Ministry of Education in **December of 2012.**”⁹*

It is instructive to note that, by way of a Requisition of September 3, 2013, the OCG posed a similar question to Ms. Jean Hastings, Programme Director, Education System Transformation Programme (ESTP), MOE, to which she responded on September 13, 2013, as follows:

“I am knowledgeable about the circumstances surrounding the award of a contract to Cable and Wireless Jamaica Ltd. for the provision of the WAN connectivity to the Ministry of Education to the extent indicated herein. While not directly involved in the procurement process, as the Director of the Education System Transformation Programme under which the procurement was done, my responsibility includes giving oversight to procurement. I became aware of the issue relating to this specific process, after the fact. Two reports were submitted to me for sign off as follows:-

⁹ Response which was received from Mrs. Elaine Foster-Allen and which was dated September 16, 2013. (Response No.1)



1. Report to be sent to the Ministry's Procurement Committee for its approval for award of contract ... and;

2. Tender report to be submitted to the IDB under my signature for its non-objection for award of contract...

On the assumption that the contents of those documents are true, and I do not know of any reason to doubt their veracity, both sets of documents provided me with the opportunity to be informed/become knowledgeable of the process that was followed. Based on the reports presented, **I was satisfied that up to that point, the required procedures (IDB and GoJ) were being followed. I became aware of the matter of the failure to complete the procedure for approval when one of the bidders, Columbus Communications (FLOW), lodged a protest with respect to the interpretation of the bid as evaluated and I undertook a review of the file and saw no evidence that the report to the procurement committee had been submitted. It was also pointed out by the Auditor General in the Audit report of the IDB funded project for the Financial Year 2011/2012.**¹⁰ (OCG Emphasis)

¹⁰ Response received from Ms. Jean Hastings, dated September 13, 2013. (Response No.1)



In an effort to ascertain the formal tender procedures that were utilized by the MOE in respect of the subject procurement, the OCG, by way of its Requisition of September 3, 2013, posed, *inter alia*, the following question to certain Officers of the MOE.

“Please provide an Executive Summary detailing the formal tender procedures which were utilized by the MOE in the procurement of WAN Connectivity to support the MOE’s EMIS. Your Executive Summary should include:

- (a) the criteria for selection;*
- (b) the evaluation methodology;*
- (c) the specifications for the WAN Connectivity;*
- (d) the specifications which were to be met by all Bidders who submitted proposals to the MOE; and*
- (e) Whether the aforementioned was clearly communicated to the prospective Bidders.*

Please provide documentary evidence, where possible, to substantiate your assertions/responses.”¹¹

Mrs. Elaine Foster-Allen, Permanent Secretary in the MOE, by way of her response of September 16, 2013, provided the OCG with, *inter alia*, the following response.

“Based on reports received and documents perused, I am aware that the tender process in the award of the contract ...included;

¹¹ OCG Requisition which was dated September 3, 2013. (Question No.2)



- a. *Technical specifications being drafted and sent to the Programme Manager/Director ESTP of the Education System Transformation Programme by the Management Information System of the Ministry of Education ...*
- b. *A Request for Proposal (RFP) developed by ESTP including the specification to be met, the terms surrounding the tendering of the bids and the opening of and closing of tender;*
- c. *The Education System Transformation Programme then advertised in the press inviting bids from suppliers that would meet the specifications and indicated the date for opening and closing of the tender...*
- d. *Prospective bidders requested and received the Request for Proposal (RFP) and submitted bids before the November 30, 2010 deadline;*
- e. *The bids were opened and sent to the technical evaluation committee whose members evaluated the proposals contained in the bids submitted against technical specifications included in the RFP;*
- f. *The Technical Evaluation Committee submitted its report containing its recommendation of the successful bidder(s) who met the technical specifications, to the ESTP;*
- g. **All the best practices and standard operating procedures such as obtaining approval from the International Development Bank (IDB), The Ministry's Internal Procurement Committee, The**



National Contracts Commission (NCC), Internal Procurement Committee, preparing final tender reports and letters of award and the monitoring of payments should have been undertaken by the ESTP.

- h. *The contract was then prepared and submitted to the Permanent Secretary for signature.*¹²(OCG Emphasis)

In support of the aforementioned statements, Mrs. Foster-Allen submitted to the OCG, under cover of said letter, *inter alia*, a copy of the Request for Proposal (RFQ) and a copy of the newspaper clipping evidencing the advertisement of the procurement opportunity.

The OCG, through its Requisition of September 3, 2013, posed a similar question to Ms. Jean Hastings, in relation to the formal Tender process which was employed by the MOE. Ms. Hastings, by way of her response of September 13, 2013, responded as follows:

“...the procurement process is required to satisfy the IDB procurement guidelines as well as the GoJ. *IDB, guidelines require Bank’s approval of the bid documents ...and only after approval has been received ... is the tender published. Once the bid is closed the proposals are sent by the Procurement Manager to the process owners (in this case the MIS Unit) for bids to be evaluated. It is the practice to inform that no less than 4 persons are to be on the evaluation committee. The*

¹² Response which was received from Mrs. Elaine Foster-Allen that was dated September 16, 2013. (Response No. 2)



evaluation criteria are also provided. An evaluation report ... is returned to the Change Management Unit (CMU) for a tender report to be prepared. The Procurement Manager prepares the tender report which is submitted through me to the local approving body. In this instance a report was prepared by the Procurement Manager for both IDB and GoJ. These reports are also referenced above.

a. The specification for the WAN connectivity was provided by the Ministry's MIS Unit and is detailed in Section VI of the bid documents ...

b. The specifications as referenced above are those expected to be met by bidders as per detailed instructions in the bid document provided to bidders...

c. The requirements for the tender inclusive of the specifications were provided to bidders in the bid document as referenced...above.”¹³ (OCG Emphasis)

Ms. Jean Hastings, in her mentioned response, submitted to the OCG a copy of a letter which was sent by the MOE to an IDB officer/official, requesting the IDB's "non objection", for the subject procurement.

¹³ Response which was received from Ms. Jean Hastings, that was dated September 13, 2013. Response No.2.



The OCG has found that the IDB's "no objection", was received by way of a letter dated October 11, 2010, which was sent to the MOE by an IDB officer/official. The OCG was also provided with, *inter alia*, a copy of the Evaluation Report, and a copy of the Bidding Document that was prepared by the MOE in respect of the said procurement.



The Procurement Process Employed by the Ministry of Education

The OCG, by way of its statutory Requisition of September 3, 2013, sought to ascertain the process by which Cable and Wireless Jamaica Ltd. was selected by the MOE for the award of a contract for the provision of Wide Area Network Connectivity to support the MOE's EMIS.

In respect of the aforementioned, Mrs. Elaine Foster-Allen, Permanent Secretary in the MOE, on September 16, 2013, responded as follows:

"The WAN (Regions 2, 3, 4, 5, 6 to Head Office) – Both LIME and Flow submitted bids for this section. The bids were opened and sent to the technical evaluation committee whose members evaluated the proposals contained in the bids submitted against technical specifications included in the RFP. The bidders LIME and FLOW got equal marks for the technical solutions proposed. LIME won the bid based on their price per month.

*Fiber Link between Caenwood and Duke Street- Flow won the 1100 Meters Fiber Link from Caenwood to 56 Duke Street at a price of USD \$3,300.00. LIME had made no submission for this lot.*¹⁴(OCG Emphasis)

The OCG's review of the Proposal which was submitted by Cable and Wireless Jamaica Limited indicated that, in relation to the '1100 Meters Single Mode Fiber Run from Caenwood to 56

¹⁴ Response received from Mrs. Elaine Foster-Allen, dated September 16, 2013.



Duke Street’, Cable and Wireless Jamaica Limited had proposed a cost of USD\$1,330.38 for the provision of the ‘Single Mode Fibre’. The referenced Proposal indicated, *inter alia*, the following:

“The cost quoted is for the provision of the Single Mode Fibre and does not include installation. It should be noted that LIME cannot facilitate the Single Mode Fibre through its ducts or via JPS’s poles line. However, LIME will provide the material above and it is recommended that the Ministry of Education negotiates with JPS to install the Single Mode Fibre.”¹⁵

Further, Mrs. Foster-Allen stated, *inter alia*, the following:

*“The non-objection was received from the IDB by letter dated April 27, 2011...The Director, ESTP, Ms. Jean Hastings wrote to both LIME and FLOW on May 5, 2011, awarding them the contracts to provide the **WAN Link Regional Offices and the Fibre Link Caenwood respectively...***

***The contract was prepared by the ESTP and signed by the Permanent Secretary, Mrs. Audrey Sewell. A review of the contract indicated that it was not dated**”.*¹⁶ (OCG Emphasis)

¹⁵ Response to Request For Proposal (RFP) for a Wide Area Networking (WAN) Connectivity to support Education Management Information system (EMIS)- NCM No.2. which was submitted to the OCG as an attachment to the response of March 27, 2014.

¹⁶ Response which was received from Mrs. Elaine Foster -Allen on September 16, 2013.



Ms. Jean Hastings, by way of her response of September 13, 2013, informed the OCG as follows:

“Based on review of the file and discussions held with the Procurement Manager, there is no approval from the GoJ as the report prepared by the Procurement Manager seemed not to have been sent for the Committee’s Consideration. This resulted in a breach in the GoJ approval process and is currently the subject of a Cabinet Submission in order to obtain Cabinet’s ex-post review of the award of contract to LIME”.¹⁷ (OCG Emphasis)

The OCG, through its statutory Requisition of January 3, 2014, required that Mr. Andre Henry, the then Procurement Manager at the MOE, detail the formal tender procedures that were utilized by the MOE in the subject procurement. Mr. Henry, by way of his response that was dated January 16, 2014, responded as follows:

“The ESTP received the specifications and a proposed budget from the MIS department for the procurement ... Based on the proposed budget the procurement method used was Local/National Competitive Bidding (LCB or NCB) and utilised the Standard Bid Document (SBD) from the IDB (the Funding agency). The RfP was prepared

¹⁷ Response which was received from Ms. Jean Hastings on September 13, 2013 to OCG’s Requisition of September 3, 2013.



along with the advertisement and sent to the IDB for No Objection ...

When this (the No Objection) was received ... the Tender was issued/opened on October 22, 2010 ... There was one request for clarification with three (3) questions, which were answered by the MIS Department and the Procurement Manager ... The Tender closed on the scheduled date of November 30, 2010. There were only two (2) submissions from FLOW and Cable & Wireless Limited.... Based on the limited number of submissions the IDB was written to requesting No Objection to proceed with the evaluation of the two (2) submissions ... When this was received the Evaluation Committee from the MIS Department completed the evaluation and submitted a report ... On receipt of the report, the Tender Report was completed incorporating the recommendations from the Evaluation Committee. The Tender Report was sent to the IDB for No Objection ... The Tender Report for the Procurement Committee was also prepared ... but was inadvertently not sent as it was assumed to have been sent because the reports are usually prepared and sent to the Procurement Committee.

The IDB responded by granting the No Objection to the process and the recommendations submitted by the Evaluation Committee ... When this was



received, the letters of award were sent to both
FLOW and Cable & Wireless ...

Please note the following:

- a) *The criteria for selection was based on the NCC's category; Computers & Related Services or Computers and Supplies*
- b) *Evaluation Methodology:*

<i>Description</i>	<i>Percentage</i>
1. Technical Solutions	15.0%
2. Service and Support	5.0%
3. Price/Cost	59.0%
4. Warranty/Guarantees	15.0%
5. Vendor qualifications/expertise	6.00
TOTAL POINTS	100



- c) *Specifications:*[the Specifications outlined on pages 32-34 of this Report were identified as the Specifications]
- d) *The MIS Department did not provide any specifications which were to be met by all the Bidders*
- e) *The aforementioned was clearly stated in the RfP issued ...*¹⁸

Having regard to the foregoing disclosures, *inter alia*, the OCG deems it necessary to highlight the following, in the form of a summary:

1. The Specifications and proposed budget was provided by the MIS Unit of the MOE, through a Memorandum which was dated July 28, 2010.
2. The MOE utilized the Local/National Competitive Bidding procedures, as well as the Standard Bidding Document (SBD) from the IDB.
3. The Tender was issued/opened on October 22, 2010.
4. The Procurement opportunity was duly advertised in the Sunday Observer of October 31, 2010.
5. Two (2) entities, Cable and Wireless Jamaica Limited and Columbus Communications Jamaica Limited submitted Proposals to the MOE.
6. Based upon the account of Mrs. Elaine Foster-Allen “... *LIME and FLOW got equal marks for the technical solutions proposed. LIME won the bid based on their price per month...* and in relation to the Fiber Link between Caenwood and Duke Street “...*Flow won the 1100 Meters Fiber Link from Caenwood to 56 Duke Street at a price of USD \$3,300. Lime had made no submission for this lot.*”
7. The ‘non-objection’ of the IDB was received for the Evaluation Committee’s recommendation, by way of letter which was dated April 27, 2011.

¹⁸ Response which was received from Mr. Andre Henry on January 13, 2014.



8. The Director, ESTP, Ms. Jean Hastings, wrote to both LIME and FLOW on May 5, 2011, advising of the award of contracts to provide the WAN Link to Regional Offices and the Fibre Link Caenwood, respectively.
9. The contract which was awarded to Cable and Wireless Jamaica Limited was prepared by the ESTP and signed by the then Permanent Secretary, Mrs. Audrey Sewell.
10. The contract which was entered into between the MOE and Cable and Wireless Jamaica Limited was not dated.
11. The Tender closed on the scheduled date of November 30, 2010.
12. The MOE indicated that having regard to its failure to receive the approval of the Central Procurement Committee and considering the breach of the GOJ Procurement Procedures, a Cabinet Submission was prepared by the MOE in an effort to obtain Cabinet's ex-post review of the award of contract to Cable and Wireless Jamaica Limited.

The OCG was later advised by the MOE that the Cabinet Submission was drafted but was never submitted as *"...notice of the OCG's investigation came while we were finalizing the document to ensure it was accurate and adequate"*.¹⁹

¹⁹ Response received from Ms. Jean Hastings, dated August 19, 2014. (Response 1)



Review of the Goods and Specifications Outlined by the Ministry of Education

The OCG's review of the Bidding Document that was prepared by the Ministry of Education (MOE) in respect of the subject procurement revealed that the following Specifications were outlined:

“List of Goods and Delivery Schedule

<i>Line Item No</i>	<i>Description of Goods</i>	<i>Quantity</i>	<i>Physical unit</i>	<i>Named place of destination as specified in BDS</i>
<i>1</i>	<i>1100meters Single Mode Fibre Run from Caenwood to 56 Duke street</i>	<i>1</i>		<i>Ministry of Education</i>
<i>2</i>	<i>MoE HQ Main Link Dedicated 100MB Internet Access from ISP</i>	<i>1</i>		<i>Ministry of Education</i>
<i>3</i>	<i>10MB WAN Link from Region 2 to ISP Cloud</i>	<i>1</i>		<i>Ministry of Education</i>
<i>4</i>	<i>10MB WAN Link from Region 3 to ISP Cloud</i>	<i>1</i>		<i>Ministry of Education</i>
<i>5</i>	<i>10MB WAN Link from Region 4 to ISP Cloud</i>	<i>1</i>		<i>Ministry of Education</i>
<i>6</i>	<i>10MB WAN Link from Region 5 to ISP Cloud</i>	<i>1</i>		<i>Ministry of Education</i>
<i>7</i>	<i>10MB WAN Link from Region 6 to ISP Cloud</i>	<i>1</i>		<i>Ministry of Education</i>



Summary of Technical Specifications

<i>Item No</i>	<i>Name of Goods or Related Service</i>	<i>Technical Specifications and Standards</i>
<i>1</i>	<i>1100meters Single Mode Fiber Run from Caenwood to 56 Duke Street</i>	<i>See Technical Specifications attached</i>
<i>2</i>	<i>MoE HQ Main Link Dedicated 100MB Internet Access from ISP</i>	<i>See Technical Specifications attached</i>
<i>3</i>	<i>10MB WAN Link from Region 2 to ISP Cloud</i>	<i>See Technical Specifications attached</i>
<i>4</i>	<i>10MB WAN Link from Region 3 to ISP Cloud</i>	<i>See Technical Specifications attached</i>
<i>5</i>	<i>10MB WAN Link from Region 4 to ISP Cloud</i>	<i>See Technical Specifications attached</i>
<i>6</i>	<i>10MB WAN Link from Region 5 to ISP Cloud</i>	<i>See Technical Specifications attached</i>
<i>7</i>	<i>10MB WAN Link from Region 6 to ISP Cloud</i>	<i>See Technical Specifications attached</i>



<i>Description</i>
<i>1100meters Single Mode Fiber Run from Caenwood to 56 Duke Street</i>
<i>MoE HQ Main Link Dedicated 100MB Internet Access from ISP</i>
<i>10MB WAN Link from Region 2 to ISP Cloud</i>
<i>10MB WAN Link from Region 3 to ISP Cloud</i>
<i>10MB WAN Link from Region 4 to ISP Cloud</i>
<i>10MB WAN Link from Region 5 to ISP Cloud</i>
<i>10MB WAN Link from Region 6 to ISP Cloud</i>
<i>Monthly data service charges (First Month)</i>

Instructively, Clause 21 of Section VII, General Conditions of Contract, Specifications and Standards contained in the Bidding Document provide, *inter alia*, the following:

“The Goods and Related Services supplied under this Contract shall confirm to the technical



*specifications and standards mentioned in Section VI, Schedule of Requirements and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the Goods' country of origin.*²⁰

The OCG notes that the Instruction to Bidders contained in Section I of the Bidding Document states, in relation to the scope of the Bid, the following:

*“The Purchaser **indicated in the Bidding Data Sheet (BDS)**, issues these Bidding Documents for the supply of Goods and Related Services incidental thereto as specified in Section VI, Schedule of Requirements. The name and identification number of this International Competitive Bidding (ICB) procurement are **specified in the BDS**. The name, identification and number of lots... are **provided in the BDS**.”*

Having regard to the foregoing, the OCG notes that the Bidding Data Sheet contained at Section II of the Bidding Document states as follows:

*“The name and identification number of the NCB are: **Wide Area Network (WAN) Connectivity to Support Education Management Information System (EMIS)***

NCB No.2

²⁰ Clause 21 of Section VII, General Conditions of Contract, Ministry of Education, Bidding Documents- Issued in October, 2010 for Procurement of Wide Area Network (WAN) Connectivity to support Education Management System (EMIS).



The number, identification and name of the lot comprising this NCB is:

WAN Connectivity:

Fibre Run connecting locations

Links for Internet Connection Connections

Links to ISP Cloud” (OCG Emphasis)

Having regard to the foregoing, the OCG now highlights that Clause 14.8 of the Subject Bidding Documents states that:

“If it is so indicated in ITB Sub-Clause 1.1, bids are being invited for individual contracts (lots) or for any combination of contracts (packages).

Unless otherwise indicated in the BDS, prices quoted shall correspond to 100% of the items specified for each lot and to 100% of the quantities specified for each item of a lot...”(OCG Emphasis)

Having regard to the foregoing, it is to be noted that while Clause 14.8 of the MOE’s Bidding Document allows for the award of contract based upon multiple lots, the MOE did not identify and/or separate the Tender into clearly defined lots in the said Document. In point of fact, Clause 1.1 of the said Bidding Document **only** identifies **one** lot.

The OCG conducted a comprehensive review of the Bidding Document that was prepared and issued by the MOE in respect of the referenced Tender. As it regards the allegation that “*Neither the Bidding Data Sheet nor Instructions to bidders, specified the period the tender should cover*”²¹; the OCG’s review of the Bidding Documents did not reveal that such a period was

²¹ Letter dated July 23, 2013, which was sent to the OCG by Michele English, President and Chief Executive Officer, Columbus Communication Jamaica.



outlined and/or articulated by the MOE in the requisite tender document(s) that was/were prepared and provided to prospective Bidders. The OCG notes, however, that the Technical Specifications provided in the said Bidding Document required Bidders to provide the “*Monthly data service charges (First Month)*”.



The Evaluation Process undertaken by the Ministry of Education

The OCG, through its statutory Requisition of September 3, 2013, sought to ascertain details of the evaluation process that was undertaken by the MOE. In this regard, the OCG required that certain officers of the MOE respond to the following:

“Please provide a comprehensive statement detailing the evaluation process which was undertaken by the MOE and/or any person or entity acting on its behalf in the review and assessment of the proposals which were received in the captioned regard. Your statement should include the following:

- (a) Whether the proposals were assessed by an Evaluation Committee;*
- (b) The names and titles of the persons who comprised the Evaluation Committee;*
- (c) The date(s) on which the proposals were evaluated;*
- (d) The Evaluation Criteria which was utilized in the Assessment of the proposals; and*
- (e) The Evaluation Report which was generated, if any, subsequent to the conclusion of the evaluation process.*

Please provide documentary evidence, where possible, to substantiate your assertions/responses.”²²

²² OCG Requisition which was sent to Mrs. Elaine Foster-Allen and Ms. Jean Hastings, on September 3, 2013. (Question No. 5.)



Mrs. Elaine Foster-Allen, by way of her response of September 16, 2013, responded, *inter alia*, as follows:

“Both LIME and Flow submitted bids for this section. The bids were opened and sent to the technical evaluation committee whose members evaluated the proposals contained in the bids submitted against technical specifications included in the RFP. The bidders LIME and FLOW got equal marks for the technical solutions proposed. LIME won the bid based their price per month. Both LIME and Flow got full marks for meeting the technical specifications as per their bids as both solutions were equally technically sound. The differences existed in pricing, that is LIME’s monthly cost was USD\$5,670.00, while Flow’s monthly cost was USD\$13,741.50.

The Evaluation Committee members were Mr. Debon Panton, Director, Mr Warren Vernon, Director Technical & User Support, Mr Tyrone Anderson, System Administrator, Mr Caswell Brown, IT Administrator...”²³ (OCG Emphasis)

Further, Mrs. Foster-Allen provided the OCG with a copy of the Evaluation Report, as well as a Ministry of Education Memorandum which was sent to Ms. Jean Hastings, Director ESTP, by Mr. Debon Panton, the then Director, MIS, MOE. The referenced Memorandum stated, *inter alia*, as follows:

²³ Response which was received from Mrs. Elaine Foster-Allen on September 16, 2013. (Response No.5.)



“I write to provide the results of our evaluation as requested in your memo dated December 6, 2011. An evaluation committee consisting of the following members was formed to carry out the required task:

- 1. Mr Debon Panton, Director, MIS*
- 2. Mr Warren Vernon, Director Technical & Uuser[sic] Support*
- 3. Mr Tyrone Anderson, System Administrator*
- 4. Mr Caswell Brown, IT Administrator*

Bids from the following entities were evaluated:

<i>Description</i>	<i>LIME</i>	<i>FLOW</i>
<i>Fibre Link Caenwood etc.</i>	<i>Y</i>	<i>Y</i>
<i>WAN Link Regional Offices</i>	<i>Y</i>	<i>Y</i>

The following chart shows a summary of the successful bidder for each of the required items.

<i>Description</i>	<i>Debon</i>	<i>Warren</i>	<i>Tyrone</i>	<i>Caswell</i>	<i>Successful Bidder</i>
<i>Fibre Link Caenwood etc</i>	<i>FLOW</i>	<i>FLOW</i>	<i>FLOW</i>	<i>FLOW</i>	<u><i>FLOW</i></u>
<i>WAN Link Regional Offices</i>	<i>LIME</i>	<i>LIME</i>	<i>LIME</i>	<i>LIME</i>	<u><i>LIME</i></u>



Having completed the evaluation process, our recommendations are as follows:

1. **FLOW Jamaica to be contracted to provide install the fibre connection that will link our Caenwood Centre and our Duke Street office complex to Central Ministry,**
2. **LIME to be contracted to provide WAN connections to all our Regional Offices,**

Finally, we wish to advise that we have decided to forego the option of providing a 100Mb dedicated internet connection here at Central, to be shared by everyone on the larger network. Instead we have decided to use the option of providing a 15Mb shared internet access at each location which works out at under US\$40.00 per month per location compared to US 8,999.00 per month.²⁴

(OCG Emphasis)

It is instructive to note that the OCG's review of a MOE Memorandum which was dated March 2, 2011, and which bore the subject matter "**TENDER REPORT FOR PROCUREMENT OF WIDE AREA NETWORK (WAN) TO SUPPORT EDUCATION MANAGEMENT INFORMATION SYSTEM (EMIS)**", indicated that the evaluation of the Technical Proposals commenced on December 16, 2010 and was completed on February 10, 2011. The referenced document also indicated the following:

"Columbus Communication (FLOW)

FLOW submitted quotes for all aspects of the Tender. The costs submitted were:

²⁴ MOE Memorandum dated February 14, 2011.



Fibre Link Caenwood to 56 Duke Street via MoE

Head Office US\$3,300.00

WAN Link to all Regional Offices US\$164,898.00

N.B The cost for the WAN to all Regional Offices was one (1) year only, hence the monthly cost US\$13,741.50

Cable & Wireless (LIME)

The company submitted an incomplete bid and only one area was assessed. The cost submitted was:

WAN LINK to all Regional Offices US \$ 204,120.00

N.B The cost for the WAN to all Regional Offices was three (3) years only, hence the monthly cost US\$5,670.00

	<i>Columbus Communications T/A FLOW</i>	<i>Cable & Wireless T/A LIME</i>
<i>Fibre Link Caenwood to 56 Duke Street via MoE Head Office</i>	<i>\$3,300.00</i>	<i>0</i>
<i>WAN Link to all Regional Offices</i>	<i>\$13,741.50</i>	<i>\$5,670.00</i>



CONCLUSION

The companies' submissions were all in conformity with the specifications as issued in the Tender document.

RECOMMENDATION

The recommendation from the Evaluation Committee are as follows:

- *Columbus Communications (Jamaica) Limited T/A FLOW Jamaica to supply the Fibre Link – Caenwood to 56 Duke Street via MoE Head Office at a cost of **US\$ 3,300.00***
- *Cable & Wireless Limited T/A LIME WAN Link to all Regional Offices at a cost of **US\$5,670.00 per month.***²⁵

It must be duly noted that the referenced document was signed by all four (4) members of the MOE's Evaluation Team.

Price Schedules Proposed by the Bidders

Having regard to the foregoing, the OCG undertook a review of the Proposals that were submitted by both Columbus Communications Jamaica Limited and Cable and Wireless Jamaica Limited, and in particular, the Price Schedules proposed. The Price Schedules proposed by the named entities are represented below:

²⁵ MOE Memorandum dated March 2, 2011.



Cable and Wireless Jamaica Limited

LOCATION	SPEED	MONTHLY CHARGE (US\$)	INSTALLATION (US\$)	SALE (US\$)
<i>1100 Meters Single Mode Fiber Run from Caenwood to 56 Duke Street</i>				<i>\$1,330.38*</i>
<i>MOE HQ Main Link Dedicated Internet Access from ISP</i>	<i>100 MB</i>	<i>\$1,170.00</i>	<i>\$1,500.00</i>	
<i>Link from Region 2</i>	<i>10 MB</i>	<i>\$900.00</i>	<i>\$1,500.00</i>	
<i>Link from Region 3</i>	<i>10 MB</i>	<i>\$900.00</i>	<i>\$1,500.00</i>	
<i>Link from Region 4</i>	<i>10 MB</i>	<i>\$900.00</i>	<i>\$1,500.00</i>	
<i>Link from Region 5</i>	<i>10 MB</i>	<i>\$900.00</i>	<i>\$1,500.00</i>	
<i>Link from Region 6</i>	<i>10 MB</i>	<i>\$900.00</i>	<i>\$1,500.00</i>	
TOTAL		\$5,670.00	\$7,500.00	\$1,330.38



Columbus Communications Jamaica Limited

<i>Services</i>	<i>Description of Connectivity</i>	<i>1yr. Term MRC (monthly recurring charge)</i>	<i>Installation (One time charge)</i>
<i>Fiber Run</i>	<i>1100m Single Fiber run from Caenwood to 56 Duke Street</i>	<i>N/A</i>	<i>\$3,300.00 USD</i>
<i>Internet Service</i>	<i>MOE HQ: Kingston 100MB Internet</i>	<i>\$8,999 USD</i>	<i>\$495 USD</i>
<i>VLAN Service</i>	<i>Region 2: Port Antonio 10MB VLAN Port</i>	<i>\$899 USD</i>	<i>\$495 USD</i>
<i>VLAN Service</i>	<i>Region 3: Browns Town 10MB VLAN Port</i>	<i>\$899 USD</i>	<i>\$495 USD</i>
<i>VLAN Service</i>	<i>Region 4: Montego Bay 10MB VLAN Port</i>	<i>\$899 USD</i>	<i>\$495 USD</i>
<i>VLAN Service</i>	<i>Region 5: Mandeville 10MB VLAN Port</i>	<i>\$899 USD</i>	<i>\$495 USD</i>
<i>VLAN Service</i>	<i>Region 6: Old Harbour 10MB VLAN Port</i>	<i>\$899 USD</i>	<i>\$495 USD</i>



Monthly Charges

<i>Description</i>	<i>Monthly Charge</i>
<i>100 MB Internet at HQ</i>	<i>\$8999</i>
<i>10 MB VLAN to 5 locations (Regions 2-6)</i>	<i>\$4495</i>
<i>Total Monthly Charge</i>	<i>\$13,494</i>

One Time Charges

<i>Description</i>	<i>Installation Charge</i>
<i>Total Cost for 1100m Fiber Run</i>	<i>\$3,300 USD</i>
<i>Installation of 100MB Internet</i>	<i>\$ 495 USD</i>
<i>Installation of 10MB VLANs to 5 locations (Regions 2-6)</i>	<i>\$2,475 USD</i>
<i>Total Installation Charge</i>	<i>\$6,270 USD</i>

Having regard to the foregoing, the OCG highlights that the total monthly charge proposed by Cable and Wireless Jamaica was in the amount of USD\$5,670.00, in respect of the provision of WAN Links to the identified Regions and the ‘MOE HQ Main Link Dedicated Internet Access from ISP’. The referenced entity, however, offered only a sale price, in the amount of USD \$1,330.38.00, for the ‘1100 Meters Single Mode Fiber Run’, on the basis that it did not have the capacity to install same.

Conversely, Columbus Communication Jamaica Limited proposed a monthly charge of USD\$13,494.00, for the provision of WAN Links to the identified Regions and the ‘MOE HQ Main Link Dedicated Internet Access from ISP’. The said entity also proposed the amount of USD \$3,300.00 for the provision of ‘1100m Single Fiber Run’.

Comparatively, the OCG notes the following distinctions in the proposed prices noted above:



1. The cost per month for the provision of WAN Link for each Region, as proposed by Cable and Wireless Jamaica Limited, amounted to USD\$900.00, and to all five (5) Regions USD\$4,500.00. That which was proposed by Columbus Communications Jamaica Limited was in the amount of USD\$899.00, and to all five (5) Regions USD \$4,495.00.
2. Whereas Cable and Wireless Jamaica Limited opted to waive the installation charges amounting to USD\$9,000.00²⁶, the installation cost proposed by Columbus Communications Jamaica amounted to USD \$2,970.00.
3. A cost of USD\$8,999.00 was proposed by Columbus Communications Jamaica Limited for '100 MB Internet at HQ' while, the amount of USD\$1,170.00, was proposed by Cable and Wireless Jamaica Limited.
4. Notwithstanding, the representation that the MOE opted to "... *forego the option of providing a 100Mb dedicated internet connection here at Central...*" the Bids were assessed inclusive of same.

Evaluation Criteria

The OCG has found, based upon its perusal of the MOE's Bidding Documents, issued, October 2010 and referenced, herein, that the following, *inter alia*, was noted in relation to the Evaluation Criteria:

"Evaluation Criteria (ITB 36.3(d))

The Purchaser's evaluation of a bid may take into account, in addition to the Bid Price quoted in accordance with ITB Clause 14.6, one or more of the following factors as specified in ITB Sub-Clause

²⁶ The incorrectly calculated amount of US\$7,500.00 was stated in the Price Schedule proposed by Cable and Wireless Jamaica Limited.



36.3 (d) and in BDS referring to ITB 36.3(d), using the following criteria and methodologies.

Specific additional criteria

<i>Description</i>	<i>Percentage</i>
1. Technical Solutions	15.0%
2. Service and Support	5.0%
3. Price /Cost	59.0%
4. Warranty/Guarantees	15.0%
5. Vendor qualifications/expertise	6.00
TOTAL POINTS	100

It is instructive to note that Clause 36 of the Bidding Documents, Section I, Instructions to Bidders, notes as follows:

“36.1 *The Purchaser shall evaluate each bid that has been determined, up to this stage of the evaluation, to be substantially responsive.*

36.2 **To evaluate a Bid, the Purchaser shall only use all the factors, methodologies and criteria defined in the ITB Clause 36. No other criteria or methodology shall be permitted.**



36.3 To evaluate a Bid, the Purchaser shall consider the following:

- (a) the Bid Price as quoted in accordance with clause 14;
- (b) price adjustment for correction of arithmetic errors in accordance with ITB Sub-Clause 31.3;
- (c) price adjustment due to discounts offered in accordance with ITB Sub-Clause 14.4;
- (d) adjustments due to the application of the evaluation criteria specified in the BDS from amongst those set out in Section III, Evaluation and Qualification Criteria;
- (e) adjustments due to the application of a margin of preference, in accordance with ITB Clause 35 if applicable.”²⁷ (OCG Emphasis)

Importantly, Clause 36.6 states as follows:

“If so specified in the BDS, these Bidding Documents shall allow Bidders to quote separate prices for one or more lots, and shall allow the Purchaser to award one or multiple lots to more than one Bidder. The methodology of evaluation to determine the lowest-evaluated lot combinations is specified in Section III, Evaluation and Qualification Criteria.”²⁸(OCG Emphasis)

²⁷ MOE Bidding Documents Section I – Instructions to Bidders, Clause 36

²⁸ MOE Bidding Documents Section I – Instructions to Bidders, Clause 36.6



The OCG notes that Section E, ‘Evaluation and Comparison of Bids’, as indicated in the referenced Bidding Data Sheet specifies that “*Bidders **shall** be allowed to quote separate prices for one or more lots*”.

Having regard to the foregoing, and based upon the OCG’s review of the MOE’s Bidding Document, the OCG reiterates that whereas Clauses 14.8 and 36.6 of the MOE’s Bidding Document allows for the award of contract based upon multiple lots, the MOE did not identify and/or separate the tender into clearly defined lots. In point of fact, Clause 1.1 of the said Bidding Document only identifies one lot.

Further, the IDB’s Policies for the Procurement of Goods and Works financed by the Inter-American Development Bank, March 2011, in advancing its policy for the Clarity of Bidding Documents, notes the following:

“Bidding documents shall be so worded as to permit and encourage international competition and shall set forth clearly and precisely the work to be carried out, the location of the work, the goods to be supplied, the place of delivery or installation, the schedule for delivery or completion, minimum performance requirements, and the warranty and maintenance requirements, as well as any other pertinent terms and conditions. In addition, the bidding documents, where appropriate, shall define the tests, standards, and methods that will be employed to judge the conformity of equipment as delivered, or works as performed, with the specifications. Drawings shall be consistent with



the text of the specifications, and an order of precedence between the two shall be specified.

The bidding documents shall specify any factors, in addition to price, which will be taken into account in evaluating bids, and how such factors will be quantified or otherwise evaluated. If bids based on alternative designs, materials, completion schedules, payment terms, etc., are permitted, conditions for their acceptability and the method of their evaluation shall be expressly stated.²⁹(OCG Emphasis)

The OCG, by way of its Requisitions of November 6, 2013, that were directed to (a) Mr. Tyrone Anderson, System Administrator, MOE, (b) Mr. Warren Vernon, Director, Technical and User Support, MOE, and (c) Mr. Caswell Brown, IT Director, MOE, posed, *inter alia*, the following question:

“In the event that your response to Question No. 5 above was in the affirmative, please provide a comprehensive statement detailing the evaluation process which was undertaken by the MOE and/or any person or entity acting on its behalf in the review and assessment of the proposals which were received in the captioned regard. Your statement should include the following:

- (a) Whether the proposals were assessed by an Evaluation Committee;*

²⁹ Clauses 2.16 and 2.17 of the IDB’s Policies for the Procurement of Goods and Works financed by the Inter-American Development Bank, March 2011.



- (b) The names and titles of the persons who comprised the Evaluation Committee;*
- (c) The date(s) on which the proposals were evaluated;*
- (d) The Evaluation Criteria which was utilized in the Assessment of the proposals;*
- (e) The Evaluation Report which was generated, if any, subsequent to the conclusion of the evaluation process;*
- (f) The name(s) of the person(s) and/or Committee to whom the Evaluation Report was submitted;*
- (g) Any directives, recommendations and/or advice that was provided to you, or the Evaluation Committee, as it regards the review and assessment of the bids in the captioned regard; and*
- (h) Whether the bids were assessed based upon multiple lots or a single lot, please provide (i) the rationale and/or justification for this assessment, (ii) whether this specific criterion of assessment was clearly communicated to the Bidders prior to the assessment (iii) the date on which it was communicated, and (iv) the specific information which was communicated to the Bidders.*



Please provide documentary evidence, where possible, to substantiate your assertions/responses.”³⁰

Based upon the responses that were received, in relation to the aforementioned question, the following observations have been made:

1. That the Proposals were evaluated by an Evaluation Team in February 2011.
2. That the Vender Scoring Sheet referenced, herein, reflected the Evaluation Criteria that was utilized by the Evaluation Committee in the assessment of the Proposals.
3. That no directives, recommendations and/or advice were provided to members of the Evaluation Committee, as it regards the review and assessment of the bids in the captioned regard.
4. That the Bids were evaluated based upon “...multiple lots/items”³¹.
5. That the “...Fiber Link from Caenwood to Duke Street was evaluated separately from the WAN Links for Regions 2-6 and Head Office”.³²
6. The Vendor Scoring Sheets that were prepared, by the MOE’s Evaluation Committee, as it regards the subject Tender Evaluation indicated, *inter alia*, the following information in relation to the Fiber Link component of the subject tender:
 - i. The Vendor Scoring Sheet that was prepared by Mr. Debon Panton indicated that no submission was made by Cable And Wireless Jamaica Limited and offered no score for same.
 - ii. That which was prepared by Mr. Warren Vernon offered no score and indicated that the proposal made by Cable And Wireless Jamaica Limited was incomplete as well as the notation “...contractor proposing to supply material only specifications not met”.

³⁰ OCG Requisitions which were dated November 6, 2013 and which were directed to Mr. Warren Vernon, Mr. Caswell Brown, and Mr. Tyrone Anderson. (Question No. 6)

³¹ Response received from Mr. Caswell Brown that was dated December 19, 2013.

³² Response received from Mr. Warren Vernon that was dated December 3, 2013.



- iii. That which was prepared by Mr. Caswell Brown provided a score, however, noting “*not selected...Cost excludes installation*”.
- iv. Similarly, that which was prepared by Mr. Tyrone Anderson, provided a score and noted that Cable and Wireless Jamaica Limited “*Did not meet specification...Cost above is for fibre only installation is not provided*”.



The Approval Process

In an effort to ascertain the approval(s) sought and received by the Ministry of Education (MOE) in respect of its procurement of Wide Area Network (WAN) Connectivity to support the MOE's Education Management Information System (EMIS), the OCG through its Requisition of September 3, 2013, required that the Permanent Secretary, Mrs. Elaine Foster-Allen respond to the following:

“Please provide the name(s) and title(s) of the MOE Official(s), Officer(s), Employee(s) and/or anyone acting on its behalf who (a) approved, (b) recommended and/or (c) influenced the award of the contract(s) to Cable and Wireless Jamaica Limited.”³³

Mrs. Elaine Foster-Allen, by way of her response of September 16, 2013, responded as follows:

“The Evaluation Committee of Mr. Debon Panton, Director, Mr Warren Vernon, Director Technical & User Support, Mr Tyrone Anderson, System Administrator, Mr Caswell Brown, IT Administrator met and recommended the award of the WAN Link Regional Offices and the Fibre Link Caenwood to LIME and FLOW respectively. [An Officer/Official] at the IDB (the loan providers) signed the non-objection letter. Ms. Jean Hastings, Director of the ESTP wrote letters

³³ OCG Statutory Requisition that was sent to Mrs. Elaine Foster-Allen and which was dated September 3, 2013. (Question No. 6.)



of award and prepared the contract and Mrs. Audrey V. Sewell signed the contract with LIME on behalf of the Ministry of Education.³⁴ (OCG Emphasis)

A similar question was posed to Ms. Jean Hastings, Director, ESTP, MOE, by way of an OCG statutory Requisition of September 3, 2013, to which Ms. Hastings, in addition to confirming the recommendation of the aforementioned Evaluation Committee, responded as follows:

“...The process of approval, within the Ministry of Education following the recommendation was determined to have been breached (established from review of the file and discussion with the Procurement Manager) and the procedure to remedy, as recommended, is now in process.

*Award proceeded, as required under IDB loan agreement, and in keeping with their procurement guidelines. The contract was sent to the then, Permanent Secretary, Mrs. Audrey Sewell for Signature by the Procurement Manager, through me ... It was signed by the Financial Manager of the ESTP, Ms. Judith Sayle, on my behalf and in my absence.*³⁵

Response which was received from Mrs. Elaine Foster-Allen, and which was dated September 16, 2013. (Response 6).

³⁵ Response which was received from Ms. Jean Hastings and which was dated September 13, 2013. (Response 6.)



Approval of the Procurement Committee

Further, the OCG through its Requisition of September 3, 2013, required that both Mrs. Foster-Allen and Ms. Hastings respond to the following:

“Please provide a comprehensive statement outlining the role of the Procurement Committee in the award of contract to Cable and Wireless Jamaica Limited for the provision of WAN Connectivity to support the Ministry of Education’s EMIS. Your Executive Summary should include:

- (a) The names and titles of persons who comprised the Procurement Committee;*
- (b) The date(s) on which the Procurement Committee met and deliberated on the subject procurement;*
- (c) The information which was presented to the Procurement Committee for its review and approval;*
- (d) The name(s) and title(s) of the individual(s) who was/were present at the deliberations;*
- (e) The outcome of such deliberations;*
- (f) The basis of the Procurement Committee’s decision;*
- (g) Please provide a copy of all Procurement Committee Minutes of Meeting in which the procurement of the WAN Connectivity to support the Ministry of Education’s EMIS was discussed; and*



(b) Any other particulars that are pertinent to the evaluation of the bids, by the Procurement Committee.

Please provide documentary evidence, where possible, to substantiate your assertions/responses.”³⁶

The following response was received in relation to the aforementioned question:

“The recommendation of the evaluation committee for the award of the contracts to LIME and FLOW for the supply of the WAN Link to the Regional Offices and the Fibre Link from Caenwood was never submitted to or approved by the Central Procurement Committee of the Ministry of Education. The Central Procurement Committee at the time was chaired by Mr. Paul Matalon, Executive Director of the National Education Trust and his Vice –Chairperson was Marcia Carvalho, Principal Finance Officer.”³⁷(OCG Emphasis)

In relation to the aforementioned OCG Requisition, Ms. Hastings provided the following response:

“In general the role of the Procurement Committee is to review the tender process on behalf of the

³⁶ OCG Statutory Requisitions that were sent to Mrs. Elaine Foster-Allen and Ms Jean Hastings and which were dated September 3, 2013. (Question No. 7.)

³⁷ Response that was received from Mrs. Elaine Foster-Allen.(Response No. 7)



accounting officer (the Permanent Secretary) of the Ministry and make the recommendation for award. As indicated previously, though the tender report was prepared and sent through me for submission to the Procurement Committee the Procurement Manager at the time, Mr. Andre Henry neglected to do same. He later stated to me that it slipped his attention and he proceeded on the basis of the non-objection received from the funding agency alone. Mr. Henry no longer works with the Ministry.

A Cabinet Submission has been prepared and we are in the process of consultations prior to presenting to Cabinet for its review and endorsement. I am therefore not able to provide a statement on the role of the Procurement Committee in this specific instance, nor am I able to provide the names of the persons who comprised the Procurement Committee as only the names of the Chairman and Secretary are known to me. The Chair was Mr. Paul Matalon and the secretary Mrs. Maulian McKenzie who is no longer employed to the Ministry.”³⁸(OCG Emphasis)

Further, the OCG found, by way of a MOE Memorandum,³⁹ which was dated May 2, 2012, and which was sent by Ms. Jean Hastings to Dr. Grace McLean, the then Acting Permanent

³⁸ Response that was received from Ms. Jean Hastings.(Response No. 7)

³⁹ The referenced MOE Memorandum was in response to a MOE Memorandum that was sent to Ms. Jean Hastings by Dr. Grace McLean and which was dated April 12, 2012.



Secretary, MOE, that the following, *inter alia*, was noted in relation to the approval of the Procurement Committee;

“...The Tender Report dated March 2, 2011 was prepared and addressed to the Central Procurement Committee.

Response

Agreed, however, it appeared it was not submitted as investigation done by the Auditors showed the Procurement Officer did not complete the action of obtaining approval and it was an oversight on my part as the Officer’s supervisor. The only approval obtained was from the funding agency... (OCG Emphasis)

Through its statutory Requisition of January 3, 2014, the OCG required that Mr. Andre Henry, Former Procurement Manager at the MOE, respond to the following question:

“The OCG has been informed that, in your then capacity as Procurement Manager, at the Ministry of Education, you failed to submit the relevant documentation to the Procurement Committee for its review and approval. In this regard, please respond to the following:

- (a) Please provide a statement detailing the veracity of the aforementioned allegation;*
- (b) Please provide a comprehensive statement detailing the circumstances surrounding and any failure, on*



your part, to submit the relevant particulars of the referenced procurement to the Procurement Committee; and

- (c) Any additional information which you consider to be relevant to this allegation.”⁴⁰*

In the aforementioned regard, Mr. Henry responded as follows:

- a) **“Yes, that is correct. I failed to send the Tender Report to the Procurement Committee for review and approval as an oversight. I prepared the Report and assumed I had sent it to the Procurement Committee as would have been done with all other Tender Reports.***
- b) The Report was prepared with the attendant Appendices*
- c) None”.*

Mr. Henry also informed the OCG that:

“The Procurement Committee was not involved in the award of Contract to Cable & Wireless Limited for the provision of WAN Connectivity to support the MoE’s EMIS. The decision to award Cable & Wireless Limited a portion of the procurement was based on the No Objection from the IDB. This in

⁴⁰ OCG Statutory Requisition which was dated January 3, 2014, and which was sent to Mr. Andre Henry. (Question No. 13.)



turn was based on the recommendations as provided by the Evaluation Committee.

The Tender Report for the Procurement Committee was completed but as an oversight on my part it was not sent to the Procurement Committee. There was no deliberate action on my part not to send the Report to Procurement Committee as it is normal procedure when the Reports are completed they are sent to the Procurement Committee.⁴¹ (OCG Emphasis)

Interestingly, the GHPPP (October 2010) provides no requirements for the approval of the Procurement Committee, as per Appendix 6, and the provisions stipulated for the Local Competitive Bidding procurement methodology for contracts within the value threshold of above \$10 million to \$30 million.

Also, Section 2.2.5 (i) of the GHPPP states that the “*Procurement Committee shall review all procurement within the threshold established by the Head of Entity*”.

To this end and based upon the representations noted above, in relation to the failure of the MOE to secure the approval of the MOE’s Central Procurement Committee, the OCG required Mrs. Elaine Foster-Allen to submit, *inter alia*, a copy of the internal procedures which governs the Procurement Committee’s review of procurements undertaken by the MOE. The OCG’s request which was made by way of a statutory Requisition dated September 12, 2014, made specific reference to those internal procedures that applied to the said contract that was awarded to Cable and Wireless Jamaica Limited.

Mrs. Elaine Foster-Allen, by way of her response which was dated September 22, 2014 and received in our Office on September 24, 2014, provided the OCG with, *inter alia*, a copy of a

⁴¹ Response which was received from Mr. Andre Henry. Response No. 12



document entitled “***Procurement Guidelines Ministry of Education Central Procurement Committee***”. The referenced document stated that “*The Procurement Committee shall consist of eight (8) members chosen by the Permanent Secretary to review procurement procedures for goods, services and works from a minimum of \$501,000 to a maximum of \$15 Million.*” (OCG Emphasis)

It is instructive to note, at this juncture, that the subject contract was in the amount of US\$204,120.00.

Additionally, the Terms of Reference included in said document noted, *inter alia*, the following stipulations as it regards the Procurement Committee:

“To review all submissions ensuring that the correct procedures were followed ensuring transparency and fairness is obtained and that no conflict of interest is identified in submissions.

To provide advice to procuring units on weaknesses in written report or where submission is not aligned to procurement procedures.”⁴² (OCG Emphasis)

Approval of the IDB

Based upon the OCG’s review of a letter that was dated April 27, 2011, that was sent by an IDB officer/official to Ms. Jean Hastings, MOE, it was found that the IDB had reviewed the recommendation of the Evaluation Committee and offered its “no objection”.⁴³

The following, *inter alia*, was noted:

⁴² Procurement Guidelines Ministry of Education Central Procurement Committee, submitted in respect of Mrs. Elaine Foster-Allen’s response of September 22, 2014.

⁴³ Response that was received from Mr. Andre Henry. (Response 3 and Exhibit 10)



<i>Supplier</i>	<i>Description</i>	<i>Cost</i> <i>(US\$)</i>
<i>Columbus Communications Jamaica Limited T/A FLOW</i>	<i>Fibre link (Caenwood to 56 Duke Street via MOE Head Office)</i>	<i>3,300</i>
<i>Cable and Wireless Limited T/A LIME</i>	<i>WAN link to all Regional Offices</i>	<i>204,120</i>

NCC Approval

Having regard to the fact that both the IDB policies and the GOJ procurement procedures were required, in respect of the subject procurement, the OCG notes that the award of a contract to Cable and Wireless Jamaica Limited in July 2011, in the amount of US\$204,120.00, required the approval and endorsement of the National Contracts Commission (NCC).

The GOJ Handbook of Public Sector Procurement Procedures (GHPPP) revised October 2010, Section 2.4 specifies the following:

“The approval thresholds for all contract awards are as follows:

<i>THRESHOLD</i>	<i>AUTHORITY</i>
<i>Above J\$10 Million up to J\$ 30 Million</i>	<i>The Head of the Procuring Entities shall approve on the endorsement of the recommendation by the NCC.</i>



The OCG's review of the Bank of Jamaica's (BOJ) Monthly Average Exchange Rate accessed on the BOJ's website informs that for the period July 2011, the rate of exchange was J\$86.00 to US\$1.00⁴⁴. Consequently the contract that was awarded to Cable and Wireless Jamaica, in the amount of US\$204,120.00, when converted to Jamaican dollars amounted to approximately J\$17,554,320.00.

Based upon the aforementioned, the OCG, during the course of its Investigation, conducted a comprehensive review of the National Contracts Commission's (NCC) Endorsed Contracts Database, as well as the NCC's Correspondence Database. The OCG's review was conducted in an effort to ascertain whether any approval was sought by the MOE and issued by the NCC in relation to the subject procurement. In this regard, the OCG has found no evidence to suggest that the subject procurement received the endorsement and/or approval of the NCC, and as such, contravened the requirement of Section 2.4 of the then applicable GHPPP.

The OCG notes that the MOE acknowledged its failure to receive the endorsement and/or approval of the NCC in respect of the referenced contract. By way of a MOE Memorandum, which was dated May 2, 2012 that was sent to Dr. Grace McLean by Ms. Jean Hastings the following was noted:

"It is already accepted that the Government of Jamaica's procurement process was not also followed and that only, the procedures for the funding agency was followed...It is accepted that there has been a breach as approval of the award should also have obtained by way of the National Contracts Committee [sic] (NCC) endorsement of recommendation. That matter, in my view, is the

⁴⁴ Bank of Jamaica's (BOJ) Monthly Average Exchange Rate, accessed on July 10, 2014, accessed at http://www.boj.org.jm/foreign_exchange/fx_rates_monthly.php.



*only contentious matter as it relates to this award.*⁴⁵(OCG Emphasis)

Further, Mr. Warren Vernon, Director, Technical and User Support, MOE, in his response of January 10, 2014, informed the OCG as follows:

***“I am aware that the ESTP did not received[sic] approval from the National Contracts Commission and the Ministry of Education Internal Procurement Committee for same contracts. The Technical recommendations submitted to Ms. Jean Hastings, Director ESTP as customary with the understanding that same procurement unit would have done a detailed tender report and submitted same to the Internal Procurement Committee for consideration. The ESTP did not seek approval from the Internal Procurement Committee and the National Contracts Commission.*”**⁴⁶(OCG Emphasis)

⁴⁵ MOE Memorandum which was dated May 2, 2012 and which was sent to Dr. Grace Mclean by Ms. Jean Hastings.

⁴⁶ Response which was received from Mr. Warren Vernon which was dated January 10, 2014. (Response No. 6.)



The Award of Separate Contracts for the Procurement of Wide Area Network to Support the EMIS

Having regard to the OCG's review of (a) the MOE's Evaluation Committee Report, which was dated February 14, 2014, (b) the MOE's Letters of Notification to both Cable and Wireless Jamaica Limited and Columbus Communication Jamaica Limited which were dated May 5, 2011, and (c) the contract which was prepared and awarded to Cable and Wireless Jamaica Limited, the OCG has found that the MOE made two (2) separate awards of contract.

It is to be noted that the aforementioned Letters of Notification were issued by Ms. Jean Hastings, Programme Director, MOE, and advised of, *inter alia*, the “...approval ... to award the contract to Cable & Wireless Jamaica Limited to supply Wide Area Network link to all Regional Offices at a cost of... (US\$204,120.00)” and the “...approval to award the contract to Columbus Communication Jamaica Limited to supply Fibre Link ... at a cost of ... (US\$ 3,300.00).”⁴⁷

In respect of the allegation that was made to the OCG that “*The NCB comprised a single lot with three line items ...*”⁴⁸, the OCG's comprehensive review of (a) the Tender Notice, issued in October 2010, (b) the Bidding Data Sheet of the MOE's Bidding Documents issued in October 2010 and (c) the Instructions to Bidders of the said Bidding Documents has found that the MOE failed to identify and/or separate the tender into clearly defined lots. In point of fact, Clause 1.1 of the said Bidding Document only identifies one lot.

The OCG notes that by way of letter dated May 18, 2011, that was sent to Mr. John Clear, Technical Sales Manager, Columbus Business Solutions, by Ms. Jean Hastings, and which was provided to the OCG by Ms. Michelle English, CEO, Columbus Communications Jamaica Ltd., under cover of letter dated July 23, 2013, that the following was stated:

⁴⁷ Letter of Notification which was sent by Ms. Jean Hastings to both Cable and Wireless Jamaica Ltd. and Columbus Communication Jamaica Limited.

⁴⁸ Letter dated July 23, 2013, which was received from Ms. Michele English, President and Chief Executive Officer, Columbus Communication Jamaica Limited.



“We are [sic] receipt of your email dated May 9 and note your concern regarding the award. Having reviewed our evaluation and the RfP the following are to be noted:

- *FLOW’s submission for the Fibre Link from Caenwood to 56 Duke Street was accepted.*
- *The cost submitted by FLOW for the Links to the regions was for one (1) year only (page 24 of submission from FLOW). When the cost was compared with the other supplier for three (3) years the other supplier’s submission was accepted*

We also bring to your attention:

“For projects that require similar, but separate items of work, bids may be invited under alternative contract options that would attract the interest of both small and large firms, to allow them, at their option, to bid for individual contracts (slices/lots) or for a group of similar contracts (package). When this is done, all bids and combination of bids shall be received by the same deadline and opened and evaluated simultaneously, so as to determine the bid or combination of bids offering the lowest evaluated cost to the Borrower (2.4)



Based on the above the Wide area Network to Support EMIS was awarded in this manner.”⁴⁹

The OCG notes that the aforementioned Clause that is relied upon by the MOE refers to Section 2.4 of the Policies for the Procurement of Goods and Works financed by the Inter-American Development Bank GN-2349-9, March 2011.

It is instructive to note that the OCG perused a Ministry of Education, Office of the Permanent Secretary Memorandum that was dated April 12, 2012, and which was sent by Dr. Grace McLean, the then Acting Permanent Secretary in the MOE, to Ms. Jean Hastings, Programme Director, ESTP, MOE. The referenced Memorandum stated, *inter alia*, the following:

“The file for the Procurement of Wide Area Network Equipment for EMIS was sent to me in February, 2012, asking that I sign a letter, dated February 28, 2012, addressed to the National Contracts Commission requesting permission to utilize the Sole Source Methodology to procure the Fibre Link Network to connect Caenwood to 56 Duke Street via the Ministry of Education’s Head Office.

Having reviewed the file, I note that this request has been made as a result of challenges experienced in procuring the service as far back as May, 2011.

The following are my observations:

⁴⁹ Letter dated May 18, 2011 that was sent to Mr. John Clear by Ms Jean Hastings.



- *LIME and FLOW submitted quotations for the services advertised.*
- *The Tender Opening was on November 30, 2010.*
- *The Tender Report was dated March 2, 2011 was prepared and addressed to the Central Procurement Committee.*
- *There is no Approval on file from the Central Procurement Committee.*
- ***The Tender was fragmented and sections awarded to different suppliers.***
- *One Tendered Section was not awarded to any supplier.*
- *LIME was awarded a portion of the Tender on May 5, 2011, in the amount of US\$204,120.00. This award was accepted.*
- *FLOW was awarded a portion of the Tender on May 5, 2011, in the amount of US\$3,300.00. An objection was issued by FLOW.*
- ***Meetings were held with FLOW who stated the protest is made on the grounds that the tender was for a Single Lot and the award was not treated as such.***
- *Meetings were held with FLOW and the IDB to discuss the objection but no resolution was arrived at.*
- *FLOW was written to on December 22, 2011, indicating that if no response was received by*



January 31, 2012, the Ministry would proceed with the implementation.

FLOW has lodged an objection in writing regarding the process and is now prepared to take legal action against the Ministry and to bring the matter to the attention of the Contractor General.

The process that has been followed would suggest a breach of the Procurement Guidelines as no approval was received from the Central Procurement Committee. Additionally the tender appears to have been awarded contrary to the terms advertised.

This activity has seemingly been seriously compromised and we must resolve the pending implications before we can proceed. I am therefore recommending the following:

- *The contract with LIME be reviewed and terminated based on the termination clause.*
- *The tender process be reviewed*

I am therefore directing that the necessary assessments be done immediately and that I be advised, without delay, of the approach that will be



taken to remedy this unfortunate situation.”⁵⁰(OCG Emphasis)

In response to the foregoing, Ms. Jean Hastings responded by way of a Memorandum which was dated May 2, 2012, and which was directed to Dr. Grace McLean stating the following:

“Please refer to your Memo dated April 12, 2012...Please note below response to the observations as detailed in the referenced memo:

1. *Lime and Flow submitted quotations for the services advertised.*

Response

Agreed

2. *The Tender Opening was on November 30, 2010.*

Response

Agreed

3. *The Tender Report dated March 2, 2011 was prepared and addressed to the Central Procurement Committee.*

Response

Agreed, however, it appeared it was not submitted as investigation done by the Auditors showed the Procurement Officer did not complete action of obtaining approval and it was an oversight on my part as the Officer’s supervisor...

⁵⁰ Memorandum dated April 12, 2012 that was sent by Dr. Grace McLean to Ms. Jean Hastings



4. *There was no approval on file from the Central Procurement Committee...*
5. *The tender was fragmented and sections awarded to different suppliers*

Response

The tender was not fragmented as the bidding documents and Bank Procurement guidelines allow for the procurement to be tendered in lots or as in this case by items.

It is stated in the bid documents “bids may be invited under alternative contract options that would attract the interest of both small and large firm to allow them at their option to bid for individual contract (slices/lots) or for a group of similar contracts (package). When this is done all bids and combination of bids shall be received by the same deadline and open and evaluated simultaneously so as to determine the bid or combination of bids offering the lowest evaluated cost to the borrower...

Further reference to the validity of this approach to the tender, is noted at section 1, sub-section 14.8 of the “Instruction to Bidders” of the IDB Bid document. What this means is that it was allowed for award to be for all of the items or any combination of items to different bidders.



The Tender itself was not fragmented, the award, however was to more than 1 bidder.

6. *One Tendered Section was not awarded to any supplier.*

Response

Agreed. The MIS Unit indicated that was no longer necessary and so in keeping with Section, Sub-section 39.1 which speaks to the purchaser's right to accept any bid or reject any or all bids prior to contract award without incurring any liability to the bidder. Section 1, subsection F41 also allows for the purchaser's right to vary quantity of the award at the time of award...

7. ...
8. *FLOW was awarded a portion of the Tender on May 5, 2011 in the amount of US\$3,300.00. An objection was issued by FLOW.*

Response

Agreed. The objection was brought to my attention on May 18th, 2011 [sic] that an email was sent to Mr. Andre Henry on May 9th, 2012 indicating their objection to the award. A letter was written to Flow based on the objection raised clarifying the reason that the award was given. The letter of May 18th, was followed by a meeting on June 6th, with representatives of FLOW ...who



reiterated their position that they were of the belief that the entire bid should have been awarded to them.

9. *Meetings were held with Flow who stated that their protest was on the grounds that the tender was for a Single Lot and award was not treated as such.*

Response

Agreed. Flow made this their single point of contention in all their official documentation. In fact Flow lodged a protest with the IDB since the documentation (Bid document) in question was that of the IDB.

10. *Meetings were held with Flow and the IDB to discuss the objection but no resolution was arrived at.*

Response

This is not factual. There was a teleconference between the local IDB office, the Legal Department in Washington and myself to clarify matters related to the interpretation of the Bid document and the protest lodged by Flow. This was followed by a meeting at which, Flow's representatives... and myself were invited. The meeting was presided over by the IDB's



procurement manager for the Caribbean and Latin American Region...who successfully chaired the meeting towards a resolution of the Flow situation...

On December 22, when no response was received from Flow a letter was written to Flow giving them until January 30, 2012 to respond to the award of contract. The letter stated than [sic] unless otherwise notified by Flow the Ministry would proceed to carry through implementing a fibrelink Wide Area Network (WAN) as had been proposed in the award of contract.

To date no response has been received. It was for this reason we proceeded to identify an alternative for the fiberlink in question ...

The matter is currently stalled as the Ministry is to give its approval for sole source methodology.

Your memo states that Flow has again lodged an objection and is prepared to take legal action and to bring the matter to the attention of the Contractor General. I wish to point out that there was no breach for which Flow could take legal action. Having



not accepted the offer letter no contract was ever issued to Flow, there is therefore no breach of promise and no attendant (in my opinion) liability to the Ministry from proceeding to satisfy its requirement. After all it would not be in keeping with the principle of natural justice for a supplier to hold at ransom a bidder's fulfillment of its requirements due to the bidders refusal to accept the offer made. In respect of Flow's decision to bring the matter to the Contractor General that is a decision that is within their right... ”⁵¹(OCG Emphasis)

The OCG was further provided with a copy of a Ministry of Education, Office of the Permanent Secretary Memorandum that was dated July 26, 2012, and which was sent by Dr. Grace McLean, the then Acting Permanent Secretary in the MOE, to Ms. Jean Hastings, Programme Director, ESTP, MOE. The referenced Memorandum stated, *inter alia*, the following:

*“I have noted with great concern the breaching of the procurement guidelines which was pointed out to you in memorandum sent on April 12, 2012. **You have now accepted responsibility for the breach as outlined in your memorandum of July 13, 2012.***

Please also note that this matter, having sought the advice of the National Contracts Commission, where this request should have been endorsed as

⁵¹ MOE Memorandum which was dated May 2, 2012 that was sent by Ms. Jean Hastings to Dr. Grace McLean.



well. We are now in the process of discussing this matter with the Financial Secretary following which we will advise you of the outcome.

I am also using this opportunity to remind you that, as the responsible officer, greater care must be taken as it relates to the adherence to the government procurement guidelines.

I expect that moving forward you will pay close attention to these documents that are leaving your office and ensure that the procedures are followed.”⁵² (OCG Emphasis)

In relation to the matter pertaining to the award of separate contracts, it is to be noted that whereas reference is made to the permissibility of the award of contracts based on multiple lots, **the MOE did not identify and/or separate the tender into clearly defined lots. Clause 1.1 of the said Bidding Document only identifies one lot.**

Further, the OCG deems it prudent to highlight that the Instruction to Bidders forms part of the Bidding Documents and which outlines the specific instructions, expectations and all necessary information that is critical to the preparation of Proposals to ensure, *inter alia*, the integrity and equity of the procurement process.

Additionally, the OCG reiterates the provisions of the IDB in its Policies for the Procurement of Goods and Works financed by the Inter-American Development Bank, March 2011, as it regards the clarity of Bidding Documents, noted herein.

⁵² Ministry of Education Memorandum, dated July 26, 2012, that was submitted to the OCG by Dr. Grace McLean, in support of her Response to the OCG dated September 9, 2014 and pursuant to an OCG Requisition that was dated August 12, 2014.



The OCG, by way of a Requisition which was dated March 13, 2014 that was sent to Mr. Garry Sinclair, Chief Executive Officer, LIME Jamaica, required that responses be provided for, *inter alia*, the following:

“Please indicate whether Cable and Wireless Jamaica Limited was advised, at any time, by the MOE that the contract for the provision of WAN Connectivity to support the MOE’s EMIS, would be evaluated as multiple lots and/or packages, based on the Tender Specification(s). If your response to the foregoing is “Yes”, please respond to the following:

- (a) The extent of your knowledge of the circumstances surrounding this decision;*
- (b) The rationale and/or justification for such a decision;*
- (c) Please provide full particulars of the substance of any discussion(s), negotiation(s), meeting(s), seminar(s), conference(s) and/or any other form of assembly with which Cable and Wireless Jamaica Limited may have been involved and which pertained to the above stated decision;*
- (d) The date on which Cable and Wireless Jamaica Limited became aware of this decision; and*
- (e) The manner in which the decision was communicated to Cable and Wireless Jamaica Limited.*



Please provide documentary evidence, where possible, to substantiate your assertions/responses.”⁵³

In relation to the foregoing OCG Requisition, Mr. Edward Gabbidon, VP, Corporate and SME Sales, Cable and Wireless, Jamaica, informed as follows:

“...No, LIME was not advised at any time by the Ministry that the Contract for the provision of WAN Connectivity to support the Ministry’s EMIS would be evaluated as multiple lots and/or packages, based on the tender specifications.”⁵⁴
(OCG Emphasis)

In an effort to ascertain whether any specific instructions and/or directives were given in relation to the award of separate contracts, in the subject regard, the OCG, by its statutory Requisition of September 3, 2013, required that Mrs. Elaine Foster-Allen and Ms. Jean Hastings, Programme Director, respond to the following:

“Please indicate whether you are aware of any decision which was taken and/or any directive which was given by any official(s)/officer(s) of the MOE, or any person or entity acting on its behalf, to make separate awards of contract in respect of the procurement of WAN Connectivity to support the MOE’s EMIS. If your response to the foregoing is “Yes”, please respond to the following:

⁵³ OCG Requisition which was dated March 13, 2014. (Question 5).

⁵⁴ Response which was received from Mr. Edward Gabbidon on March 27, 2014. (Response 5.)



- (a) *The extent of your knowledge of the circumstances surrounding this decision;*
- (b) *The rationale and/or justification for such a decision;*
- (c) *Please provide full particulars of the substance of any discussion(s), negotiation(s), meeting(s), seminar(s), conference(s) and/or any other form of assembly with which you may have been involved and which pertained to the decision to award separate contracts for the WAN Connectivity to support the MOE's EMIS.*
- (d) *The name(s) and title(s) of the Public Officer(s), Official(s) or any other person(s) and/or entity(ies) who/which made that decision;*
- (e) *Please provide a list of the name(s) and title(s) of all the person(s) who was/were a party to and/or involved in, attended and/or affiliated with, such discussion(s), negotiation(s), meeting(s), seminar(s), conference(s) and/or any other form of assembly in regards to the referenced decision;*
- (f) *The date on which this decision was made;*
- (g) *Whether this decision was communicated to the prospective Bidders; and*
- (h) *The manner in which and the date on which the decision was communicated to the prospective Bidders.*



*Please provide documentary evidence, where possible, to substantiate your assertions/responses.*⁵⁵

Mrs. Elaine Foster-Allen, in her response of September 16, 2013, informed the OCG that her knowledge in relation to the aforementioned question was “... *limited to reports received and documents perused since ... appointment as Permanent Secretary ... in December 2012...*”

Mrs. Elaine Foster-Allen further stated the following:

*“As far as I am aware FLOW by letter dated July 8, 2011 raised concerns about the award of contract to provide the Fibre Link from Caenwood at USD\$ 3,300.00 and simultaneously objected to the award of contract to LIME to provide the WAN Link to the Regional Offices at a cost of USD\$204,120.00...”*⁵⁶

In response to the above stated question, it is instructive to note that Ms. Jean Hastings provided the OCG with the following response:

“To the best of my knowledge, there was no decision taken or directives given by any official(s) of the Ministry or any person or entity acting on the Ministry’s behalf to make separate awards. The bid which was conducted using national competitive bidding procedures as specified in the IDB’s policies for procurement of goods and

⁵⁵ OCG Statutory Requisition of September 3, 2013 that was sent to Mrs. Elaine Foster-Allen and Ms. Jean Hastings. (Question No. 9)

⁵⁶ Response that was received from Mrs. Elaine Foster-Allen on September 16, 2013. (Response 9)



works was notified in advertisements...The bid document used was that of the IDB. The Bid document allowed for evaluation by items as stated in the instruction to bidders (ITB) 14.8. It would seem that the evaluation team proceeded on that basis given that the specifications as presented at Section VI of the Bid document ...were listed by item. This was also endorsed by the IDB following their review of the procedure consequent on a protest lodged by Columbus Communications (FLOW) ”⁵⁷. (OCG Emphasis)

In relation to Ms. Hastings’ assertion that the aforementioned procedure had received the endorsement of the IDB upon their review, the OCG was presented with certain email correspondence which were dated October 26, 2011 and October 27, 2011, respectively, as well as correspondence dated December 9, 2011, to substantiate same.

The aforementioned email that was dated October 26, 2011 and that was sent by an officer/official representing the IDB to Ms. Jean Hastings *et.al.* stated as follows:

“Ms. Hastings it was a pleasure meeting and participating in the resolution of the Flow situation. The clarification you provided to the comments [of the FLOW representative] were concise, strategic and creative. For this I thank you profusely. We await Flow’s decision if they will accept the \$3K contract.”(OCG Emphasis)

⁵⁷ Response that was received from Ms. Jean Hastings, dated September 13, 2013.



Further, by way of letter which was dated December 9, 2011, and which was sent to Ms. Jean Hastings by an officer/official representing the IDB, stated as follows:

“We refer to the correspondence between the Bank and the Ministry of Education regarding the captioned subject. Based on the meeting held on October 26, 2011 ... we note that from our side the issue regarding the protest from Flow Jamaica has been resolved...

Please let us know if you have received feedback from Flow Jamaica regarding their acceptance of the US\$3,300 contract to supply fibre link from Caenwood to 56 Duke Street via MOE Head Office.”⁵⁸

It is to be noted that the OCG has seen no evidence that any formal and/or specific directives were given by any Official(s)/Officer(s) of the MOE, or any person or entity acting on its behalf, to make separate awards of contract in respect of the procurement of WAN Connectivity to support the MOE’s EMIS.

In fact, and based upon the representations that have been made by Ms. Jean Hastings, Programme Director, the award of separate contracts in respect of (a) the supply of Wide Area Network Link to all Regional Offices and (b) the provision of Fiber Link from Caenwood to 56 Duke Street, was based upon the MOE’s interpretation of the IDB’s Bidding Documents, as well as Clause 14.8 of the Instructions to Bidders.

⁵⁸ Letter dated December 9, 2011, that was sent to Ms Jean Hastings by Cynthia Hobbs.



The OCG has noted with significant interest, a copy of a letter which was dated June 27, 2012, that was sent by Dr. Grace McLean to Ms. Michelle English, President and Chief Operating Officer, FLOW. The referenced letter stated as follows:

“We write further to our meeting on March 23, 2012 regarding Tender No. NCB #2 for the procurement of Wide Area Network (WAN) Connectivity to support Education Management Information System (EMIS), to advise that we have had a subsequent internal meeting and the following outlines the findings:

1. *The request for a quotation for services very similar to that on which there was an ongoing tender (i.e. at the time) has identified a gap that existed within our internal processes. Measures have since been put in place to ensure that this does not recur.*
2. ***Against the above point, it can be really seen how a decision to split the tender and award sections to different bidders can cause severe discomfort.***
*While there is no connection between the two points (i.e. obtaining the quotations and the splitting of the tender), this decision continues to be the major issue regarding this particular tender. **Attempting to get the best possible pricing for the Ministry was the basis on which this was done and while well intentioned, in hindsight, was not the prudent route to have taken.***



The awardee of the other aspect of the project has completed installation of those areas which they were so awarded and hence, a complete withdrawal and re-tendering is not a currently available option. With this in mind, we now propose to re-tender the section that remains (i.e. dark fibre connecting Caenwood, Head Office and Duke Street) and trust that this will assist in moving ahead with this project.

In closing we wish to apologise for whatsoever inconvenience and misunderstanding this entire situation has caused and look forward to the continued good relations between the Ministry of Education and FLOW Jamaica, one of our premier partners in educating the nation.”⁵⁹ (OCG Emphasis)

In addition, the OCG notes that Columbus Communications Jamaica Limited by way of a letter that was dated February 28, 2013, responded to the MOE’s letter of June 27, 2012 stating, *inter alia*, as follows:

“Flow had a legitimate expectation that its Bid would have been fairly evaluated. Based on evidence, a fair evaluation would have resulted in

⁵⁹ Letter dated June 27, 2012, that was sent by Dr. Grace McLean to Ms. Michelle English and copied to Ms. Jean Hastings, Mr. Debon Panton, and Mr. Paul Matalon.



an award to FLOW, particularly as its only competitor had submitted an incomplete bid.

It is our view that Flow was severely prejudiced by the manner in which the process was handled by the Ministry of Education in that the process was irregular and flawed, especially as separate awards were made in respect of a single lot.

By your own letter dated June 27, 2012, you have conceded that our complaint is justified. Therefore we are not satisfied with your proposal to re-tender the dark fibre connecting Caenwood, Head Office and Duke Street. Further, we reiterate that the completion of the installation for the other areas is not relevant and strongly suggest you either reverse the previous award and award the complete project to Flow or re-tender the complete project.”⁶⁰

The OCG notes the contrast between the response of the then Acting Permanent Secretary, Dr. Grace McLean and that which was provided by Ms. Jean Hastings, Programme Director, ESTP. The OCG highlights that while Ms. Hastings has held that the Bid Document allowed for evaluation by items and that the IDB had endorsed this view; the then Acting Permanent Secretary in her letter to Columbus Communication Jamaica Limited stated, *inter alia*, that “Attempting to get the best possible pricing for the Ministry was the basis on which this [the splitting of the tender] was done and while well intentioned, in hindsight, was not the prudent route to have taken.”

⁶⁰ Letter dated February 28, 2013 that was sent to Dr. Grace McLean by Ms. Michele English.



Payments Made by the MOE to Cable and Wireless Jamaica Limited

In an effort to ascertain the total payments that have been made to Cable and Wireless Jamaica Limited in respect of the award of contract for the supply of Wide Area Network Link to all Regional Offices, the OCG, through its Requisition of March 13, 2014, required Ms. Jean Hastings, Programme Director, to respond to the following:

“Please provide a copy of the Final Accounts, reflecting all payments that were made by the MOE to Cable and Wireless Jamaica Limited, in respect of the contract for supply of WAN Connectivity to support the MOE’s EMIS.

Please note that your response should also include (a) a copy of all approved Payment Certificates that were issued by the MOE and (b) a copy of all approved Payment Vouchers that were issued by the MOE.”⁶¹

Ms. Jean Hastings, by way of her response which was dated March 27, 2014, provided the OCG with a copy of the Payment Voucher that was made payable to Cable and Wireless Jamaica Limited. The referenced Payment Voucher which was prepared by the MOE was dated December 12, 2011, and was in the amount of \$15, 916,020.22. The said Payment Voucher was also duly signed by the Programme Manager, Ms. Jean Hastings and the requisite Accountable/Accounting Officers of the MOE. The OCG was also provided with a “contract card” which indicated that the total amount of US\$183,708.00 was paid to Cable and Wireless Jamaica Limited. The OCG notes that the amount reflected the first payment, broken down as

⁶¹ Requisition that was dated March 13, 2014 that was sent to Ms. Jean Hastings. (Question No. 4.)



10% equivalent to US\$20,412.00, payable upon the signing of the contract and 80%, which is equivalent to US\$163,296.00, payable upon Delivery of Goods.

Further, the OCG was informed by Ms. Hastings that “...*the amount outstanding on the contract can only be paid when the link connecting the Ministry’s offices at Duke Street, Heroes Circle and Caenwood is completed. At that time the entire WAN can be checked and certified by the Ministry’s MIS. Final payment will then be made.*”⁶²

⁶² Response that was received from Ms. Jean Hastings and dated March 27, 2014. Response No. 3.



Contract Awarded to Columbus Communications Jamaica Limited

Having regard to the award of contract which was made by the Ministry of Education to Columbus Communications Jamaica Limited for the supply of Fibre Link (Caenwood to 56 Duke Street via MOE Head Office), in the amount of US\$3,300.00, the OCG through its Statutory Requisition of March 13, 2014, required Ms. Jean Hastings, Programme Director, ESTP, MOE, to respond to the following:

“Reference is made to a letter which was dated May 5, 2011, and which was sent by you, in your capacity of Director, Education System Transformation Programme, to the attention of Ms. Michelle English, President and Chief Operating Officer, Columbus Communication Jamaica, in which you advised that “...approval has been received to award the contract to Columbus Communications Jamaica Limited to supply Fibre Link (Caenwood to 56 Duke Street via MOE Head Office...” In this regard, kindly indicate whether the contract was in fact awarded to Columbus Communications Jamaica Limited. If yes, please provide a copy of the following:

- (a) A copy of the signed contract; and*
- (b) A copy of the Final Accounts, reflecting all payments that were made by the MOE to Columbus Communications Jamaica Limited.*

If “no” please indicate any subsequent action that was taken by the MOE as it regards the “...Fibre



*Link (Caenwood to 56 Duke Street via MOE Head Office)...*⁶³

Ms. Jean Hastings, in her response of March 27, 2014, responded as follows:

*“The notification letter referred to dated May 5, 2011 prepared by the then Procurement Manager for my signature was sent to Ms. English, as the president and CEO of Columbus Communication Jamaica. The company however responded sometime after indicating their objection to the award... **Consequently no contract was awarded to Columbus Communication Jamaica to supply Fibre Link (Caenwood, 56 Duke Street, and Head Office at Heroes Circle) as part of the WAN.***

*Following verbal advice received from the Ministry’s MIS, the then acting Permanent Secretary, Mrs. Grace McLean, was asked to approve Direct Contracting of the National Works Agency (NWA) who we were advised was the only entity in Jamaica who could provide the service as it involved laying of underground fibre optic cables. A letter to the NCC was drafted for her signature for their consideration of recommending this method of procurement.”*⁶⁴ (OCG Emphasis)

⁶³ OCG Requisition of March 13, 2014, that was sent to Ms. Jean Hastings. (Question 1).

⁶⁴ Response which was received from Ms. Jean Hastings, and which was dated March 27, 2014.



Special Note

Having regard to circumstances attending this Investigation and, in particular, (a) the indication that the MOE sought to remedy the matter by way of a Submission to the Cabinet of Jamaica and a request for the Cabinet to provide approval of the contract *ex post facto*, and (b) certain statements that have been made by the MOE in relation to the ‘timeliness’ of the OCG’s Investigation, the OCG notes the following representations.

Ms. Jean Hastings, by way of her response of March 27, 2014, to an OCG statutory Requisition informed the OCG of the following:

*“...The action to proceed with the Tender was therefore stopped. This was further paused due to the OCG’s intervention first with its review and now Investigation which has further delayed completion of the procurement while we await the conclusion of and decision of the OCG in this regard. Loan funding for this activity will expire in November 2014 when the IDB loan comes to an end...”*⁶⁵

During the course of this Investigation, the OCG received a letter from Mrs. Elaine Foster-Allen, the Permanent Secretary, MOE, advising of the following:

“...Your investigation so far has span almost 10 months and to the best of our knowledge have not yielded any definitive decision.

⁶⁵ Response which was received from Ms. Jean Hastings and which was dated March 27, 2014.



It was pointed out in the Director's response of March 13, 2014 that the matter under investigation was funded under an IDB Loan which supports the Education Sector Reform. That loan programme is ending and this remains an outstanding matter for which the funding is reserved and which has kept the project back from achieving one of its major objectives. We are therefore seeking your consideration in moving ahead with your investigation and or bringing some closure to that matter which would allow for the procurement of this outstanding requirement to be undertaken. Alternatively, if you are unable conclude and bring closure to the investigation at this time, we ask that you allow the project (ESTP) to proceed with the procurement of the Wide Area Network (WAN) facilities to link the Ministry of Education offices at Caenwood, Heroes Circle and Duke Street.

Our request is based on the need to implement all remaining project activities as budgetary provision has been made for the procurement and installation of the WAN during the current financial year... ”⁶⁶

In relation to the foregoing representations and request, the OCG, by way of a letter which was dated June 11, 2014, guided the Permanent Secretary as follows:

⁶⁶ Letter dated June 4, 2014 and received by the OCG on June 10, 2014.



“Please be advised that the OCG’s Investigation into the captioned matter is still ongoing, and that upon completion of the OCG’s Investigation you will be notified in accordance with the law.

Further, the OCG notes that you have also stated in your referenced letter that “...We are therefore seeking your consideration in moving ahead with your investigation and or bringing some closure to that matter which would allow for the procurement of this outstanding requirement to be undertaken”.

The aforementioned statement is of particular concern to the OCG, in consideration of certain statements that were made in a letter of March 21, 2014, which was sent to the OCG by Ms. Jean Hastings, Programme Director, and which was also copied for your attention. The OCG notes that the said letter indicated as follows:

*“...please note as of December 24, 2013, the Wide Area Network links were already installed in Regions 2-6 by LIME and one payment in the amount of US\$183,708.00 was made. The outstanding payment will be made when the full link is completed...This is the link that should have been awarded to FLOW **but to-date remains work outstanding due to their non-response to the offer to contract.**” (OCG Emphasis)*



A fortiori, having regard to the foregoing, the OCG is alarmed by the Ministry's assertion that the OCG's Investigation places the timely completion of the procurement at risk.

In this regard, and pursuant to the OCG's oversight responsibilities, we caution and recommend that due care be exercised in ensuring that any further process undertaken by the Ministry is capable of standing up to the highest standard of scrutiny.”(OCG Emphasis)

Additionally, the OCG, through its Inspectorate Division, and pursuant to its monitoring mandate wrote to Mrs. Elaine Foster-Allen on June 11, 2014, and requested, *inter alia*, that the MOE provides the following:

*“...an indication of the steps that will be taken to complete implementation of the outstanding project activities....specifically, whether the component of the project which was not accepted by FLOW will be re-tendered, or how same will otherwise be treated.”*⁶⁷

Consequent upon the foregoing, the OCG was informed by Mrs. Foster-Allen of, *inter alia*, the following:

⁶⁷ OCG Letter dated, June 11, 2014, that was sent to Mrs. Elaine Foster-Allen.



“As per your question as to the process to be followed to conclude this assignment, please note as follows:

- *The Ministry intends to obtain approval for direct contracting of the NWA from both the GOJ and the Inter-American Development Bank (IDB).*
- *Information now available to the Ministry is that the NWA is best placed to offer this service being the only body authorized to undertake works involving disturbing the roadway in the KMA.*
- *Give [sic] the stance taken by the IDB in respect of its investigation of the protest lodged by FLOW (evidence previously provided) we are confident that non objection will be received.*
- *We also believe that the guidelines for government to government procurement this particular activity will be granted permission for direct contracting, as it presents the most economical option for service installation.*

The usual procurement procedure would be followed once approval once approval for direct contracting is received. That is an invitation to bid would be sent to the NWA and the approval procedure in keeping with the prescribe [sic] financial limits as outlined in the GOJ Procurement handbook would be followed. We will also be seeking the Bank’s non-objection for an award.



Once the remaining fibre link has been installed the entire WAN could then be tested. This would allow if service is evaluated by the Ministry's technical team for the payment of the final tranche of payment to LIME, thereby completing all outstanding activities.”⁶⁸

In the premises, and in keeping with the oversight jurisdiction afforded to the OCG by the Contractor General Act, the Office will continue to monitor the implementation of this contract with a view to ensuring, *inter alia*, efficiency, transparency and confidence in the Public Sector procurement process.

⁶⁸ MOE letter dated June 24, 2014.



CONCLUSIONS

Based upon the documents which have been reviewed, as well as the responses that have been received from the representatives of the Ministry of Education, Columbus Communications Jamaica Limited, and Cable and Wireless Jamaica Limited, the OCG has arrived at the following considered Conclusions:

1. The referenced procurement required the application of both the GOJ Procurement Guidelines and the Policies and Procedures of the Inter- American Development Bank (IDB).
2. In respect of the subject procurement, the MOE utilized the Local/National Competitive Bidding procedures, as well as the Standard Bidding Documents of the IDB.
3. The OCG has concluded that only two (2) proposals were received and evaluated by the MOE in respect of the subject tender process. The proposals were submitted by Cable and Wireless Jamaica Limited and Columbus Communications Jamaica Limited.
4. The award of a contract to Cable and Wireless Jamaica Limited, for the supply and installation of Wide Area Network (WAN) Connectivity to support the Ministry of Education's Education Management Information System (EMIS), was in breach of Section 4 of the Contractor General Act and the then applicable GHPPP (October 2010).
5. The MOE acted in contravention of Section 2.4 of the GHPPP, which specifies, *inter alia*, the reporting requirements of a Public Body. Section 2.4 of the GHPPP specifies that the endorsement and/or approval of the National Contracts Commission (NCC) is required for the award of contracts which fall within the value threshold of above \$10 million and up to \$30 million.



The OCG has not seen any evidence to indicate that the contract, which was awarded to Cable and Wireless Jamaica Limited, received the approval of the NCC, in accordance with the above referenced provision of the then applicable GHPPP, (May 2010).

6. There is an anomaly in relation to (a) the required internal approval procedures of the MOE and (b) the admitted failure of the MOE to submit the Tender Report and more specifically, the recommendations of the Evaluation Committee to the Central Procurement Committee for its independent review and approval.
 - i. Whilst the MOE has conceded to the aforementioned failure, the then applicable GHPPP provides no specific requirement for the review and approval of the Procurement Committee, given the value of the contract, and the provisions stipulated for the Local Competitive Bidding procurement methodology.
 - ii. Given the value of the contract and the internal threshold established by the MOE, the Ministry's internal procedures did not require the approval of the Central Procurement Committee.

Notwithstanding the foregoing, the Terms of Reference established by the MOE requires the Procurement Committee to **“To review all submissions ensuring that the correct procedures were followed ensuring transparency and fairness is obtained and that no conflict of interest is identified in submissions”**. The foregoing remains a point of conflict.

7. The MOE failed to clearly specify the period that the Proposals were to cover in relation to the services that were being procured. This failure, on the part of the MOE, to clearly specify, in the Bidding Documents, the exact duration of the services required may have resulted in the Bidders submitting Proposals outlining varying periods.



8. Notwithstanding the fact that both the GOJ and IDB procurement policies and procedures allows for the award of contract based upon multiple lots and/or packages, the MOE's Bidding Document **only identified one (1) lot**, which consisted of certain items, as indicated in the Tender Specifications.

The OCG notes that whereas it may have been the intention of the MOE to award the contract based upon lots, the MOE failed to clearly represent this intention, in the requisite Bidding Document, as well as to provide clear and specific instructions to guide the preparation of Bids. In the interest of equity and fairness and to dispel and avoid any possible ambiguities, specific instructions must be **expressly** communicated to Prospective Bidders in the Bidding Documents.

The OCG, therefore, concludes that there is merit to the allegation made by Columbus Communications Jamaica Limited that the *"NCB comprised a single lot with three line items..."*

Accordingly, the OCG concludes that the evaluation and consequent award of contract was unfair, and at best, irregular.

9. Whilst the OCG has seen no evidence to indicate that the award of separate contracts emanated from any specific directives that were issued by any Officer and/or Official of the MOE, there is a discrepancy between the rationales provided by the then Permanent Secretary, Dr. Grace McLean and the Programme Director, ESTP, Ms. Jean Hastings, for the award of two (2) separate contracts in respect of the subject procurement.

The OCG highlights that while Ms. Hastings held that the Bid Document allowed for evaluation by items and that the IDB had endorsed this view; the then Acting Permanent



Secretary , apologetically indicated that an attempt to get the best possible pricing for the Ministry was the basis upon which separate contracts were awarded.

In any effect, the OCG concludes that the award of two (2) separate contracts in the circumstances noted, herein, brings into question the propriety and regularity of the procurement process undertaken by the MOE, as well as the level of transparency that was brought to bear upon the entire process.

10. The actions of the MOE, in evaluating and awarding the subject contract based upon lots, compromised the integrity of the procurement process which was undertaken. This is based upon the fact that the MOE awarded two (2) separate contracts in respect of a tender which only identified one (1) lot.
11. Notwithstanding the noted breach of the Government Procurement Guidelines and the questions of equity and fairness arising from the OCG's Findings, the OCG has found no evidence to indicate that any Public Officer of the MOE, who was involved in the procurement exercise, held any pecuniary and/or undisclosed interest in the company Cable and Wireless Jamaica Limited.



RECOMMENDATIONS

Section 20 (1) of the Contractor General Act mandates that “*after conducting an Investigation under this Act, a Contractor-General shall, in writing, inform the principal officer of the public body concerned and the Minister having responsibility therefore of the result of that Investigation and make such Recommendations as he considers necessary in respect of the matter which was investigated.*” (OCG’s Emphasis)

Having regard to the foregoing, the OCG now posits the following recommendations:

1. Having regard to the breaches of the GOJ Procurement Procedures highlighted herein, the OCG feels compelled to recommend that the Accounting and Accountable Officers of the MOE should ensure scrupulous compliance with the Handbook of Public Sector Procurement Procedures (March 2014), particularly with respect to the approvals required in the award of government contracts.

Instructively, it is recommended that the MOE, in undertaking its projects and procurements, make adequate provisions for the approvals and authorizations which must be secured, in the circumstances, before the commencement of the project, as well as those which must be obtained throughout the execution of the project before the contract award. These approvals include provisions for the agency Public Body’s Procurement Committee, its Accounting/ Accounting Officers, the NCC and the Cabinet.

2. The OCG strongly recommends that the Accounting and Accountable Officers of the MOE ensure that adequate procedures, systems, checks and balances are not only implemented but are aggressively enforced to secure a radically improved level of compliance with the Public Bodies Management and Accountability Act and the GOJ Public Sector Procurement Procedures.



3. The OCG recommends that the MOE, in preparing its Bidding Documents, ensure that clear and unambiguous instructions are given to prospective Bidders to ensure amongst other things, that all necessary information is furnished and to avoid any ambiguities and obscurities.
4. The OCG recommends that the Permanent Secretary who is “Accounting Officer” with responsibility for the MOE, take a more proactive and aggressive role in developing, implementing and enforcing effective risk management systems, checks and balances and other appropriate management systems for the Education System Transformation Programme, in an effort to mitigate against any possibility of deviations from the GOJ Public Sector Procurement Procedures, and with an intention of promoting good governance by enhancing transparency and accountability.
5. The OCG notes the concerns that have been posited by the Permanent Secretary, Mrs. Elaine Foster-Allen, and the Programme Director, Ms. Jean Hastings, in relation to the OCG’s Investigation and the deadline for the expiration of the funds allocated for the completion of the subject project. To this end, the OCG encourages Public Bodies to exercise greater diligence in undertaking procurement activities, in an effort to ensure that the award and implementation of government contracts are awarded impartially and on merit and that the circumstances in which each contract is awarded does not involve any level of impropriety or irregularity.

Accordingly, where proper procedures are utilized, the procurement process will be capable of standing up to the highest degree of scrutiny. Consequently, Public Bodies will be better positioned to ensure that projects are completed in a timely manner whilst ensuring the integrity of the project.

6. The Ministry of Finance and the Public Service should, in an effort to prevent the recurrence of a Public Body misinterpreting the applicability of the GOJ procurement



procedures to projects that are funded by Multilaterals Organizations, draft and disseminate a Circular, Policy and/or procedures that governs such procurements.

7. The OCG recommends that in instances where a Public Body has identified that there is a breach of the procurement procedures, the responsible agent should seek to remedy the said breach in an expeditious and effective manner as opposed to continuing with the procurement in violation of the applicable GOJ Public Sector Procurement Procedures, the Regulations and other governing laws.

The OCG notes the aborted attempt by the MOE to seek the *ex post facto* approval of the Cabinet in relation to certain breaches that have been identified, herein. However, given the fact that the then applicable Public Sector Procurement Procedures required the approval of the NCC, the OCG contends that such remedial approval ought to have been more appropriately sought from the NCC.