



OFFICE OF THE CONTRACTOR GENERAL OF JAMAICA

Special Report to the Parliament of Jamaica

Concerning the Posture of the Cabinet of Jamaica with respect to certain Lawful Requisitions of the Office of the Contractor General

Office of the Cabinet

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Overview

The Commission of the Contractor General, in the discharge of its monitoring and investigative mandate under law, pursuant to the provisions of the Contractor General Act, has, in approximately the last seven (7) months, by way of its lawful Statutory Requisitions, written to the Office of the Cabinet, in several instances, to provide respective Cabinet Submissions and Decisions in regard to the following matters:

1. The approval for (a) the continuation of the North South Link of Highway 2000, (b) the Gordon Cay Container Transshipment Hub, (c) the Fort Augusta Container Terminal and (d) the establishment of an Oversight Panel to oversee the Award of Government contracts;
2. The extension of the Operating Agreement with Blue Diamond Hotels and Resorts Inc. – Braco Resorts Hotel (formerly Breezes Rio Bueno), Trelawny; and
3. The Liquefied Natural Gas (LNG) Project – Floating, Storage and Regasification Terminal and the Supply of LNG.

The Office of the Contractor General (OCG) must place upon the formal record the fact that the Office of the Cabinet and/or the Cabinet of Jamaica, have, to-date, failed to comply with any of the lawful Statutory Requisitions, which have been issued in respect of each of the abovementioned matters. It is the OCG's understanding, based upon the correspondence which it has received from the Office of the Cabinet, that the Office of the Cabinet and/or the Cabinet of Jamaica has taken this stance in light of the advice which it has received from the Learned Attorney General of

Jamaica, the Hon. Patrick Atkinson, QC, MP, and further advice which it is also awaiting from the Learned Attorney General.

It is in this regard that, as a duly constituted Commission of the Parliament of Jamaica, and pursuant to Sections 28 (2) and 28 (4) of the Contractor General Act, the OCG has found it necessary to lay before the Honourable Houses of Parliament, a Special Report outlining the challenges which have been posed by the Office of the Cabinet and/or the Cabinet of Jamaica's non-compliance with its Statutory Requisitions.

The referenced provisions of the Contractor General Act states as follows:

*"A Contractor-General shall submit to Parliament an annual report relating generally to the execution of his functions **and may at any time submit a report relating to any particular matter or matters investigated, or being investigated, by him which, in his opinion, require the special attention of Parliament.***

A Contractor-General may, in the public interest, from time to time publish in such manner as he thinks fit, reports relating to such matters as are mentioned in subsection (2) and any case which is the subject of a special report under section 21, but no such report shall be published until after it has been laid pursuant to subsection (3)."

The referenced challenges have essentially brought to a halt, the work which is being undertaken on the three (3) abovementioned matters, and by virtue of the precedence which it sets, has the potential of crippling the entire work of the OCG, and prevent the Office from, *inter alia*, (a) fully discharging its lawful mandates, (b) acting in accordance with the prescribed provisions of the Contractor General Act, (c) performing in the unfettered manner and form as prescribed by the Contractor General Act, and (d) exercising full jurisdiction over the pre and post contract award stages of Government contracts.

The Commission believes it is necessary to bring to the attention of the Parliament of Jamaica, what it considers to be a very grave situation, which is not only incongruous in nature but which

further questions the intent of the Cabinet of Jamaica, and by extension, the current Administration, in its decision to challenge the statutory requests of the OCG for the provision of the referenced Cabinet Documents.

The current stance of the Office of the Cabinet, and/or the Cabinet of Jamaica, raises very serious concerns for the OCG, especially since the OCG had, in the past, received the full and unfettered support and compliance of the Office of the Cabinet.

In the interim, and despite the attempts which have been made by the OCG to explain its lawful right to request and receive the information from the Office of the Cabinet, the OCG remains constrained as the Office of the Cabinet has advised that compliance with the OCG's Requisitions will be subject to, *inter alia*, the pending ruling in the application for Judicial Review which has been filed in the Supreme Court.

The referenced Court action was brought against the OCG by the current Minister of Transport, Works and Housing, Dr. the Hon. Omar Davies, who found it necessary to question, *inter alia*, the Commission's **primary mandate** under the law, to monitor the pre-contract award stages of Government of Jamaica contracts, a mandate which the OCG has been discharging for the past approximately twenty eight (28) years, and which accounts for approximately eighty percent (80%) of the OCG's Annual Work Programme.

Subsequent to the referenced Court application, the OCG has, without doubt, been negatively impacted in its monitoring and investigative operations, as at least one other Public Body has used the pending Court proceedings as a basis upon which to resist the OCG's request for information, despite the fact that said Public Body was not party to the referenced Court proceedings.

It is also important to note that the stance which has been taken by the Office of the Cabinet and/or the Cabinet of Jamaica has, in fact, prevented the completion of at least one of the OCG's investigations concerning the extension of the Operating Agreement with Blue Diamond Hotels and Resorts Inc. – Braco Resorts Hotel (formerly Breezes Rio Bueno), Trelawny.

In the premises, it is very important that the following provisions of the Contractor General Act, which prescribes the OCG's jurisdiction and which authorises its request for the referenced Cabinet Documents, be placed upon the record:

- (1) Sections 4 (1) (a) (i) and (ii) which mandates the Contractor-General, *"... on behalf of Parliament- to monitor the award and the implementation of Government contracts with a view to ensuring that such contracts are awarded impartially and on merit (and that) the circumstances in which each contract is awarded...do not involve impropriety or irregularity..."*
- (2) Section 4 (1) (b) which mandates the Contractor-General, *"... on behalf of Parliament- to monitor the grant, issue, suspension or revocation of any prescribed licence, with a view to ensuring that the circumstances of such grant, issue, suspension or revocation do not involve impropriety or irregularity and, where appropriate, to examine whether such licence is used in accordance with the terms and conditions thereof".*
- (3) Section 4 (2) (b) which prescribes the power of a Contractor-General *"to have access to all books, records, documents, stores or other property belonging to Government, whether in the possession of any officer of a Public Body or a contractor or any other person..."*
- (4) Section 4 (2) (d) which prescribes the power of a Contractor-General *"to have access to all books, records, documents or other property used in connection with the grant, issue, suspension or revocation of any prescribed licence whether in the possession of any public officer or any other person"*.
- (5) Section 4 (2) (e) which prescribes the power of a Contractor-General *"to have access to any premises or location where he has reason to believe that any such books, records, documents or other property as are referred to in paragraph (d) or any property which is the subject of a prescribed licence, may be found"*.
- (6) Section 4 (3) of the Act which prescribes the power of a Contractor-General to *"...require any Public Body to furnish in such manner and at such times as may be specified by the*

Contractor-General, information with regard to the award of any contract and such other information in relation thereto as the Contractor-General may consider desirable”.

- (7) Section 4 (4) which prescribes that, *“For the purposes of paragraphs (d) and (e) of subsection (2) the Contractor-General shall have power to require any public officer or any other person to furnish in such manner and at such times as may be specified by the Contractor-General, information with regard to the grant, issue, suspension or revocation of any prescribed licence and such other information in relation thereto as the Contractor-General considers desirable”.*
- (8) Section 5 (1) which provides that, *“In the exercise of the powers conferred upon him by this Act, a Contractor-General shall not be subject to the direction or control of any other person or authority”.*
- (9) Section 15 (1) which prescribes the discretionary power of a Contractor-General to conduct an investigation into any or all of the following matters:
- (a) “the registration of contractors”;*
 - (b) “tender procedures relating to contracts awarded by public bodies”;*
 - (c) “the award of any Government contract”;*
 - (d) “the implementation of the terms of any Government contract”;*
 - (e) “the circumstances of the grant, issue, use, suspension or revocation of any prescribed licence”;*
 - (f) “the practice and procedures relating to the grant, issue, suspension or revocation of prescribed licences”.*
- (10) Section 17 (1) which prescribes the power of a Contractor-General *“...to adopt whatever procedure he considers appropriate to the circumstances of a particular case and, subject to the provisions of (the) Act, may obtain information from such person and in such manner and make such enquiries as he thinks fit”.*

- (11) Section 17 (2) which provides that *“Nothing in this Act shall be construed as requiring a Contractor-General to hold any hearing and, no person shall be entitled as of right to comment on any allegations or to be heard by a Contractor-General”*.
- (12) Section 18 (1) which prescribes the power of a Contractor-General, *“at any time, (to) require any officer or member of a public body or any other person who, in his opinion, is able to give any assistance in relation to the investigation of any matter pursuant to this Act, to furnish such information and produce any document or thing in connection with such matter as may be in [his] possession or under the control of that officer, member or other person”*.
- (13) Section 18 (2) which prescribes the power of a Contractor-General to *“...summon before [him] and examine on oath any person who has made representations to him; or any officer, member or employee of a public body or any other person who, in the opinion of the Contractor General, is able to furnish information relating to the investigation; and such examination shall be deemed to be a judicial proceeding within the meaning of Section 4 of the Perjury Act”*.
- (14) Section 18 (3) which provides that *“For the purposes of an investigation under this Act, a Contractor-General shall have the same powers as a Judge of the Supreme Court in respect of the attendance and examination of witnesses and the production of documents”*.
- (15) Section 18 (4) which provides that *“Any obligation to maintain secrecy or any restriction on the disclosure of information or the production of any document or paper or thing imposed on any person by or under the Official Secrets Act, 1911 to 1939 of the United Kingdom (or any Act of Parliament of Jamaica replacing the same in its application to Jamaica) or, subject to the provisions of this Act, by any other law (including a rule of law) shall not apply in relation to the disclosure of information or the production of any document or thing by that person to a Contractor-General for the purpose of an investigation...”*.
- (16) Section 18 (5) which provides that *“No person shall, for the purpose of an investigation, be compelled to give any evidence or produce any document or thing which he could not be*

compelled to give or produce in proceedings in any court of law.”

(17) Section 19 (1) which provides that “*Where the Secretary to the Cabinet at the direction of Cabinet –*

(a) gives notice that the disclosure by a Contractor-General of any document or information specified in the notice, or any class of document or information so specified, would –

(i) involve the disclosure of the deliberations or proceedings of the Cabinet, or any committee thereof, relating to matters of a secret or confidential nature and is likely to be injurious to the public interest; or

(ii) prejudice the relations of Jamaica with the government of any other country or with any international organization; or

(iii) prejudice the detection of offences,

a Contractor-General or any member of his staff shall not communicate to any person for any purpose any document or information specified in the notice or any document or information of a class so specified;

(b) certifies that the giving of any information or the answering of any question or production of any document or thing would prejudice the security or defence of Jamaica, a Contractor-General shall not further require such information or answer to be given or such document or thing to be produced.

(18) Section 19 (2) which provides that **“Except as provided in subsection (1), no law which authorizes or requires the refusal to answer any question or the withholding of any information or document or thing on the ground that the answering of the question or the disclosure of the information, document or thing would be injurious to the public interest, shall apply in respect of any investigation by or proceedings before a Contractor-General.”**

(19) Section 22 which provides that, “*The proceedings of a Contractor-General shall not be rendered void for want of form*”.

(20) Section 29 which provides as follows:

“Every person who –

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

(b) without lawful justification or excuse –

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

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

shall be guilty of an offence ...”.

In light of the foregoing provisions of the Contractor General Act and, in particular, Section 19 of the Act, it is clearly established in law that the OCG, in making its request to the Office of the Cabinet, has acted within the parameters of the Contractor General Act and, in so doing, has exercised due care, responsibility and reasonableness, in its requests to the Office of the Cabinet.

Having had cause to outline the provisions of law to the Office of the Cabinet, under which its Statutory requests are made, the OCG is cognisant of the fact that the continued actions of the Office of the Cabinet, and the Cabinet of Jamaica, are readily amounting to a seeming attempt to frustrate, hinder and/or resist the lawful efforts of the Commission to discharge its obligations as required by the law.

Therefore, it is not without merit that the OCG remains appalled at the posture of the Cabinet of Jamaica, and by extension, the current Administration, in its undertaking to challenge the powers which are conferred upon this Independent Anti-corruption Commission of the Parliament of Jamaica, to have access to pertinent information which it deems necessary for its efficient, effective and comprehensive monitoring and completion of the enquiries and investigations which have been initiated by the Office.

Notably, the commencement of the Judicial Review Application which was filed before the Courts, by the mentioned Minister, resulted in the Cabinet of Jamaica deeming it fit to defer its response and to request advice from the Learned Attorney General of Jamaica, in each matter, to provide the requisite information in connection with the pre-award stages of the referenced Government contract awards.

Notwithstanding same, and as it regards (a) the Opinions of the Learned Attorney General, and (b) the referenced pending Court matter, the OCG has been consistent in its considered position on each matter.

The OCG is of the considered view that until and unless a Court of competent jurisdiction overrules the decision that was handed down in the Supreme Court case of *Lawrence v. Ministry of Construction (Works) and the A.G. (1991) 28 J.L.R. 265*, or otherwise restrains the OCG from proceeding with its Requisitions, a failure by the Cabinet of Jamaica, or by any other person or authority, to comply with the said OCG Requisitions amounts to a flagrant violation of the Rule of Law and constitutes a criminal offence under Section 29 of the Contractor General Act.

In the premises, and for the purpose of clarity, the OCG has deemed it necessary to provide an overview of the positions which have been posited by the Office of the Cabinet, for and on behalf of the Cabinet of Jamaica, over an approximate seven (7) month period, for the Honourable Parliament's information and assessment of the circumstances, which have surrounded the Office of the Cabinet's failure or hesitance to comply with the lawful statutory Requisitions of this Commission of the Parliament of Jamaica.

1. Approval for the continuation of the North South Link of Highway 2000, Gordon Cay Container Transshipment Hub, the Fort Augusta Container Terminal and the establishment of an Oversight Panel to oversee the Award of Government contracts

The OCG, by way of its Statutory Requisition, which was dated 2012 April 25, required the Cabinet Secretary, Ambassador the Hon. Douglas Saunders, OJ, CD, JP, to provide, *inter alia*, a copy of all the Cabinet Submissions and Decisions pertaining to (a) the subject three (3) projects

and (b) the establishment of the Oversight Panel which had been purportedly established by the current Administration to “...expand the framework for monitoring the award of contracts.”¹

The Office of the Cabinet responded to the referenced OCG letter of 2012 April 25, on even date,² and advised, *inter alia*, that the release of Cabinet Documents required the approval of the Cabinet of Jamaica and, as such, an extension to 2012 May 10 was being requested to seek approval for same. The requested extension was granted by the OCG on 2012 April 27³.

Subsequently, by way of a letter which was dated 2012 May 3⁴, seven (7) days prior to the deadline for the submission of the response, the Office of the Cabinet advised the OCG that its request was discussed at a Meeting of the Cabinet, which was held on 2012 April 30, at which time a decision was taken to defer the release of the relevant documentation pending the advice of the Learned Attorney General. Notwithstanding the posture of the Cabinet, the OCG considered and granted a further extension to 2012 May 24.⁵

It is instructive to note that the Office of the Cabinet, on 2012 May 24, requested a further extension of the deadline to 2012 June 7⁶, upon the basis that advice had not yet been received from the Learned Attorney General. Upon consideration of the representations which were made to the OCG, the OCG again granted a further extension on even date⁷.

Further, the OCG, by way of letter which was dated 2012 May 18⁸, requested additional documentation from the Office of the Cabinet as it pertained to the submission of a Memorandum

¹ OCG’s Statutory Requisition to Ambassador the Hon. Douglas Saunders, OJ, CD, JP, Cabinet Secretary, Office of the Cabinet, which was dated 2012 April 25. (For full context, see Copy of The Hansard of the Parliament of Jamaica, which was dated 2012 April 24) – **Exhibit No.1**

² Letter from the Office of the Cabinet, which was dated 2012 April 25 – **Exhibit No. 2**

³ OCG’s Letter of Extension to Ambassador the Hon. Douglas Saunders, OJ, CD, JP, Cabinet Secretary, Office of the Cabinet, which was dated 2012 April 27 – **Exhibit No. 3**

⁴ Letter from the Office of the Cabinet, which was dated 2012 May 3 – **Exhibit No. 4**

⁵ OCG’s Letter of Extension to Ambassador the Hon. Douglas Saunders, OJ, CD, JP, Cabinet Secretary, Office of the Cabinet, which was dated 2012 May 8 – **Exhibit No. 5**

⁶ Letter from the Office of the Cabinet, which was dated 2012 May 24 – **Exhibit No. 6**

⁷ OCG’s Letter of Extension to Ambassador the Hon. Douglas Saunders, OJ, CD, JP, Cabinet Secretary, Office of the Cabinet, which was dated 2012 May 24 – **Exhibit No. 7**

⁸ OCG’s Requisition to Ambassador the Hon. Douglas Saunders, OJ, CD, JP, Cabinet Secretary, Office of the Cabinet, which was dated 2012 May 18 – **Exhibit No. 8**

of Understanding between the Port Authority of Jamaica and China Harbour Engineering Co. Ltd for the development of a Container Terminal at Fort Augusta.

To this end, the Office of the Cabinet responded, under the cover of letter which was dated 2012 June 1, and indicated that same would be “...included in the initial request from your office and consequently, the extended deadline of 7th June 2012 for submission of the said documents would also apply in the instant case.”⁹

On 2012 June 6, the Office of the Cabinet requested a further extension of the deadline to 2012 June 21, upon the basis that it had only just been in receipt of the Opinion from the Attorney General.¹⁰ The OCG, by way of letter which was dated 2012 June 7, granted the requested extension.¹¹ Subsequently, by way of letter to the OCG, which was dated 2012 June 20, the Office of the Cabinet requested a further extension to 2012 July 5. The referenced letter stated, *inter alia*, that “...no decision was taken as the matter was deferred pending further advice from the Attorney General.”¹²

The OCG again acquiesced to the request of the Office of the Cabinet and granted a further extension, under cover of letter dated 2012 June 22.¹³

On 2012 July 3, the Office of the Cabinet, forty eight (48) working days later, after the continued exchange of the referenced correspondence, advised the OCG that “*In the light of recent developments involving the Attorney General’s application to the Supreme Court for a Judicial Declaration in a matter involving the very same projects, Cabinet has deferred consideration of the matter pending the outcome of the judicial proceedings.*” In this regard, the Office of the Cabinet sought an “...indefinite extension, pending the outcome of the judicial review.”¹⁴

⁹ Letter from the Office of the Cabinet, which was dated 2012 June 1 – **Exhibit No. 9**

¹⁰ Letter from the Office of the Cabinet, which was dated 2012 June 6 – **Exhibit No. 10**

¹¹ OCG’s Letter of Extension to Ambassador the Hon. Douglas Saunders, OJ, CD, JP, Cabinet Secretary, Office of the Cabinet, which was dated 2012 June 7 – **Exhibit No. 11**

¹² Letter from the Office of the Cabinet to the OCG, which was dated 2012 June 20 – **Exhibit No. 12**

¹³ OCG’s Letter of Extension to Ambassador the Hon. Douglas Saunders, OJ, CD, JP, Cabinet Secretary, Office of the Cabinet, which was dated 2012 June 22 – **Exhibit No. 13**

¹⁴ Letter from the Office of the Cabinet to the OCG, which was dated 2012 July 3 – **Exhibit No. 14**

2. Extension of the Operating Agreement with Blue Diamond Hotels and Resorts Inc – Braco Resorts Hotel (formerly Breezes Rio Bueno), Trelawny

The OCG, by way of a letter which was dated 2012 July 2, wrote to Ambassador the Hon. Douglas Saunders, OJ, CD, JP, Cabinet Secretary, Office of the Cabinet, and requested a copy of the respective Cabinet Submission(s) and Decision(s) for the subject matter.¹⁵

The Office of the Cabinet, by way of a letter which was dated 2012 July 9, referred to its letter of 2012 July 3, which pertained to the North South Link *et al.* matter, and expressed an intent to seek an extension pending the determination of the abovementioned legal process.¹⁶

In response to the foregoing letter, the OCG expressed its concern at the posture of the Office of the Cabinet, and under the cover of letter which was dated 2012 July 11, and further to consultation with its Attorney, questioned the basis upon which the referenced legal action, which was brought by the Minister of Transport, Works and Housing, against the OCG, impacted and/or prevented the Office of the Cabinet from acceding to the OCG's lawful request.¹⁷

It is instructive to note that the Office of the Cabinet responded to the OCG, by way of letter which was dated 2012 July 12 and indicated that since the OCG had consulted its Attorney it would also be seeking the advice of the Attorney General's Chambers.¹⁸

3. Liquefied Natural Gas (LNG) Project – Floating, Storage and Regasification Terminal and the Supply of LNG

The OCG, by way of a letter which was dated 2012 July 26, which was addressed to the Cabinet Secretary, Ambassador the Hon. Douglas Saunders, OJ, CD, JP, requested the provision of all Cabinet Submission(s) and Decision(s) regarding the subject matter.¹⁹

¹⁵ OCG's Requisition to Ambassador the Hon. Douglas Saunders, OJ, CD, JP, Cabinet Secretary, Office of the Cabinet, which was dated 2012 July 2 – **Exhibit No. 15**

¹⁶ Letter from the Office of the Cabinet to the OCG, which was dated 2012 July 9 – **Exhibit No. 16**

¹⁷ OCG's Letter to Ambassador the Hon. Douglas Saunders, OJ, CD, JP, Cabinet Secretary, Office of the Cabinet, which was dated 2012 July 11 – **Exhibit No. 17**

¹⁸ Letter from the Office of the Cabinet to the OCG, which was dated 2012 July 12 – **Exhibit No. 18**

The Office of the Cabinet, by way of a letter which was dated 2012 July 31, referred the OCG to its previous letter of 2012 July 12, and stated its inability to respond until the Opinion from the Attorney General's Chambers was received.²⁰

4. OCG's Continued Stance to Secure the Requisite Documents from the Cabinet Office

In light of the Office of the Cabinet's position, the OCG, by way of letter dated 2012 August 8, which was addressed to the Cabinet Secretary, advised the Office of the Cabinet, *inter alia*, that it will be "...proceeding, following upon the requisite due process, and in the interest of public transparency and good governance, as prescribed by the Contractor General Act."²¹ Further, the OCG maintained its position that the law is settled under the *Lawrence* case. Notwithstanding the foregoing, the OCG granted an extension to the Office of the Cabinet for compliance with its lawful Requisitions, by 2012 August 24.

The Office of the Cabinet, despite its failure to comply by the extended deadline date of 2012 August 24, or to seek an extension of the said deadline date, was granted a further extension to 2012 September 4, by the OCG, by way of letter which was dated 2012 August 28.²²

On 2012 August 31, the Office of the Cabinet responded to the OCG, and expressed that the advice from the Attorney General's Chambers "...indicates that the Supreme Court was asked to interpret certain parts of the statute governing the Office of the Contractor [sic] in "Minister of Works vs. The Contractor General", and that the Courts ruling in that matter will impact the advice to the Cabinet concerning the OCG's requisitions for Cabinet Documents. In the circumstances, the advice awaited by the Cabinet will not be forthcoming until after the Court has delivered its ruling in the aforementioned case."²³

¹⁹ OCG's Requisition to Ambassador the Hon. Douglas Saunders, OJ, CD, JP, Cabinet Secretary, Office of the Cabinet, which was dated 2012 July 26 – **Exhibit No. 19**

²⁰ Letter from the Office of the Cabinet to the OCG, which was dated 2012 July 31 – **Exhibit No. 20**

²¹ OCG's Letter to Ambassador the Hon. Douglas Saunders, Cabinet Secretary, Office of the Cabinet, which was dated 2012 August 8 – **Exhibit No. 21**

²² OCG's Letter of Extension to Ambassador the Hon. Douglas Saunders, Cabinet Secretary, Office of the Cabinet, which was dated 2012 August 28 – **Exhibit No. 22**

²³ Letter from the Cabinet Office to the OCG, which was dated 2012 August 31 – **Exhibit No. 23**

A significant and materially contradictory occurrence which has faced the OCG is the fact that 1) while the Cabinet of Jamaica sought to refrain from providing the requisite information for the Commission to undertake its mandate under the law, and 2) the GOJ continued to assert the pending case as a basis for its non-compliance and to inform its advice to Public Bodies, the GOJ, through one of its agents, proceeded to, in at least one instance, sign a Concession Agreement for the North South Link of Highway 2000, even before a ruling has been handed down by the Court.

The OCG, having outlined, *inter alia*, the foregoing positions to the Office of the Cabinet, under the cover of letter which was dated 2012 September 6²⁴, received a response from the Office of the Cabinet on 2012 September 13, which indicated that it would be seeking further advice from the Attorney General's Chambers.²⁵ In this regard, the OCG, by way of letter which was dated 2012 September 19, granted a further extension to the deadline date for the submission of the requisite Cabinet Documents to 2012 October 5.²⁶

5. OCG's Requisition for Information from the Minister and Permanent Secretary in the Ministry of Science, Technology, Energy and Mining

In an attempt to sequester information regarding the subject LNG Project from Mrs. Hilary Alexander, Permanent Secretary in the Ministry of Science, Technology, Energy and Mining, the OCG issued two (2) lawful Requisitions, which were dated 2012 September 5 and 2012 September 17, respectively.²⁷

On 2012 September 11, the referenced Permanent Secretary responded to the OCG and requested an extension to the deadline for submission to 2012 October 12.²⁸ The OCG, by way of letter which

²⁴ OCG's Letter to Ambassador the Hon. Douglas Saunders, Cabinet Secretary, Office of the Cabinet, which was dated 2012 September 6 – **Exhibit No. 24**

²⁵ Letter from the Office of the Cabinet, which was dated 2012 September 13 – **Exhibit No. 25**

²⁶ OCG's Letter of Extension to Ambassador the Hon. Douglas Saunders, Cabinet Secretary, Office of the Cabinet, which was dated 2012 September 19 – **Exhibit No. 26**

²⁷ OCG's Requisitions to Mrs. Hilary Alexander, Permanent Secretary, Ministry of Science, Technology, Energy and Mining, which were dated 2012 September 5 and 2012 September 17, respectively – **Exhibit Nos. 27 & 28**

²⁸ Letter from Mrs. Hilary Alexander, Permanent Secretary, Ministry of Science, Technology, Energy and Mining, which was dated 2012 September 11 – **Exhibit No. 29**

was dated 2012 September 14, granted the extension which was requested.²⁹ Upon telephone communication with a representative from the referenced Ministry on 2012 October 12, and the receipt of a follow-up letter, on even date, from the Permanent Secretary, as it regards both Requisitions, the OCG granted a further extension to the respective deadline dates to 2012 October 18.³⁰

Under the cover of letter which was dated 2012 October 17, the Permanent Secretary stated an intent to request advice from the Attorney General's Chambers with respect to providing the requested information to the OCG and, as such, sought an extension of the deadline date.³¹ The requested extension to 2012 October 24 was granted by the OCG on 2012 October 18.³²

Further, the Ministry, by way of letter which was dated 2012 October 23, advised the OCG, *inter alia*, that *"The Ministry is as of today in receipt of the advice of the AGC. In that regard, the AGC notes that your office is carrying out a monitoring function in relation to the pre-contractual stage of the procurement process, pursuant to section 4 of the Contractor General Act, and that no investigation has been launched. In these circumstances, the AGC has advised that the issue of your office's jurisdiction to monitor the pre-contractual stages of government contracts is presently the subject of judicial review proceedings in the Supreme Court..."*³³

It is instructive to note that in regard to the same matter, the OCG wrote to the Minister of Science, Technology, Energy and Mining, the Hon. Phillip Paulwell, on 2012 October 16, in an attempt to obtain clarification of certain concerns which were brought before the Commission.³⁴

²⁹ OCG's Letter of Extension to Mrs. Hillary Alexander, Permanent Secretary, Ministry of Science, Technology, Energy and Mining, which was dated 2012 September 14 – **Exhibit No. 30**

³⁰ Letter from Mrs. Hillary Alexander, Permanent Secretary, Ministry of Science, Technology, Energy and Mining, which was dated 2012 October 12 – **Exhibit No. 31**

³¹ Letter from Mrs. Hillary Alexander, Permanent Secretary, Ministry of Science, Technology, Energy and Mining, which was dated 2012 October 17 – **Exhibit No. 32**

³² OCG's Letter of Extension to Mrs. Hillary Alexander, Permanent Secretary, Ministry of Science, Technology, Energy and Mining, which was dated 2012 October 18 – **Exhibit No. 33**

³³ Letter from Mrs. Hillary Alexander, Permanent Secretary, Ministry of Science, Technology, Energy and Mining, which was dated 2012 October 23 – **Exhibit No. 34**

³⁴ OCG's Letter of Request for Clarification to the Hon. Phillip Paulwell, Minister, Ministry of Science, Technology, Energy and Mining, which was dated 2012 October 16 – **Exhibit No. 35**

Upon the referenced Minister's failure to acknowledge and/or respond to the foregoing OCG letter, the OCG, on 2012 November 6, wrote to the Minister and requested that he provide the relevant information by 2012 November 12.³⁵

The OCG received a letter on 2012 November 8 from the referenced Minister, in similar fashion to the response of 2012 October 23 from the Permanent Secretary, advising the OCG of the position of the Attorney General's Chambers which advanced the questions regarding the OCG's jurisdiction to monitor pre-contractual stages of the procurement process, pursuant to section 4 of the Contractor General Act, and that same was presently the subject of judicial proceedings in the Supreme Court.

In the instant case, the Minister informed the OCG, amongst other things, that he was further advised by the Attorney General's Chambers to *"...await the outcome of the judicial review proceedings in the Supreme Court before responding to the above-mentioned requisitions."*³⁶

The OCG, in its response to the noted positions of the Minister, the Permanent Secretary and the Learned Attorney General, which was dated 2012 November 8,³⁷ respectfully brought to the Minister's attention, amongst other State authorities who were duly copied, the case of **Lawrence v. Ministry of Construction (Works) and the A.G. (1991) 28 J.R.L 265**, in which the Supreme Court of Jamaica was moved by way of Originating Summons, at the instance of the then Contractor General, to rule on the very point which is the contention of the Minister of Transport, who is being represented by the Learned Attorney General.

In the referenced case, Mr. Justice Orr held unequivocally as follows:

"The proper interpretation of the (Contractor General) Act is one which empowers the Contractor General to monitor the pre-contract stages of government contracts and to obtain

³⁵ OCG's Letter to the Hon. Phillip Paulwell, Minister, Ministry of Science, Technology, Energy and Mining, which was dated 2012 November 6 – **Exhibit No. 36**

³⁶ Letter from the Hon. Phillip Paulwell, Minister, Ministry of Science, Technology, Energy and Mining, which was received by the OCG on 2012 November 8, however, dated 2012 November 16 – **Exhibit No. 37**

³⁷ OCG's Letter to the Hon. Phillip Paulwell, Minister, Ministry of Science, Technology, Energy and Mining, which was dated 2012 November 8 – **Exhibit No. 38**

information from public bodies prior to the award of such contracts...The ordinary meaning of the words of the statute in light of the context and grammar suggest no other interpretation.”

Of note, the referenced letter of 2012 November 8 was copied to the Most Hon. Prime Minister, Portia Simpson Miller, the Leader of the Opposition, the Hon. Andrew Holness, the Speaker of the House of Representatives, the Hon. Michael Peart, M.P., the President of the Senate, Rev. Senator the Hon. Stanley Redwood, the Director of Public Prosecutions, Ms. Paula Llewellyn, the Learned Attorney General, the Hon. Patrick Atkinson, Q.C., the Cabinet Secretary, Ambassador the Hon. Douglas Saunders and the OCG’s Attorney-at-Law, Mrs. Jacqueline Samuels-Brown, Q.C.

The OCG’s concerns lie at the heart of the positions which have been taken by the Office of the Cabinet and/or the Cabinet of Jamaica, and the Learned Attorney General, which run contrary to the settled law and to the principles of the Rule of Law, a principle which must, at all times, take primacy of place in the discharge and the administration of the affairs of the State.

The OCG has contended, and continues to contend, that it is a trite principle of the law that until and unless a Court of competent jurisdiction rules contrary to the aforementioned ruling and/or the Parliament of Jamaica changes the law to reflect the contentions and Opinion of the Attorney General’s Chambers, the application which the Learned Attorney General has filed before the Court does not and cannot possibly render the settled law void or lacking in its efficacy and validity.

In this regard, the OCG must also contend that if the referenced assertions are to be taken to their logical conclusion, then they would suggest that the mere filing of an Application for Judicial Review would render any applicable law, which is the subject of the said Application, a nullity and of no moment.

Having expressed the foregoing positions to the Minister, the OCG was further advised, by way of letter which was dated 2012 November 10, that advice was again being sought from the Attorney

General's Chambers as it regards same.³⁸ A further extension was requested by the Minister to 2012 November 20. Consequent upon same, the OCG granted the extension on 2012 November 15.³⁹

Notwithstanding same, the OCG went further and reminded the Minister, in the referenced letter of 2012 November 15, of, *inter alia*, the Commissions obligations to act independently, in good faith, and in a manner which it deems to be consistent with (a) its statutory responsibilities and mandates under the law, (b) the provisions of the Contractor General Act by which it is circumscribed, and (c) the prior decision of the Supreme Court of Jamaica and, in particular, the decision which was handed down in the *Lawrence* case, which continues to stand as the settled law.

In the premises, and based upon the previous challenges which were being experienced, the OCG deemed it prudent to obtain an independent Legal Opinion from Queens Counsel, Mrs. Jacqueline Samuels-Brown, as it regards the refusal by Government Departments/Officers to respond to the numerous Statutory Requisitions which were issued by the OCG.

The referenced Legal Opinion, which was received on 2012 November 16, having clearly outlined the issues, opined, *inter alia*, that “...the Minister, Cabinet Secretary, and all public bodies are by law obligated to respond to the requisitions of the Contractor General as aforesaid. Failure to so respond amounts to an offence as contemplated by Section 29 of the **Contractor General Act**. It is therefore for the Contractor General to decide whether as a matter of policy it will refrain from insisting on its requisitions being answered, taking into account all the circumstances. However, he is not by law obliged to do so.”⁴⁰ (Please find attached the full context of the Legal Opinion)

Out of an abundance of caution, and for their due consideration, the OCG, on 2012 November 19, wrote to Ambassador the Hon. Douglas Saunders, Cabinet Secretary, enclosing a copy of the referenced Legal Opinion, and copied same to, *inter alia*, the Most Honourable Prime Minister,

³⁸ Letter from the Hon. Phillip Paulwell, Minister, Ministry of Science, Technology, Energy and Mining, which was dated 2012 November 10 – **Exhibit No. 39**

³⁹ OCG's Letter of Extension to the Hon. Phillip Paulwell, Minister, Ministry of Science, Technology, Energy and Mining, which was dated 2012 November 15 – **Exhibit No. 40**

⁴⁰ Queen's Counsel Legal Opinion which was received by the OCG from Mrs. Jacqueline Samuels-Brown on 2012 November 16 – **Exhibit No. 41**

Portia Simpson Miller, the Leader of the Opposition, the Hon. Andrew Holness, the Speaker of the House of Representatives, the Hon. Michael Peart, M.P., the President of the Senate, Rev. Senator the Hon. Stanley Redwood, Minister Phillip Paulwell and Permanent Secretary Hillary Alexander, Ministry of Science, Technology, Energy and Mining, Dr. The Hon. Omar Davies, Minister of Transport, Works and Housing, the Director of Public Prosecutions, Ms. Paula Llewellyn, the Learned Attorney General, the Hon. Patrick Atkinson, Q.C.⁴¹

In the referenced letter of 2012 November 19, the OCG, buttressed by the Legal Opinion which it had received, placed upon the record its intent to enforce the compliance of the Office of the Cabinet, pursuant to its statutory mandates under the Contractor General Act.

It must also be noted that on 2012 November 20, the OCG received an Opinion from the Learned Attorney General, as it pertained the refusal of the Office of the Cabinet, the Minister of Transport, Works and Housing, and the Ministry of Science, Technology, Energy and Mining, to provide the requested information for the subject projects.

The referenced Opinion outlined the positions of the Learned Attorney General and stated, *inter alia*, that “...I have advised the **Cabinet, the Minister of Transport, Works and Housing and the Ministry of Science, Technology, Energy & Mining** that compliance with your request should await the Supreme Court’s decision in the matter of the Ministry of Transport, Works and Housing v The Contractor General – Claim No. 2012 HCV 03501. In these circumstances, I am requesting that your office should also await the court’s decision before making any further demands on the offices in question.”⁴² To this end, the OCG consulted Queens Counsel, Mrs. Jacqueline Samuels-Brown, who responded to the Learned Attorney General on 2012 November 21.⁴³

Notwithstanding the positions of the Learned Attorney General, both the Minister of Science, Technology, Energy and Mining and Permanent Secretary Hillary Alexander, much to their credit,

⁴¹ OCG’s Letter to Ambassador, the Hon. Douglas Saunders, OJ, CD, Cabinet Secretary, Office of the Cabinet, which was dated 2012 November 19 – **Exhibit No. 42**

⁴² Queen’s Counsel Legal Opinion which was received from the Attorney General’s Chambers on 2012 November 20 – **Exhibit No. 43**

⁴³ Letter from Mrs. Jacqueline Samuels-Brown, QC, to the Hon. Patrick Atkinson, MP, QC, which was dated 2012 November 21 – **Exhibit No. 44**

responded to the OCG's Statutory Requisitions on 2012 November 20 and 2012 November 27, respectively.⁴⁴ The OCG lauded their actions, under the cover of letter dated 2012 November 28.⁴⁵

6. Concluding Comments

As a Commission of the Parliament of Jamaica, the OCG is gravely concerned that it has had to undergo the aforementioned challenges to secure information, which it is, by law, authorised to obtain, particularly from Public Bodies and Public Officials, in the interest of public transparency and for and on behalf of the People and Taxpayers of Jamaica.

It is instructive to note that the OCG, on 2012 November 29, had once again, extended the deadline to 2012 December 10, for the submission of the requisite Cabinet Documents from the Cabinet Office, to afford the Office of the Cabinet, the opportunity to provide the information and to consider the material elements of the law.⁴⁶

In this regard, the Commission has duly noted the position of the Office of the Cabinet, under the cover of letter dated 2012 November 26, which advised, *inter alia*, that “...only the Cabinet can authorize the release of its documents. The Cabinet Office is therefore not in a position to release such documents without the express approval of the Cabinet. It is expected that the matter will be considered by the Cabinet on 3rd December 2012...”⁴⁷

Further to same, and out of an abundance of caution, the OCG, on 2012 December 3rd, went a step further and wrote to the Most Honourable Prime Minister Portia Simpson-Miller, seeking her immediate and urgent intervention, upon the basis that the OCG, as required by the law under which it was created, and remains circumscribed, must act in accordance with same.

⁴⁴ Response from the Hon. Phillip Paulwell, Minister of Science, Technology, Energy and Mining, and Mrs. Hillary Alexander, Permanent Secretary in the said Ministry, which was dated 2012 November 20 and 27, respectively – **Exhibit Nos. 45 & 46**

⁴⁵ OCG's Letter which was addressed to the Hon. Phillip Paulwell, Minister of Science, Technology, Energy and Mining, which was dated 2012 November 28 – **Exhibit No. 47**

⁴⁶ OCG's Letter to the Office of the Cabinet, which was dated 2012 November 29 – **Exhibit No. 48**

⁴⁷ Letter from the Office of the Cabinet to the OCG, which was dated 2012 November 26 – **Exhibit No. 49**

⁴⁸ OCG's Letter to the Most Honourable Prime Minister Portia Simpson-Miller, which was dated 2012 December 3 – **Exhibit No. 50**

The OCG has, up to this juncture, exercised its due discretion and a reasonable, responsible and prudent approach to the challenges which have been mounted against it, in the face of the settled law, and which, in the considered opinion of the OCG, amounts to, *inter alia*, an obstruction and refusal to comply with the lawful request of a Commission of Parliament. As it now stands, and despite the best efforts of the OCG, the actions of the Office of the Cabinet and/or the Cabinet of Jamaica, as it awaits the further advice of the Attorney General's Chambers, continues to circumvent the settled law.

It must be recalled that by strict law, and pursuant to Section 19 of the Contractor General Act, the only restrictions on the Commission to request and make public information from the Cabinet Secretary are matters of national security, none of which are applicable to the matters for which information has been sought from the Cabinet Office.

To further compound the issue, the OCG received a letter from the Office of the Cabinet, which was dated 2012 December 10, and which states, *inter alia*, that "*The Cabinet, at its meeting today, considered the resurrected requisitions of the OCG for the relevant Cabinet Submissions and Decisions, including the legal issues raised by way of the latter's letter dated 19th November, 2012, and has requested further advice on the matter from the Attorney General.*"⁴⁹

With due consideration to the foregoing fact circumstances, the settled law, the independent Legal Opinion from Queen's Counsel, which contrast to those put forward by the Learned Attorney General, the Commission of the Contractor General must respectfully place upon the record, in the interest of transparency and good governance, its considered concern and the fact that as a creature of law and a duly established Commission of the Parliament of Jamaica, the OCG must, and will act within the confines of the law and must, at all times, exercise such recourse as is available to it under law to effectively discharge its mandate.

⁴⁹ Letter from the Office of the Cabinet, which was dated 2012 December 10 – **Exhibit No. 51**

APPENDICES

List of Appendices

1. Office of the Contractor General's Statutory Requisition to Ambassador the Hon. Douglas Saunders, OJ, CD, JP, Cabinet Secretary, Office of the Cabinet, which was dated 2012 April 25. (For full context, see enclosed a copy of *The Hansard* of the Parliament of Jamaica, which was dated 2012 April 24)
2. Letter from Ms. K. Sewell Mills, for and on behalf of the Cabinet Secretary, Office of the Cabinet, to the OCG, which was dated 2012 April 25.
3. Letter from the Office of the Contractor General to Ambassador the Hon. Douglas Saunders, OJ, CD, JP, Cabinet Secretary, Office of the Cabinet, which was dated 2012 April 27.
4. Letter from Ms. K. Sewell Mills, for and on behalf of the Cabinet Secretary, Office of the Cabinet, to the Office of the Contractor General, which was dated 2012 May 3.
5. Letter from the Office of the Contractor General to Ambassador the Hon. Douglas Saunders, OJ, CD, JP, Cabinet Secretary, Office of the Cabinet, which was dated 2012 May 8.
6. Letter from Ms. K. Sewell Mills, for and on behalf of the Cabinet Secretary, Office of the Cabinet, to the Office of the Contractor General which was dated 2012 May 24.
7. Letter from the Office of the Contractor General to Ambassador the Hon. Douglas Saunders, OJ, CD, JP, Cabinet Secretary, Office of the Cabinet, which was dated 2012 May 24.
8. Letter from the Office of the Contractor General to Ambassador the Hon. Douglas Saunders, Cabinet Secretary, Office of the Cabinet, which was dated 2012 May 18.

9. Letter from Ms. K. Sewell Mills, for and on behalf of the Cabinet Secretary, Office of the Cabinet, to the Office of the Contractor General, which was dated 2012 June 1. (See OCG's Letter of Acknowledgement enclosed, which was dated 2012 June 4).
10. Letter from Ms. K. Sewell Mills, for and on behalf of the Cabinet Secretary, Office of the Cabinet, to the Office of the Contractor General, which was dated 2012 June 6.
11. Letter from the Office of the Contractor General to Ambassador the Hon. Douglas Saunders, OJ, CD, JP, Cabinet Secretary, Office of the Cabinet, which was dated 2012 June 7.
12. Letter from Ms. K. Sewell Mills, for and on behalf of the Cabinet Secretary, Office of the Cabinet, to the Office of the Contractor General, which was dated 2012 June 20.
13. Letter from the Office of the Contractor General to Ambassador the Hon. Douglas Saunders, OJ, CD, JP, Cabinet Secretary, Office of the Cabinet, which was dated 2012 June 22.
14. Letter from Ms. K. Sewell Mills, for and on behalf of the Cabinet Secretary, Office of the Cabinet, to the Office of the Contractor General, which was dated 2012 July 3.
15. Letter from the OCG to Ambassador the Hon. Douglas Saunders, Cabinet Secretary, Cabinet Office, which was dated 2012 July 2.
16. Letter from Ms. K. Sewell Mills, for and on behalf of the Cabinet Secretary, Office of the Cabinet, to the Office of the Contractor General, which was dated 2012 July 9.
17. Letter from the Office of the Contractor General to Ambassador the Hon. Douglas Saunders, Cabinet Secretary, Office of the Cabinet, which was dated 2012 July 11.
18. Letter from Ms. K. Sewell Mills, for and on behalf of the Cabinet Secretary, Office of the Cabinet, to the Office of the Contractor General, which was dated 2012 July 12.
19. Letter from the Office of the Contractor General to Ambassador the Hon. Douglas Saunders, Cabinet Secretary, Office of the Cabinet, which was dated 2012 July 26.

20. Letter from Ms. K. Sewell Mills, for and on behalf of the Cabinet Secretary, Office of the Cabinet, to the Office of the Contractor General, which was dated 2012 July 31.
21. Letter from the Office of the Contractor General to Ambassador the Hon. Douglas Saunders, Cabinet Secretary, Office of the Cabinet, which was dated 2012 August 8.
22. Letter from the Office of the Contractor General to Ambassador the Hon. Douglas Saunders, Cabinet Secretary, Office of the Cabinet, which was dated 2012 August 28.
23. Letter from Ms. K. Sewell Mills, for and on behalf of the Cabinet Secretary, Office of the Cabinet, to the Office of the Contractor General, which was dated 2012 August 31.
24. Letter from the Office of the Contractor General to Ambassador the Hon. Douglas Saunders, Cabinet Secretary, Office of the Cabinet, which was dated 2012 September 6.
25. Letter from Ms. K. Sewell Mills, for and on behalf of the Cabinet Secretary, Office of the Cabinet, to the Office of the Contractor General, which was dated 2012 September 13.
26. Letter from the Office of the Contractor General to Ambassador the Hon. Douglas Saunders, Cabinet Secretary, Office of the Cabinet, which was dated 2012 September 19.
27. Letter from the Office of the Contractor General to Mrs. Hillary Alexander, Permanent Secretary, Ministry of Science, Technology Energy and Mining, which was dated 2012 September 17.
28. Office of the Contractor General's Requisition to Mrs. Hillary Alexander, Permanent Secretary, Ministry of Science, Technology Energy and Mining, which was dated 2012 September 5.
29. Letter from Mrs. Hillary Alexander, Permanent Secretary, Ministry of Science, Technology Energy and Mining, which was dated 2012 September 11.
30. Letter from the Office of the Contractor General to Mrs. Hillary Alexander, Permanent Secretary, Ministry of Science, Technology Energy and Mining, which was dated 2012 September 14.

31. Letter from Mrs. Hillary Alexander, Permanent Secretary, Ministry of Science, Technology, Energy and Mining, to the Office of the Contractor General, which was dated 2012 October 12.
32. Letter from Mrs. Hillary Alexander, Permanent Secretary, Ministry of Science, Technology, Energy and Mining, to the Office of the Contractor General, which was dated 2012 October 17.
33. Letter from the Office of the Contractor General to Mrs. Hillary Alexander, Permanent Secretary, Ministry of Science, Technology, Energy and Mining, which was dated 2012 October 18.
34. Letter from Mrs. Hillary Alexander, Permanent Secretary, Ministry of Science, Technology, Energy and Mining, which was dated 2012 October 23.
35. Office of the Contractor General's Request for Clarification which was addressed to the Hon. Phillip Paulwell, Minister, Ministry of Science, Technology, Energy and Mining, which was dated 2012 October 16.
36. Letter from the Office of the Contractor General to the Hon. Phillip Paulwell, Minister, Ministry of Science, Technology, Energy and Mining, which was dated 2012 November 6.
37. Letter from the Hon. Phillip Paulwell, Minister, Ministry of Science, Technology, Energy and Mining, to the Office of the Contractor General, which was received on 2012 November 8 (dated 2012 November 16).
38. Letter from the Office of the Contractor General to the Hon. Phillip Paulwell, Minister, Ministry of Science, Technology, Energy and Mining, which was dated 2012 November 8.
39. Letter from the Hon. Phillip Paulwell, Minister, Ministry of Science, Technology, Energy and Mining, to the Office of the Contractor General, which was dated 2012 November 10.
40. Letter from the Office of the Contractor General to the Hon. Phillip Paulwell, Minister, Ministry of Science, Technology, Energy and Mining, which was dated 2012 November 15.
41. Legal Opinion which was received, by way of email correspondence from Mrs. Jacqueline Samuels-Brown, QC, Attorney-at-Law, which was dated 2012 November 16.

42. Letter from the Office of the Contractor General to Ambassador the Hon. Douglas Saunders, Cabinet Secretary, Office of the Cabinet, which was dated 2012 November 19.
43. Letter from the Learned Attorney General, the Hon. Patrick Atkinson, QC, which was addressed to the former Contractor General, Mr. Greg Christie, which was dated 2012 November 20.
44. Letter from Mrs. Jacqueline Samuels-Brown, QC, Attorney-at-Law, to the Learned Attorney General, the Hon. Patrick Atkinson, which was dated 2012 November 21.
45. Response to the Office of the Contractor General's Requisition of 2012 October 16, from the Hon. Phillip Paulwell, Minister, Ministry of Science, Technology, Energy and Mining, which was dated 2012 November 20.
46. Response to the Office of the Contractor General's Requisitions of 2012 September 5 and 17, from Mrs. Hillary Alexander, Permanent Secretary, Ministry of Science, Technology, Energy and Mining, which was dated 2012 November 27.
47. Letter from the Office of the Contractor General to the Hon. Phillip Paulwell, Minister, Ministry of Science, Technology, Energy and Mining, which was dated 2012 November 28.
48. Letter from the Office of the Contractor General to Ambassador the Hon. Douglas Saunders, Cabinet Secretary, Office of the Cabinet, which was dated 2012 November 29.
49. Letter from Ms. K. Sewell Mills, for and on behalf of the Cabinet Secretary, Cabinet Office, to the OCG, which was dated 2012 November 26.
50. Letter from the Office of the Contractor General to the Most Honourable Portia Simpson Miller, Prime Minister of Jamaica, which was dated 2012 December 3.
51. Letter from Ambassador the Hon. Douglas Saunders, Cabinet Secretary, Office of the Cabinet, to the OCG, which was dated 2012 December 10.



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

No. :

TELEPHONE No.: 876-929-8560/6466

FAX No. : 876-929-2476

E-mail: general@ocg.gov.jm

OFFICE OF THE CONTRACTOR-GENERAL

PIOJ Building

16 Oxford Road

P.O. BOX 540

KINGSTON 5

JAMAICA, W.I.

URGENT & IMMEDIATE

COPY

April 25, 2012

Ambassador the Hon. Douglas Saunders, OJ, CD, JP
Cabinet Secretary
Office of the Cabinet
1 Devon Road
Kingston 10

Dear Cabinet Secretary:

Re: Cabinet Submissions and Decisions – Approval for the continuation of the North South Link of Highway 2000, Gordon Cay Container Transshipment Hub, the Fort Augusta Container Terminal and the establishment of an Oversight Panel to oversee the award of Government contracts

We write with reference to certain information which has been placed in the public domain, which has inferred that the Cabinet of Jamaica has approved the continuation of the captioned projects and, has established an Oversight Panel to *"...expand the framework for monitoring the award of contracts."*

Having regard to the foregoing, the OCG is seeking to clarify certain assertions which have alluded to, *inter alia*, the existence, consideration and granting of Cabinet Submissions, Decisions and Recommendations.

In the premises, the OCG will require your assistance and full cooperation as it seeks to be fully and formally advised of the aforementioned matter. It is very important that your attention is formally directed to the following provisions of the Contractor General Act. It is very important that your attention is formally directed to the following provisions of the Contractor General Act:

- (1) Sections 4 (1) (a) (i) and (ii) which mandates the Contractor General, "... on behalf of Parliament- to monitor the award and the implementation of Government contracts with a view to ensuring that such contracts are awarded impartially and on merit (and that) the circumstances in which each contract is awarded ... do not involve impropriety or irregularity ...".
- (2) Section 4 (1) (b) which mandates the Contractor General, "... on behalf of Parliament- to



a Contractor-General shall not be subject to the direction or control of any other person or authority”.

- (10)Section 17 (1) which prescribes the power of a Contractor General “to adopt whatever procedure he considers appropriate to the circumstances of a particular case and, subject to the provisions of (the) Act, to obtain information from such person and in such manner and make such enquiries as he thinks fit”.
- (11)Section 17 (2) which provides that “Nothing in this Act shall be construed as requiring a Contractor General to hold any hearing and, no person shall be entitled as of right to comment on any allegations or to be heard by a Contractor General”.
- (12)Section 18 (1) which prescribes the power of a Contractor General, “at any time, (to) require any officer or member of a public body or any other person who, in his opinion, is able to give any assistance in relation to the investigation of any matter pursuant to this Act, to furnish such information and produce any document or thing in connection with such matter as may be in his possession or under the control of that officer, member or other person”.
- (13)Section 18 (2) which prescribes the power of a Contractor General “to summon before him and examine on oath any person who has made representations to him or any officer, member or employee of a public body or any other person who, in the opinion of the Contractor General, is able to furnish information relating to the investigation – and such examination shall be deemed to be a judicial proceeding within the meaning of Section 4 of the Perjury Act”.
- (14)Section 18 (3) which provides that “For the purposes of an investigation under this Act, a Contractor General shall have the same powers as a Judge of the Supreme Court in respect of the attendance and examination of witnesses and the production of documents”.
- (15)Section 18 (4) which provides that “Any obligation to maintain secrecy or any restriction on the disclosure of information or the production of any document or paper or thing imposed on any person under the Official Secrets Act, 1911 to 1939 of the UK (or of any Act of Parliament of Jamaica replacing the same in its application to Jamaica) or, subject to the provisions of this Act, by any law (including a rule of law) shall not apply in relation to the disclosure of information or the production of any document or thing by that person to a Contractor General for the purpose of an investigation ...”.
- (16)Section 18 (5) which provides that “No person shall, for the purpose of an investigation, be compelled to give any evidence or produce any document or thing which he could not be compelled to give or produce in proceedings in any court of law.”
- (17)Section 22 which provides that, “The proceedings of a Contractor-General shall not be rendered void for want of form”.



- (f) Any document which is supplied by you in support of a response must be properly labeled, numbered and marked to identify what it is and the requisition or question to which it relates.
- (g) Should you mislead, resist, obstruct or hinder a Contractor General in the execution of his functions or fail to provide a complete, accurate and truthful response to any of the requisitions or questions which are set out below, you will become liable, *inter alia*, to criminal prosecution under Section 29 of the Contractor General Act.

REQUISITIONS / QUESTIONS

1. Please provide a copy of all Cabinet Submissions, Decisions and Recommendations, if any, regarding the following projects:
 - (i) The North South Link of Highway 2000;
 - (ii) The Gordon Cay Container Shipment Hub; and
 - (iii) Fort Augusta Container Terminal.
2. Please provide a copy of all Cabinet Submissions, Decisions and Recommendations, if any, regarding the establishment of the referenced Oversight Panel which has been purportedly established by the current Administration. In addition, please provide a copy of any supporting documentation, inclusive of the Terms of Reference and all related correspondence.
3. Are you aware of any additional information which you believe could prove useful to the OCG's Enquiries or requisitions which have been made of you regarding the captioned matter or is there any further statement in regard to same which you are desirous of placing on record? If yes, please provide full particulars of same.

We would like to thank you in advance for your full and anticipated cooperation in this endeavour.

Should you have any questions, please do not hesitate to contact me.

Yours sincerely,

Craig Beresford
Senior Director of Monitoring Operations,
Corporate Communications and Special Projects
for and on behalf of the Contractor General

Enclosure – Form of Declarations No. 1
Form of Declaration No. 2



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

REF. No.:11-03

TELEPHONE No. : 929-8560/6466

FAX No. : 929-7335

E-Mail: general@ocg.gov.jm

OFFICE OF THE CONTRACTOR-GENERAL

PIOJ Building

16 Oxford Road

P.O. Box 540

KINGSTON 5

JAMAICA, W.I.

Form of Declaration

The Voluntary Declaration Act: Section 7: Declaration to be in form in Schedule:

I, John Brown, do solemnly and sincerely declare as follows:

1. That I am [number] years of age and I reside and have my true place of abode at [address] in the parish of
2. That I have answered the questions posed and fulfilled the requisitions made to me in a letter from the Contractor-General dated April 25, 2012, completely, accurately and truthfully, knowing that if it is tendered in evidence I shall be liable to prosecution if I have willfully stated in it anything, which I know to be false or do not believe to be true.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Voluntary Declarations Act.

TAKEN and ACKNOWLEDGED)
by the said JOHN BROWN at [address])
in the parish of)
on this day of 2012)
in the presence of:)

JOHN BROWN

JUSTICE OF THE PEACE

For the parish of:-

TRANSACTION REPORT

APR-25-2012 WED 10:59 AM

FOR: 9292476

OCG

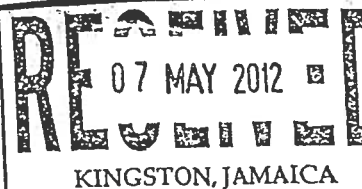
SEND

DATE	START	RECEIVER	TX TIME	PAGES	NOTE
APR-25	10:56 AM	9298459	2' 30"	6	OK

Kadian Jones

From: Cheryl Gibson [cheryl.gibson@japarliament.gov.jm]
Sent: Monday, May 07, 2012 06:27 PM
To: Kadian Jones
Subject: RE: Copy of Hansards
Attachments: Hansard April 24, 2012 (statement made by Minister Davies).pdf

CONTRACTOR GENERAL



The Hansard you requested is attached. I understand that you received the Hansard of the PAAC already. Please confirm.

From: Kadian Jones [mailto:kjones@ocg.gov.jm]
Sent: Thursday, April 26, 2012 12:25 PM
To: Cheryl Gibson
Cc: atalbot@ocg.gov.jm
Subject: Copy of Hansards

Good afternoon Ms. Gibson,

I am requesting a copy of the Hansards for the following meetings, held on Tuesday, April 24th:

- PAC Meeting regarding discussions on Bellevue Hospital's Security contract; and
- Meeting of the House of Representatives regarding discussions with Dr. Omar Davies on three projects to be executed namely, Container Terminal, North/South link of Highway 2000 and Renovation of Birth at Port Authority of Jamaica

Your kind and usual assistance is anticipated.

Very best regards,

Kadian Jones
Administrative Assistant (Actg.) to the Contractor-General

Confidential, Privileged, Proprietary and/or Sensitive Information

This e-mail message and any document which is attached to it are intended solely for the use of the person or persons to whom the message is addressed. If you have received this message in error, you are hereby advised that any further dissemination, distribution, publication and/or copying of same is prohibited. If you believe that you have received this e-mail in error, please contact the sender by telephone and delete the message and its attachments from your system immediately. Also note that we cannot guarantee that this message and its attachments, if any, are virus free or have been intercepted or amended.

THANK YOU FOR YOUR CO-OPERATION.

Office of the Contractor-General of Jamaica
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16 Oxford Road
P.O. Box 540, Kingston 5.
JAMAICA W.I.
Telephone #: 876-929-6460, 876-929-6466,
876-929-7535, 876-929-7536
Fax #: 876-929-7335
www.ocg.gov.jm

Bar C. Chinn, Sr.
9-50 AM
Wm B.

THE HONOURABLE HOUSE OF REPRESENTATIVES

RESUMPTION

The SPEAKER: You may be seated. This Honourable House now resumes its sitting.

CALL OF THE ROLL
(As Listed)

The SPEAKER: Let me ask you to join with me in welcoming students from the St. Francis Primary School 40 of them and the Browns Town Community College, 41 of them. (Applause)

I have some sad news on the passing of Mr. Leofryd Aldred. He was the first Marshall to the House of Representatives and he served from 1944 until he resigned in 1953. He died on Wednesday of last week. Service will be held at the Up Park Camp Chapel.

Could we stand for a moment's silence.

(Moment's silence observed.)

Members, on the adjournment of our sitting last Tuesday, the media carried some unfortunate parts of the final motion on the adjournment. I think in the way we have been operating since the new session of Parliament I don't want us to get off track. Some of the things were carried in the media, I don't think we could just continue in this vein. So I am going to ask Mr. McKenzie if he could just retract some of what we saw.

Mr. McKENZIE: Mr. Speaker, It was never intended to demonstrate any level of disrespect to the chair. And the comments which were carried in the media I would like to take this opportunity to withdraw those comments

and to extend my apologies to the Acting Speaker and to the House in general.

(HON. ANTHONY GEORGE HYLTON, (PNP), St. Andrew, Western, Minister of Industry, Investment and Commerce Hylton, entered and took his seat.)

(MR. EDMUND CURTIS BARTLETT, (JLP), St. James, East Central, entered and took his seat.)

The SPEAKER: Thank you, Mr. McKenzie. In truth and in fact I think the media misconstrued your intention. And I thank you for your withdrawal and your apology.

STATEMENTS BY MINISTERS

Mr. PAULWELL: Mr. Speaker, this afternoon we have two Statements by Ministers. The first one will be done by the Minister of Transport, Works and Housing and the other Statement will be done by the Minister for Agriculture.

The SPEAKER: Minister Davies.

Dr. DAVIES: Thank you very much, Mr. Speaker.

Mr. Speaker, I take this opportunity to provide an update on three major infrastructure projects which this administration believes to be critical for the country's future development.

(MISS OLIVIA ATAVIA GRANGE, (JLP), St. Catherine, Central, entered and took her seat.)

THE HONOURABLE HOUSE OF REPRESENTATIVES

They are the north/south link of Highway 2000, the Gordon Cay Container transshipment hub and the Fort Agusta Container terminal.

Mr. Speaker, when I assumed office as Minister of Transport Works and Housing I realised that significant work had been done to advance the projects. Consequently I advised Cabinet that in the interest of the country this administration should take all the necessary steps towards implementing these projects.

At the sitting of the Public Administration and Appropriations Committee last week I was heartened by the support given by members from both sides of the House for one of these projects and recommendation that the government should proceed with implementation. Mr. Speaker, I should also indicate that very soon after assuming office I was visited by the Member of Parliament for West Portland who briefed me in his own peculiar style on the projects and I suggested that full attention be paid to them.

Mr. Speaker, it is no secret that the country faces fiscal constraints over the medium term. Consequently, unless we are willing to continue with a long period of economic stagnation, we have no option but to attempt to maximize the level of private investment. Against that background these three projects which I am about to discuss, are considered to be of strategic importance to the development of the Jamaican economy, particularly after the opening of the widening of the Panama Canal in 2014.

The three projects which I am about to describe are expected to: One, capitalise on Jamaica's strategic position with respect to the international shipping links; two, leverage the benefit of our natural harbour and advance port development; three, enhance internal road linkages while opening up new areas for further development; four, generate employment in the maritime and transport sectors; and five, expand the country's overall economic base.

After due consideration of the enormous potential impact of the projects on the economy, Cabinet took the decision to advance the project in a manner consistent with good governance and transparency.

Mr. Speaker, I will take some time to outline: One, the details of the three projects; two, the concerns expressed by the Office of Contractor General; and three, the additional measures which will be taken to address the matter as received.

Mr. Speaker, the Ministry of Transport, Works and Housing through its agencies the Port Authority of Jamaica, the National Road Operating and Construction Company, more commonly called NROCC, received unsolicited proposals from companies to execute the three infrastructure projects to which I have made reference. I repeat, the north/south link of Highway 2000, the south terminal of the Gordon Cay Container Transshipment hub, and the Fort Agusta Container Terminal.

Mr. Speaker, let me summarise, highlight the three projects. As regards the north/south link of Highway 2000,

THE HONOURABLE HOUSE OF REPRESENTATIVES

on February 14, 2011 the then Cabinet which - through Decision No. 6/11 ratified an MOU with China Harbour for the construction of the north/south link of Highway 2000, inclusive of the completion of the Mount Rosser Bypass.

The construction of the North/South link of Highway 2000, Spanish Town to Ocho Rios, will be divided into three sections: first, the Spanish Town to Linstead Bypass, section one; section 2, the Mount Rosser Bypass - this is money; and three, Linstead to Moneague, section 3, Moneague to Ocho Rios.

(MR. KEITH ANTHONY WALFORD, (PNP), St. Ann, South Western, entered and took his seat.)

(DR. ANDREW O'BRIEN WHEATLEY, (JLP), St. Catherine, South Central, entered and took his seat.)

Mr. Speaker, it is well known that the completion of the Mount Rosser Bypass has been delayed for various technical reasons, thus undermining the value of the investment made to date and amount in excess of US\$125 million. Mr. Speaker, Cabinet further, by way of Decision No. 42/11 dated November 7, 2011, after noting the terms and conditions of framework agreement between NROCC and China Harbour which was signed on May 27, 2011, approved the signing of the implementation agreement between the Government of Jamaica, NROCC, China Harbour and the Jamaica North/South Highway Company Limited for the implementation of the toll road.

(MR. RUDYARD CONRAD SPENCER, (JLP), Clarendon, South Eastern, entered and took his seat.)

A draft concession agreement has been prepared which will give effect to the implementation of the project, but the negotiations were suspended by NROCC in light of the concerns raised by the Office of the Contractor General concerning what by institution considered as a lack of competitiveness in the process.

Mr. Speaker, the Cabinet of this administration on April 23, that's yesterday, considered the issues raised and made a determination to proceed with the conclusion of the negotiation and move forward with the implementation of project.

Mr. Speaker, it is estimated that total investment for this project will be in excess of US\$600 million with no financial contribution required of the Government of Jamaica. (Applause)

THE HONOURABLE HOUSE OF REPRESENTATIVES

Dr. DAVIES: The second project, Mr. Speaker, the South Terminal Gordon Cay Container Trans-shipment Hub, Mr. Speaker, the CMA/CGM group of France, the world's third largest shipping conglomerate engaged the PAJ on the matter of its interest in the development of a container transshipment facility at the Port of Kingston. Subsequently on August 15, 2011, by way of decision number 31/11 Cabinet gave approval for the execution of a non-binding MOU between the Port Authority and CMA/CGM.

The MOU was developed to facilitate the undertaking of studies to access the feasibility and viability of a proposal from CMA/CGM to develop *inter alia* new berthing capacity at the Port of Kingston to be used as that company's hemispheric hub, either by substantially renovating an existing section of Gordon Cay and/or by building additional berthing capacity adjacent to Gordon Cay with specifications to accommodate large super host Panamax vessels and related facilities for the transshipment of cargo.

I pause, Mr. Speaker, to indicate that the widening of the Panama Canal is going to totally transform shipping in the Caribbean and on the eastern sea board of North America primarily because the vessels which can now - which will be able after 2014 to pass through the Panama Canal are perhaps three times the size of the present maximum capacity, and this will totally revolutionize the matter of transshipment; and this is one of the factors here, Mr. Speaker. (Applause)

At the end of the feasibility study to be carried out by the French firm a

final proposal will be presented including a least agreement and/or any agreements as necessary to implement the project. Under the terms of the MOU, an extension has been given to June 13, 2012 for the completion of their studies after which the Government of Jamaica has up until October 31, 2012 to decide on whether to proceed with a contract for the implementation of the project.

Mr. Speaker, the feasibility studies are being undertaken at no cost to the Government of Jamaica, and they do not represent any legal commitment on the part of the GOJ or its functionaries to award a contract to CMA/CGM when the MOU expires.

Now to the third project, Mr. Speaker, the Fort Augusta Container Terminal. The Port Authority received a proposal from China Harbour on July 15, 2011, expressing an interest in providing private investment to develop a new container terminal on lands already owned by the Port Authority as well on lands to be created by dredging at Fort Augusta. After consideration of the proposal, the then Cabinet give approval for the Port Authority to proceed with the implementation of a non-binding MOU with China Harbour for the development of a container terminal at Fort Augusta included the associated development of lands at Caymanas.

As in the case of the MOU with CMA/CGM, this MOU does not represent a commitment by the GOJ to enter into a contractual arrangement with China Harbour, but rather it allows for the assessment of the feasibility and

THE HONOURABLE HOUSE OF REPRESENTATIVES

viability of the proposed project, including the finalization of the scope of works and investment value, risk assessment and obligation on the part of the various parties involved.

Mr. Speaker, let me say something about the strategic investment window, because the time is now, the opportunity is now. (Applause) Cabinet's approval for the continuation of the processes for the assessment and the negotiation of the various proposals was sought on the basis of the likely positive impact these strategic investments will have on the transportation and infrastructure network, the port and trade related activities as well as on the overall economic development of the country. (Applause)

The method by which these proposals were engaged was guided by a number of factors. Mr. Speaker, these investments have been proposed within a strategic investment window, a time when there is increased need to strengthen the road infrastructure to spur national development; a time when there is limited ability for the GOJ to incur additional debt, even for productive investments; a time when the shipping business is increasingly competitive as ports the world over try to position themselves to reap the potential benefits of an expanded Panama Canal in 2014. (Applause)

Additionally, there was a significant risk that if the private intentions of these investors were subject to open competitive tender, the investments would have been lost to rival destinations which are clamoring

for similar capital investment especially in port development. Simply put, as the investors would have felt that their intellectual property, and plans were not being protected having revealed them to the Government of Jamaica.

Similarly the risk of losing the investment coupled with the need to ensure that works commenced in time to meet the completion of the expanded Panama Canal in 2014 were factors that were considered in deciding - in the Cabinet's decision to approve the implementation of the project on a timely basis.

Mr. Speaker, Parliament should note that these projects already fall within the specific developmental plans of the relevant agencies and fit within the strategic vision for Jamaica as articulated by the Vision 2030, National Development Plan.

The Parliament should note as well that the ministry and its entities are mindful of the position of the Office of the Contractor General with the regard to the need to subject unsolicited proposals to open competitive tender. It is for this reason that the assessment of the National Contracts Commission, (NCC) was sought and no objection was received for each of the three proposals. I repeat, Mr. Speaker, we took the proposals and we sent the officials before the National Contracts Commission, and they assessed the proposals. And let me quote, "In the Commission's opinion, these proposals are not procurement matters, as defined by the GOJ procurement handbook. Furthermore, the NCC recommended that the merits of the proposals be

THE HONOURABLE HOUSE OF REPRESENTATIVES

discussed with the Ministry of Finance and Planning for guidance before submission to Cabinet. (Applause)

Now let me speak to Cabinet's approval, Mr. Speaker, to take another step. The Office of the Contractor General has consistently raised issues with and has objected to the method of procurement being utilized for the proposed projects. The OCG expressed that it was not in agreement with the direct negotiations taking place with the relevant parties which could lead to the engagement of the said parties through contractual arrangements. Mr. Speaker, let me outline some of the particular concerns raised by the OCG with respect to these unsolicited proposals.

First, that the proposed developments are not open to competitive tender. And second, there is a risk of not being able to determine or achieve value for money when there is no competitive process, in particular, where the projects are large and involve substantial capital commitments. Those were the two main objections raised. What is of interest, Mr. Speaker, is that, in all three cases there is nothing which the Government of Jamaica, in terms of financial contribution, is being asked to put up.

(Mr. Anthony George Hylton St Andrew Western entered and took his seat)

Mr. Speaker, it is to be noted that the GOJ Procurement Handbook, issued in 2010, Volume II, Section 1, and it speaks of unsolicited proposal. The handbook provides for engaging prospective investors through the direct

negotiation process, once an initial determination of the merit of the proposal has been undertaken. In all three instances this was done and Cabinet's approval was received for engaging the parties through MOUs and other instruments to undertake more detailed feasibilities and investment obligations.

~~In light of these concerns and out of an abundance of caution I took a decision to not only subject these projects to the existing approval processes, but to expand the monitoring framework by establishing what we will call an independent oversight panel comprising of persons whose professional integrity, expertise and commitment to Jamaica are beyond question.~~

Mr. Speaker, I have great pleasure in announcing that the following three persons have agreed to be members of this tripartite panel. The Honourable Professor Gordon Shirley, OJ, Principal and Pro Vice Chancellor of the UWI Mona Campus. He will share this panel; the Honourable R. Danny Williams, OJ and Mr. Everton McDonald retired territorial senior partner from Price Water House Coopers. (Applause) These three gentlemen have agreed to form an independent oversight panel.

(Mr. Derrick Kellier, St. James Southern entered and took his seat)

Cabinet has approved the establishment of the above-mentioned ~~panel which will provide the necessary oversight of these three unsolicited proposals to ensure value for money,~~

THE HONOURABLE HOUSE OF REPRESENTATIVES

transparency and accountability, effective monitoring and controls while providing project evaluation and technical advice. The independent oversight panel will also ensure that the methodologies provided for in the Government of Jamaica procurement procedures are upheld in the implementation and management of the projects.

(Mr. Andrew Holness St. Andrew West Central entered and took his seat)

Mr. Speaker, in reporting to me it is expected that the independent oversight panel will, along side the respective established authorities strengthen the oversight capacity and capabilities of the ministry and its agencies in the implementation of large scale infrastructural development projects. The panel will consult with the Development Bank of Jamaica, the Ministry of Finance and Planning and any other stakeholders on critical matters, but it is decidedly independent to facilitate greater levels of transparency.

(Ms. Joyce Denise Daley St. Catherine Eastern entered and took her seat)

The Parliament will receive regular updates on the activities of the panel and on the projects which it will monitor and evaluate during the course of its life.

(Ms. Lisa Hanna St. Ann South Eastern entered and took her seat)

Briefly, Mr. Speaker, and I can make available to Members of this

Honourable House a copy of the full terms of reference of the panel. In general, amongst inter alia the panel will review the proposals, documentations and plans relative to these projects. Review the financial and technical capabilities and project execution experience of the companies to satisfy Parliament that they have the capacity to undertake the projects in the manner envisaged.

(Dr. Fenton Ferguson St. Thomas Eastern entered and took his seat)

Three, ensure that there has been no gift or other improper or in appropriate benefit to any Jamaican public official aimed at encouraging the GOJ or any of its entities to proceed to contract with either or both of the project companies.

Four, ensure that the proposed financing arrangements for the projects represent competitive market pricing to the extent that the financing cost, directly or indirectly impact on the GOJs economic returns from the projects.

THE HONOURABLE HOUSE OF REPRESENTATIVES

Dr. DAVIES:

5. The panel will use their best commercial judgement to make recommendations and provide guidance to the negotiating teams of the Government of Jamaica entities, and assist them to achieve the optimal value from the projects that is practically available, given the prevailing circumstances.

Dr. Kenneth Leigh O'Neil Baugh, (JLP), St. Catherine, West Central, entered and took his seat.

And finally, the panel will brief the Minister and make recommendations on whether or not the GOJ should enter into binding agreements with the companies or their nominated contracted vehicles on the terms and conditions which have been negotiated.

Mr. Speaker, I have deliberately provided detailed discussion of the projects and the steps which we have taken to ensure transparency and accountability.

And so, let me close by reiterating my commitment to this Honourable House and to the nation, that during this Administration, every effort will be made to ensure that there is greater accountability and transparency in the implementation of projects undertaken by my Ministry. I further

~~pledge that all decisions taken will be in the best interest of the nation.~~

At the same time, Mr. Speaker, even as we commit ourselves to greater accountability and transparency, we cannot afford for the rare opportunities presented by these projects to be lost, or for the country's progress to be crippled by bureaucratic obstacles.

I thank you. (Applause)

The SPEAKER: Mr. Samuda.

Mr. SAMUDA: Mr. Speaker, I think it is without question, a set of proposals — plans and proposals that deserve support.

GOVERNMENT MEMBERS:

Hear! Hear!

(Government Members applaud)

Mr. SAMUDA: And I am not going to attempt at all to rain on the parade of the Minister, by reminding him...(Laughter)...what is the origin of these projects. (Laughter/Applause)

Dr. DAVIES: Did you listen to my opening paragraph?

Mr. SAMUDA: I know. And we have had private discussions, and he is fully appreciative of the tremendous work done by the previous Administration. (Laughter)
(Opposition Members applaud)

Mr. CHARLES: Clap! Clap!

Mr. SAMUDA: So, as you will appreciate, Mr. Speaker...(Heckling)...



CABINET OFFICE

1 DEVON ROAD,
P.O. BOX 272
KINGSTON 6, JAMAICA

NO. CS4/2012- 14

The Contactor General
Office of the Contractor-General
PIOJ Building
16 Oxford Road,
Kingston 5

ATTN: Mr Craig Beresford

Dear Contractor General,

RE: Cabinet Submissions and Decisions – Approval for the Continuation of the North South Link of Highway 2000, Gordon Cay Container Transhipment Hub, the Fort Augusta Container Terminal and the Establishment of an Oversight Panel to Oversee the Award of Government Contracts

184 Reference is made to your letter dated 25th April 2012 concerning the matter at caption.

As you are aware, the release of Cabinet documents requires the approval of the Cabinet. However, the time-line indicated in your letter under reference does not provide this office with sufficient time within which to seek the Cabinet's approval for the release of the documents requested.

Accordingly, request is hereby made for an extension to 10th May 2012, and we should be grateful for your kind approval.

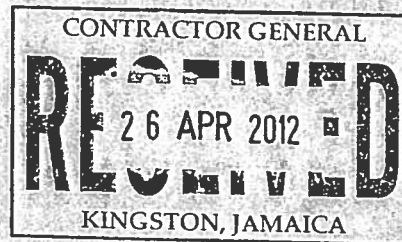
Yours sincerely,

K. Sewell Mills (Ms)

for: Cabinet Secretary

(185)

25th April 2012



Rem.
4-26-12
24/4/12



Exhibit 3

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

REF. No.:

TELEPHONE No. : 929-8560/6466

FAX No. : 929-7335

E-Mail: sgcrg@ocg.gov.jm

OFFICE OF THE CONTRACTOR-GENERAL

PIOJ BUILDING, 16 OXFORD ROAD

P.O. Box 540

KINGSTON 5

JAMAICA, W.I.

April 27, 2012

Ambassador Douglas Saunders
Cabinet Secretary
Office of the Cabinet
1 Devon Road
Kingston 6

Dear Cabinet Secretary:

Re: Cabinet Submission and Decision – Approval for the Continuation of the North South Link of Highway 2000, Gordon Cay Container Transshipment Hub, the Fort Augusta Container Terminal and the Establishment of an Oversight Panel to Oversee the Award of Government Contracts

The Office of the Contractor General (OCG) writes to acknowledge receipt of your letter dated April 25, 2012, requesting an extension of the deadline for the Office of the Cabinet response to the requisition of the OCG.

The OCG has considered your request and having taken account of all relevant factors, hereby grants an extension to the deadlines April 26, 2012, previously stated in its letter of April 25, 2012, to Thursday, May 10, 2012.

Sincerely,

Craig Beresford
Senior Director of Monitoring Operations,
Corporate Communications and Special Projects
for and on behalf of the Contractor General



Exhibit 4

CABINET OFFICE

1 DEVON ROAD,

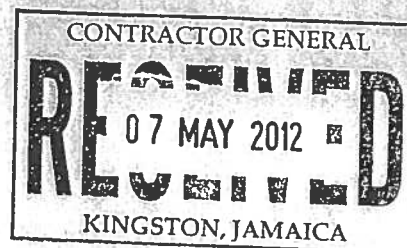
P.O. BOX 272

KINGSTON 6, JAMAICA

NO. CS5/2012- 01

3rd May 2012

The Contactor General
Office of the Contractor-General
PIOJ Building
16 Oxford Road,
Kingston 5



ATTN: Mr Craig Beresford

Dear Contractor General,

RE: Cabinet Submissions and Decisions – Approval for the Continuation of the North South Link of Highway 2000, Gordon Cay Container Transshipment Hub, the Fort Augusta Container Terminal and the Establishment of an Oversight Panel to Oversee the Award of Government Contracts

Reference is made to correspondence ending with your letter dated 27th April 2012, concerning the matter at caption. Your agreement to the extension requested is appreciated.

Please be advised however, that the matter was discussed at the Cabinet meeting held on 30th April 2012 and the request to release the relevant Cabinet documents was deferred pending the advice of the Attorney General.

In the circumstances, it is unlikely that the extended deadline of 10th May can be met. Accordingly, request is hereby made for a further extension to 24th May 2012, and we should be grateful for your kind approval.

Yours sincerely,

K. Sewell Mills (Ms)

for: Cabinet Secretary

(187)

12:5



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

OFFICE OF THE CONTRACTOR-GENERAL

PIOJ Building

16 Oxford Road

P.O. Box 540

KINGSTON 5

JAMAICA, W.I.

COPY

No. :

TELEPHONE No.: 876-929-8560/6466

FAX No. : 876-929-2476

E-mail: mbarrett@ocg.gov.jm

May 8, 2012

Ambassador Douglas Saunders, O.J., C.D., J.P.
Cabinet Secretary
Office of the Cabinet
1 Devon Road
Kingston 6

Dear Cabinet Secretary:

Re: Cabinet Submissions and Decisions – Approval for the Continuation of the North South Link of Highway 2000, Gordon Cay Container Transshipment Hub, the Fort Augusta Container Terminal and the Establishment of an Oversight Panel to oversee the Award of Government Contracts

We write to acknowledge receipt of a letter which was dated May 3, 2012, regarding the captioned matter. The referenced letter, which was signed by a Ms. K. Sewell Mills, for the Cabinet Secretary, was received in our office on Monday, May 7, 2012, at approximately 1:00 p.m., and requested an extension of the deadline for your response to the Requisition of the Office of the Contractor General (OCG), which was dated April 25, 2012.

The OCG has considered the request and, having taken account of all relevant factors, inclusive of the advice of the Attorney General which is being awaited by the Cabinet, hereby grants an extension to the May 10, 2012 deadline previously stated in its letter of April 27, 2012, to **Thursday, May 24, 2012 by 3:00 pm.**

Without prejudice to the foregoing, the OCG must take the opportunity to respectfully remind you of the very specific and unequivocal provisions of Sections 19(1) and 19(2) of the Contractor General Act, which outline, *inter alia*, the lawful rights, responsibilities and obligations of the Cabinet as it regards the provision of documentation to the OCG.

Should you require any further clarification, please contact the undersigned.

Yours sincerely,

Maurice Barrett
Chief Investigator
for and on behalf of the Contractor General

Exhibit 6



CABINET OFFICE

1 DEVON ROAD,
P.O. BOX 272
KINGSTON 6, JAMAICA

NO. CS5/2012- 07

24th May 2012

The Contactor General
Office of the Contractor-General
PIOJ Building
16 Oxford Road,
Kingston 5

ATTN: Mr Craig Beresford

Dear Contractor General,

RE: Cabinet Submissions and Decisions – Approval for the Continuation of the North South Link of Highway 2000, Gordon Cay Container Transshipment Hub, the Fort Augusta Container Terminal and the Establishment of an Oversight Panel to Oversee the Award of Government Contracts

Reference is made to correspondence ending with your letter dated 8th May 2012, concerning the matter at caption. Your agreement to the extension of time requested is greatly appreciated.

In our letter to you dated 3rd May 2012, we advised that the matter was discussed at the Cabinet meeting held on 30th April 2012 and the request to release the relevant Cabinet documents was deferred pending the advice of the Attorney General. Unfortunately, the Cabinet has not yet received the advice of the Attorney General.

In the circumstances, we are unable to meet today's deadline and respectfully request a further extension to 7th June 2012.

Yours sincerely,



K. Sewell Mills (Ms)

for: Cabinet Secretary

SD/KB/CL/K
24/5/12
4:15pm

(P)
(1)



(194) (96)

C-E 3:27



OFFICE OF THE CONTRACTOR-GENERAL

PIOJ BUILDING, 16 OXFORD ROAD

P.O. Box 540

KINGSTON 5

JAMAICA, W.I.

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

REF No:

TELEPHONE No.: 929-8500/6466

FAX No.: 929-7335

E-Mail: gcg@jagov.jm

May 24, 2012

Ambassador Douglas Saunders
Cabinet Secretary
Cabinet Office
1 Devon Road
Kingston 6

Dear Cabinet Secretary:

Re: Cabinet Submission and Decision –Approval for the Continuation of the North South Link of Highway 2000, Gordon Cay Container Transshipment Hub, the Fort Augusta Container Terminal and the Establishment of an Oversight Panel to Oversee the Award of Government Contracts

The Office of the Contractor General (OCG) writes to acknowledge receipt of your letter dated May 24, 2012, requesting an extension of the deadline for the Cabinet's Office response to the requisition of the OCG.

The OCG has considered your request and having taken account of all relevant factors, hereby grants an extension to the deadlines May 24, 2012, previously stated in its letter of May 8, 2012, to **Friday, June 7, 2012.**

Sincerely,

Craig Beresford
Senior Director of Monitoring Operations,
Corporate Communications and Special Projects
for and on behalf of the Contractor General



Exhibit 8

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

REF. No.:

TELEPHONE No. : 929-8560/6466

FAX No. : 929-7335

E-Mail: general@ocg.gov.jm

OFFICE OF THE CONTRACTOR-GENERAL

PIOJ BUILDING, 16 OXFORD ROAD

P.O. Box 540

KINGSTON 5

JAMAICA, W.I.

May 18, 2012

Amb. the Hon. Douglas Saunders, OJ, CD, JP
Cabinet Secretary
Office of the Cabinet
1 Devon Road
Kingston 6

Dear Cabinet Secretary:

Re: Cabinet Submission and Decision – Memorandum of Understanding between the Port Authority of Jamaica and the China Harbour Engineering Co. Ltd for the development of a Container Terminal at Fort Augusta

The Office of the Contractor General (OCG) makes reference to the matter at caption.

Further to same, the OCG, acting on behalf of the Contractor General, and in accordance with Section 4 of the Contractor General Act, is requesting that you provide a copy of all Cabinet Submissions and related Cabinet Decisions, regarding the matter at caption.

Please forward the requisite documentation to this Office by Thursday, May 31, 2012.

The OCG anticipates your usual prompt and cordial response to this matter and thanks you in advance for your cooperation.

Sincerely,

Craig Beresford
Senior Director, Monitoring Operations,
Corporate Communications and Special Projects
for and on behalf of the Contractor General



Exhibit 9

CABINET OFFICE

1 DEVON ROAD,
P.O. BOX 272
KINGSTON 6, JAMAICA

NO. CS6/2012- 01

1st June 2012

The Contactor General
Office of the Contractor-General
PIOJ Building
16 Oxford Road,
Kingston 5



ATTN: Mr Craig Beresford

Dear Contractor General,

RE: Cabinet Submission and Decision – Memorandum of Understanding (MOU) between the Port Authority of Jamaica and the China Harbour Engineering Co. Ltd. for the development of a Container Terminal at Fort Augusta

Reference is made to your letter dated 18th May 2012 and subsequent telephone discussion (Sewell Mills/Beresford) concerning the matter at caption.

In your letter addressed to the Cabinet Secretary dated 25th April 2012 you requested copies of all Submissions and Decisions regarding three (3) projects including the aforementioned Fort Augusta Container Terminal. In response to that request, we indicated that this office was awaiting the approval of the Cabinet and that consideration of the matter was deferred pending receipt of the opinion of the Attorney General.

It is our view that the Submission and Decision relating to the MOU are included in the initial request from your office and consequently, the extended deadline of 7th June 2012 for submission of the said documents would also apply in the instant case.

Yours sincerely,

K. Sewell Mills (Ms)
for: Cabinet Secretary

SS/MB/62

See 4/20/10-52



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

No. :

TELEPHONE No.: 876-929-8560/6466

FAX No. : 876-929-2476

E-mail: mbarrett@ocg.gov.jm

OFFICE OF THE CONTRACTOR-GENERAL

PIOJ Building

16 Oxford Road

P.O. BOX 540

KINGSTON 5

JAMAICA, W.I.

June 4, 2012

COPY

Ambassador Douglas Saunders, O.J., C.D., J.P.
Cabinet Secretary
Office of the Cabinet
1 Devon Road
Kingston 6

Dear Cabinet Secretary:

Re: Cabinet Submissions and Decisions – Memorandum of Understanding between the Port Authority of Jamaica and the China Harbour Engineering Co. Ltd for the Development of a Container Terminal at Fort Augusta

We write to acknowledge receipt of a letter which was dated June 1, 2012, regarding the captioned matter. The referenced letter, which was written in response to the Office of the Contractor General's (OCG's) letter of May 18, 2012, was signed by a Ms. K. Sewell Mills, for the Cabinet Secretary, and was received in our office on Monday, June 4, 2012.

The letter of June 1, 2012 advised, *inter alia*, that "It is our view that the Submissions and Decision relating to the MOU are included in the initial request from your office and consequently, the extended deadline of 7th June 2012 for submission of the said documents would also apply in the instant case."

Please be advised that the Office of the Contractor General (OCG) concurs with the posture taken regarding the deadline date for the captioned matter and, in light of the requirements of the OCG's letter of April 25, 2012, awaits the submission of the complete set of documents as requested in its letter of April 25, 2012, and in keeping with the extended and agreed deadline for submission of same.

Please be guided accordingly.

Should you require any further clarification, please contact the undersigned.

Yours sincerely,

Maurice Barrett
Chief Investigator
for and on behalf of the Contractor General



CABINET OFFICE

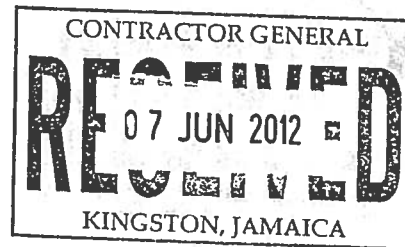
1 DEVON ROAD,
P.O. BOX 272
KINGSTON 6, JAMAICA

NO. CS6/2012- 04

The Contactor General
Office of the Contractor-General
PIOJ Building
16 Oxford Road,
Kingston 5

ATTN: Mr Craig Beresford

Dear Contractor General,

6th June 2012

RE: Cabinet Submissions and Decisions – Approval for the Continuation of the North South Link of Highway 2000, Gordon Cay Container Transshipment Hub, the Fort Augusta Container Terminal and the Establishment of an Oversight Panel to Oversee the Award of Government Contracts

Reference is made to correspondence ending with your letter dated 24th May 2012, concerning the matter at caption. Your agreement to the extension of time requested is greatly appreciated.

You may recall that in a previous letter, we advised that the matter was discussed at Cabinet and consideration deferred, pending the advice of the Attorney General.

Regrettably, the Opinion of the Attorney General has only just come to hand and will not be considered by the Cabinet before next Monday at the earliest. Accordingly, request is hereby made for a further extension to 21st June 2012.

Yours sincerely,

K. Sewell Mills (Ms)

for: Cabinet Secretary



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

No. :

TELEPHONE No.: 876-929-8560/6466

FAX No. : 876-929-2476

E-mail: mbarrett@ocg.gov.jm

OFFICE OF THE CONTRACTOR-GENERAL

PIOJ Building

16 Oxford Road

P.O. Box 540

KINGSTON 5

JAMAICA, W.I.

June 7, 2012

COPY

Ambassador Douglas Saunders, O.J., C.D., J.P.
Cabinet Secretary
Office of the Cabinet
1 Devon Road
Kingston 6

Dear Cabinet Secretary:

Re: Cabinet Submissions and Decisions – Approval for the Continuation of the North South Link of Highway 2000, Gordon Cay Container Transshipment Hub, the Fort Augusta Container Terminal and the Establishment of an Oversight Panel to oversee the Award of Government Contracts

We write to acknowledge receipt of a letter which was dated June 6, 2012, regarding the captioned matter. The referenced letter, which was signed by a Ms. K. Sewell Mills, for the Cabinet Secretary, was received in our office on Thursday, June 7, 2012, at approximately 2:40 p.m., and requested a further extension of the deadline for your response to the Requisition of the Office of the Contractor General (OCG), which was dated April 25, 2012.

The OCG has considered the request and, having taken account of all relevant factors, inclusive of the fact that the "...*Opinion of the Attorney General has only just come to hand and will not be considered by the Cabinet before next Monday at the earliest.*", hereby grants an extension to the June 7, 2012 deadline previously stated in its letter of May 24, 2012, to **Thursday, June 21, 2012 by 3:00 pm.**

Again, we would like to thank you in advance for your full and anticipated cooperation in this endeavor.

Should you have any questions, please do not hesitate to contact me.

Yours sincerely,

Maurice Barrett
Chief Investigator
for and on behalf of the Contractor General



Exhibit 12

15-9

50/17B/6e

CABINET OFFICE

1 DEVON ROAD,

P.O. BOX 272

KINGSTON 6, JAMAICA

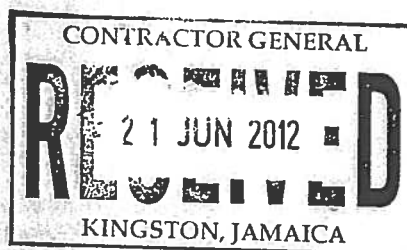
NO. CS6/2012- 14

9

21/6/12
4:05 PM

20th June 2012

The Contactor General
Office of the Contractor-General
PIOJ Building
16 Oxford Road,
Kingston 5



ATTN: Mr Craig Beresford

Dear Contractor General,

RE: Cabinet Submissions and Decisions – Approval for the Continuation of the North South Link of Highway 2000, Gordon Cay Container Transshipment Hub, the Fort Augusta Container Terminal and the Establishment of an Oversight Panel to Oversee the Award of Government Contracts

Reference is made to correspondence ending with your letter dated 7th June 2012, concerning the matter at caption. Your agreement to the extensions so far requested is greatly appreciated.

Cabinet considered the matter at its meeting held on 11th June 2012. However, no decision was taken as the matter was deferred pending further advice from the Attorney General.

Accordingly, request is hereby made for a further extension to 5th July 2012.

Yours sincerely,

K. Sewell Mills (Ms)

for: Cabinet Secretary

(210)



Exhibit 13

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

REF. No.:

TELEPHONE No. : 929-8560/6466

FAX No. : 929-7335

E-Mail: scarty@ocgc.gov.jm

OFFICE OF THE CONTRACTOR-GENERAL

PIOJ BUILDING, 16 OXFORD ROAD

P.O. Box 540

KINGSTON 5

JAMAICA, W.I.

June 22, 2012

Ambassador Douglas Saunders
Cabinet Secretary
Cabinet Office
1 Devon Road
Kingston 6

Dear Cabinet Secretary:

Re: Cabinet Submission and Decision – Approval for the Continuation of the North South Link of Highway 2000, Gordon Cay Container Transshipment Hub, the Fort Augusta Container Terminal and the Establishment of an Oversight Panel to Oversee the Award of Government Contracts

The Office of the Contractor General (OCG) writes to acknowledge receipt of your letter dated June 20, 2012, requesting an extension of the deadline for the Cabinet Office's response to the requisition of the OCG.

The OCG has considered your request and having taken account of all relevant factors, hereby grants an extension to the deadline June 21, 2012, previously stated in its letter of June 7, 2012, to **Tuesday, July 5, 2012.**

Sincerely,

Craig Beresford
Senior Director of Monitoring Operations,
Corporate Communications and Special Projects
for and on behalf of the Contractor General



Exhibit 14

15-4

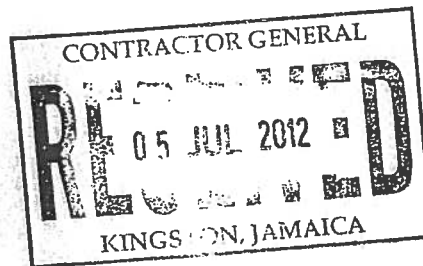
CABINET OFFICE

1 DEVON ROAD,
P.O. BOX 272
KINGSTON 6, JAMAICA

NO. CS7/2012- 01

3rd July 2012

The Contactor General
Office of the Contractor-General
PIOJ Building
16 Oxford Road,
Kingston 5



ATTN: Mr Craig Beresford

Dear Contractor General,

RE: Cabinet Submissions and Decisions – Approval for the Continuation of the North South Link of Highway 2000, Gordon Cay Container Transshipment Hub, the Fort Augusta Container Terminal and the Establishment of an Oversight Panel to Oversee the Award of Government Contracts

2/1
Reference is made to correspondence ending with your letter dated 22nd June 2012, concerning the matter at caption. Your agreement to the extensions so far requested is greatly appreciated.

In the light of recent developments involving the Attorney General's application to the Supreme Court for a Judicial Declaration in a matter involving the very same projects, Cabinet has deferred consideration of the matter pending the outcome of the judicial proceedings.

Accordingly, we are seeking an indefinite extension, pending the outcome of the judicial review.

Yours sincerely,

K. Sewell Mills (Ms)

for: Cabinet Secretary

MS/CB/62

27.5.12
4.05 PM

218



Exhibit 15

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

REF. No.:

TELEPHONE No. : 929-8561/6466

FAX No. : 929-7335

E-Mail: general@ocgc.gov.jm

OFFICE OF THE CONTRACTOR-GENERAL

PIOJ BUILDING, 16 OXFORD ROAD

P.O. BOX 540

KINGSTON 5

JAMAICA, W.I.

July 2, 2012

Ambassador. the Hon. Douglas Saunders, OJ, CD, JP
Cabinet Secretary
Office of the Cabinet
1 Devon Road
Kingston 6

Dear Cabinet Secretary:

Re: Extension of the Operating Agreement with Blue Diamond Hotels and Resorts Inc – Braco Resorts Hotel (formerly Breezes Rio Bueno) Trelawny

The Office of the Contractor General (OCG) makes reference to the matter at caption.

Further to same, the OCG, acting on behalf of the Contractor General, and in accordance with Section 4 of the Contractor General Act, is requesting that you provide a copy of the Cabinet Submission(s) and the Cabinet Decision(s) related to the matter at caption.

Please forward the requisite documentation to this Office by **Monday, July 16, 2012.**

The OCG anticipates your usual prompt and cordial response to this matter and thanks you in advance for your cooperation.

Sincerely,

Craig Beresford
Senior Director, Monitoring Operations,
Corporate Communications and Special Projects
for and on behalf of the Contractor General



CABINET OFFICE

1 DEVON ROAD,
P.O. BOX 272
KINGSTON 6, JAMAICA

NO. CS7/2012- 02

9th July 2012

The Contactor General
Office of the Contractor-General
PIOJ Building
16 Oxford Road,
Kingston 5

ATTN: Mr Craig Beresford

Dear Contractor General,

**RE: Extension of the Operating Agreement with Blue Diamond Hotels and Resorts Inc –
Braco Resorts Hotel (formerly Breezes Rio Bueno) Trelawny**

24
Reference is made to your letter dated 2nd July 2012 concerning the matter at caption.

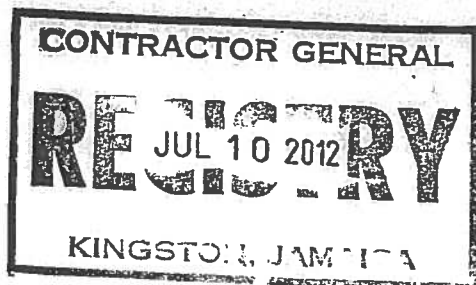
In view of the factors outlined in our letter (reference no. CS7/2012- 01) dated 3rd July 2012, we are seeking an extension, pending determination of the legal process in question.

Yours sincerely,

K. Sewell Mills (Ms)

for: Cabinet Secretary

99
C-3100



C-E 3:10



Exhibit 17

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

REF. No.:

TELEPHONE No. : 929-8560/6466

FAX No. : 929-7335

E-Mail: general@ocg.gov.jm

OFFICE OF THE CONTRACTOR-GENERAL

16 OXFORD ROAD

P.O. Box 540

KINGSTON 5

JAMAICA, W.I.

July 11, 2012

Ambassador the Honourable Douglas Saunders, OJ, CD
Cabinet Secretary
Cabinet Office
1 Devon Road
Kingston 6

Dear Cabinet Secretary:

Re: Extension of the Operating Agreement with Blue Diamond Hotels and Resorts Inc – Braco Resorts Hotel (formerly Breezes Rio Bueno) Trelawny

The Office of the Contractor General (OCG) writes with reference to your letter dated July 09, 2012, in response to its Statutory Requisition, which was dated July 02, 2012, in the captioned regard.

The OCG, in its letter, had requested "...that you provide a copy of the Cabinet Submission(s) and the Cabinet Decision(s)..." with respect to the consummation of a Lease Agreement between the Government of Jamaica, or its subject, and Blue Diamond Hotels and Resorts Inc., to operate the Braco Resorts Hotel.

The OCG has consulted its Attorney, and now respectfully asks that you advise it of the basis upon which the pending Minister of Transport and Works legal action against the OCG, impacts and/or prevents the Cabinet Office from acceding to the OCG's lawful request.

Having regard to the seriousness of the Governments' posture in this matter, and the attendant grave and serious implications for the Office's discharge of its statutory mandate pursuant to the Contractor General Act, the OCG requires that you provide a response by **July 13, 2012 at 2pm.**

Regards.

Sincerely,

Craig Beresford
Senior Director, Monitoring Operations,
Corporate Communications and Special Projects
for and behalf of the Contractor General

c.c Mrs. Jacqueline Samuels-Brown, QC, Attorney-at-Law, FIRM Law



CABINET OFFICE

1 DEVON ROAD,
P.O. BOX 272
KINGSTON 6, JAMAICA

NO. CS7/2012- 06



12th July 2012

The Contactor General
Office of the Contractor-General
PIOJ Building
16 Oxford Road,
Kingston 5

50/100/17B
[Signature]
7/13/12

ATTN: Mr Craig Beresford

Dear Contractor General,

RE: Extension of the Operating Agreement with Blue Diamond Hotels and Resorts Inc. –
Braco Resorts Hotel (formerly Breezes Rio Bueno) Trelawny

Reference is made to your letter dated 11th July 2012 concerning the matter at caption.

The Cabinet Office notes that the Office of the Contractor General (OCG) has consulted its Attorney on the matter, and will therefore seek the advice of the Attorney General's Chambers.

A response to the question raised in your letter under reference will be forwarded as soon as that advice is received.

Regards.

Yours sincerely,

[Signature of K. Sewell Mills]

K. Sewell Mills (Ms)
for: Cabinet Secretary



copy: Attorney General

CG 12:44



Exhibit 19

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

RJF. No.:

TELEPHONE No.: 929-8560/6466

FAX No.: 929-7335

E-Mail: general@ocg.gov.jm

OFFICE OF THE CONTRACTOR-GENERAL

PIOJ BUILDING, 16 OXFORD ROAD

P.O. BOX 540

KINGSTON 5

JAMAICA, W.I.

July 26, 2012

Ambassador the Honourable Douglas Saunders, OJ, CD, JP
Cabinet Secretary
Office of the Cabinet
1 Devon Road
Kingston 6

Dear Cabinet Secretary:

Re: Cabinet Submission and Decision – Liquefied Natural Gas (LNG) Project – Floating, Storage & Regasification Terminal

The Office of the Contractor General (OCG) makes reference to the matter at caption.

Further to same, the OCG, acting on behalf of the Contractor General and in accordance with Section 4 of the Contractor General Act, is requesting that you provide a copy of all Cabinet Submissions and related Cabinet Decisions, regarding the matter at caption, since January 2012.

Please forward the requisite documentation to this Office by Thursday, August 9, 2012.

The OCG anticipates your usual prompt and cordial response to this matter and thanks you in advance for your cooperation.

Sincerely,

Craig Beresford
Senior Director, Monitoring Operations,
Corporate Communications and Special Projects
for and on behalf of the Contractor General



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

TELEPHONE NO. : 929-8560/6466

E-Mail: general@ocg.gov.jm

FACSIMILE TRANSMISSION

☐ Urgent

☐ for your comment

☐ please reply

☐ for your information

DATE: July 26, 2012

TO: Amb. the Hon. Douglas Saunders, Office of the Cabinet

FAX NUMBER: (876) 929-8459

FROM: Mrs. Kadian Newby-Douglas, Administrative Assistant
for and on behalf of Mr. Craig Beresford

FAX NUMBER: (876) 929-7335

TOTAL PAGES (including cover sheet): 2

COMMENTS:

Please see letter attached.

Confirmed by Mrs. Eva Marshall @ 10:12pm 26.7.12
KAM



Exhibit 20

CABINET OFFICE

1 DEVON ROAD,
P.O. BOX 272
KINGSTON 6, JAMAICA

NO. CS7/2012- 14

31st July 2012

The Contactor General
Office of the Contractor-General
PIOJ Building
16 Oxford Road,
Kingston 5

ATTN: Mr Craig Beresford

Dear Contractor General,

Craig Beresford
17:50
17/07/12

**RE: Cabinet Submission and Decision – Liquefied Natural Gas (LNG) Project – Floating,
Storage & Regasification Terminal**

I write with reference to your letter dated 26th July 2012 concerning the matter at caption.

The Opinion awaited from the Attorney General's Chambers, and referenced in our letter dated 12th July 2012, is also pertinent to the instant case.

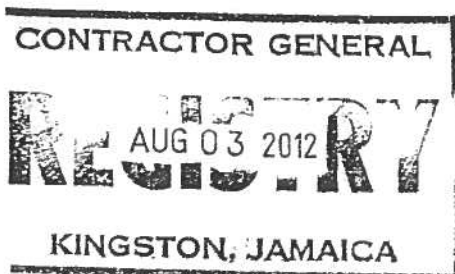
We will therefore be in a position to respond as soon as the Opinion is received.

• Regards.

Yours sincerely,

K. Sewell Mills

K. Sewell Mills (Ms)
for: Cabinet Secretary



C-G 17:15



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

REF. No.:

TELEPHONE No. : 929-8564/6466

FAX No. : 929-7335

E-Mail: general@ocg.gov.jm

OFFICE OF THE CONTRACTOR-GENERAL

PIOJ BUILDING, 16 OXFORD ROAD

P.O. Box 540

KINGSTON 5

JAMAICA, W.I.

August 08, 2012

Ambassador the Honourable Douglas Saunders, OJ, CD
Cabinet Secretary
Office of the Cabinet
1 Devon Road
Kingston 6

Dear Cabinet Secretary:

Re: Requisitions of the Office of the Contractor General regarding Cabinet Submissions and Decisions

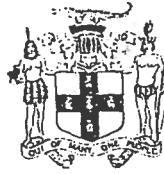
The Office of the Contractor General (OCG) makes reference to its letters dated July 02, 2012 and July 26, 2012, and yours dated July 12, 2012 and July 31, 2012, respectively, regarding the captioned matter.

The OCG, having considered your request, hereby grants an extension to both submission deadline dates for its requisitions, pending "*The Opinion awaited from the Attorney General's Chambers...*", until August 24, 2012.

It must be noted, for the formal records, that the Cabinet's disagreement with the law, which has already been settled by the Parliament of Jamaica and the Courts, cannot displace, suspend or place in abeyance compliance with the settled law. Therefore, the OCG will be proceeding, following upon the requisite due process, and in the interest of public transparency and good governance, as prescribed by the Contractor General Act.

Further, please be reminded that there is no bar, which is prescribed by the Contractor General Act, which prevents a Contractor General from sequestering and securing information, in the discharge of its lawful mandate pursuant to Sections 4 and 15 of the said Act, save and except for those which are provided for at Sections 19 (1)(b) and 18 (5) of the said Act. Neither of the two matters falls within the referenced categories.

In the circumstances, your attention is directed, in particular, to Section 18 (4) of the said Act, which states that "*Any obligation to maintain secrecy or any restriction on the disclosure of information or the production of any document or paper or thing imposed on any person and by or under the Official Secrets Act, 1911 to 1939 of the United Kingdom (or any Act of the Parliament of Jamaica replacing the same in its application to Jamaica) or, subject to the provisions of this Act, by any other law (including a rule of law) shall not apply in relation to the disclosure of*



information or the production of any document or thing by that person to a Contractor-General for the purpose of an investigation; and accordingly, no person shall be liable to prosecution by reason only of his compliance with a requirement of the Contractor-General under this section."

Also, the OCG asks that you be guided Section 19 (2) of the said Act, which provides that "*Except as provided in subsection (1), no law which authorizes or requires the refusal to answer any question or the withholding of any information or document or thing on the ground that the answering of the question or the disclosure of the information, document or thing would be injurious to the public interest, shall apply in respect of any investigation by or proceedings before a Contractor-General*"

Sincerely,

Craig Beresford
Senior Director of Monitoring Operations,
Corporate Communications and Special Projects
for and on behalf of the Contractor General

c.c The Honourable Patrick Atkinson, MP, QC, Attorney General



Exhibit 22

/-p, -yUÂpð.ð

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

REF. No.:
TELEPHONE No.: 929-8561/6466
FAX No.: 929-7335
E-Mail: general@ocgc.gov.jm

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

August 28, 2012

Ambassador the Honourable Douglas Saunders, OJ, CD
Cabinet Secretary
Office of the Cabinet
1 Devon Road
Kingston

Dear Cabinet Secretary:

Re: Requisitions of the Office of the Contractor General regarding Cabinet Submissions and Decisions

Reference is made to the Office of the Contractor General's (OCG) letter in relation to the captioned matter, which was dated August 8, 2012.

To date, you have not satisfied the OCG's lawful requisition, which was made pursuant to Section 4 and/or Section 15 of the Contractor-General Act.

The OCG now ask that you provide it with the relevant information no later than Tuesday, September 4, 2012.

Sincerely,

Craig Beresford
Senior Director of Operations,
Corporate Communications and Special Projects
for and on behalf of the Contractor General



Exhibit 23

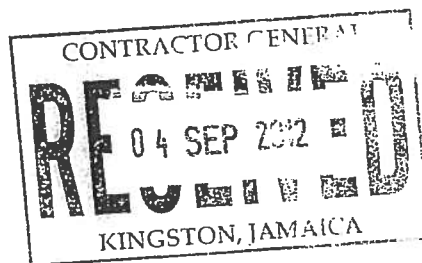
CABINET OFFICE

1 DEVON ROAD,
P.O. BOX 272
KINGSTON 6, JAMAICA

NO. CS8/2012- 05

31st August 2012

The Contactor General
Office of the Contractor-General
PIOJ Building
16 Oxford Road,
Kingston 5



ATTN: Mr Craig Beresford

Dear Contractor General,

RE: Requisitions of the Office of the Contractor General regarding

Cabinet Submissions and Decisions

B Reference is made to correspondence ending with your letter dated 28th August 2012, concerning the matter at caption.

In our letter to you dated 12th July 2012, we indicated that the advice of the Attorney General's Chambers (hereinafter, the Chambers) would have been sought in the matter. We have now received the advice from the Chambers. That advice indicates that the Supreme Court was asked to interpret certain parts of the statute governing the Office of the Contractor in "Minister of Works vs. The Contractor General", and that the Courts ruling in that matter will impact the advice to the Cabinet concerning the OCG's requisitions for Cabinet Documents.

In the circumstances, the advice awaited by the Cabinet will not be forthcoming until after the Court has delivered its ruling in the aforementioned case.

Yours sincerely,

K. Sewell Mills (Ms)

for: Cabinet Secretary

50/64 n13
2012. 4. 2012



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

REF. No.:

TELEPHONE No. : 929-8560/6466

FAX No. : 929-7335

E-Mail: general@ocg.gov.jm

OFFICE OF THE CONTRACTOR-GENERAL

PIOJ BUILDING, 16 OXFORD ROAD

P.O. BOX 540

KINGSTON 5

JAMAICA, W.I.

September 6, 2012

Ambassador the Honourable Douglas Saunders, CD, OJ
Cabinet Secretary
Office of the Cabinet
1 Devon Road
Kingston 6

Dear Cabinet Secretary:

Re: Requisitions of the Office of the Contractor General regarding Cabinet Submissions and Decisions

The Office of the Contractor General (OCG) writes to acknowledge receipt of your letter dated August 31, 2012, which was received in its Office on September 04, 2012.

The OCG has noted your assertion that *"We have now received the advice from the Chambers. That advice indicates that the Supreme Court was asked to interpret certain parts of the statute governing the Office of the Contractor [sic] in "Minister of Works vs. The Contractor General", and that the Courts ruling in that matter will impact the advice to the Cabinet concerning the OCG's requisitions for Cabinet Documents."* (OCG's Emphasis)

In the instant matter, the referenced case and certainly the germane issue which is now in contention, and before the Court, concerns, *inter alia*, the OCG's jurisdiction to request information, prior to the award of a Government of Jamaica (GOJ) Contract - Pre-Contract Stage, pursuant to its Section 4 mandate.

The OCG is now, therefore, gravely concerned that the GOJ has proceeded to, in at least one instance, sign a Concession Agreement for the North South Link of Highway 2000, even before a ruling has been handed down by the Court, and even as the GOJ is asking the OCG to await said ruling. Further, the GOJ has already signed an Operating Agreement with Blue Diamond Hotels and Resorts Inc, with respect to the Extension of the Management Agreement for the Operation of Braco Resorts Hotel (formerly Breezes Rio Bueno). Therefore, both Agreements have already been duly consummated and, consequently, outside of the ambit of the matter which is currently before the Supreme Court.



In the circumstances, the OCG, pursuant to Section 4 and/or 15 of the Contractor General Act, now requires that you provide it with the Cabinet Submissions and Decisions concerning; the Extension of the Operating Agreement with Blue Diamond Hotels and Resorts Inc. – Braco Resorts Hotel (formerly Breezes Rio Bueno) and the Approval for the Continuation of the North South Link of Highway 2000, by September 19, 2012.

The OCG anticipates your usual prompt and cordial response to this matter and thanks you in advance for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig Beresford", is written over a horizontal line.

Craig Beresford
Senior Director of Operations,
Corporate Communications and Special Projects
for and on behalf of the Contractor General



CABINET OFFICE

1 DEVON ROAD,
P.O. BOX 272
KINGSTON 6, JAMAICA

NO. CS9/2012- 09

13th September 2012

The Contactor General
Office of the Contractor-General
PIOJ Building
16 Oxford Road,
Kingston 5

ATTN: Mr Craig Beresford

Dear Contractor General,

RE: Requisitions of the Office of the Contractor General regarding
Cabinet Submissions and Decisions

SOJ/MS/Ge
✓
2-45
17/9/12

I write with reference to your letter dated 6th September 2012 concerning the matter at caption.

In view of the legal issues raised in your letter, we are obliged to seek the further advice of the Attorney General's Chambers and, in this regard, anticipate your cooperation in granting an extension pending receipt of that advice. It may also be useful to recall that, in any event, only the Cabinet can authorize the release of its documents.

Regards.

Yours sincerely,

K. Sewell Mills (Ms)
for: Cabinet Secretary



Exhibit 26

COPY

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

REF. No.:
TELEPHONE No.: 929-8560/6466
FAX No.: 929-7335
E-Mail: general@ocg.gov.jm

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

September 19, 2012

Ambassador the Honourable Douglas Saunders, OJ, CD
Cabinet Secretary
Office of the Cabinet
1 Devon Road
Kingston

Dear Cabinet Secretary:

Re: Requisitions of the Office of the Contractor General regarding Cabinet Submissions and Decisions

The Office of the Contractor General (OCG) writes with reference to its several correspondence, and to acknowledge receipt of letter dated September 13, 2012, from your K. Sewell Mills, which was received by this Office on September 17, 2012, regarding the captioned matter.

The OCG has noted that further advice would be sought from the Attorney General's Chambers, and that an extension was being requested for the response to the OCG's requisition pending receipt of said advice.

In this regard, the OCG hereby grants, again, a further extension to the deadline of September 19, 2012, which was previously indicated in its letter dated September 6, 2012, until Friday, October 5, 2012.

Notwithstanding the foregoing, the OCG wishes to place upon record that, the continued delay, with regard to the responses to its statutory requisitions, continues to have a negative impact upon its operations. Among other things, the Office has been unable to complete at least one critical Investigation, as it cannot conclude same, without first being fully informed of the decision which the Cabinet had taken regarding said matter.

Therefore, the Independent Anti-corruption Commission's ability to discharge its lawful mandate, for and behalf of the Parliament of Jamaica, and by extension, the People of Jamaica, is now being frustrated.

The OCG, has, over the past twenty-eight (28) years, received the full and unfettered support of the Office of the Cabinet and, as such, the OCG is now extremely concerned about the posture which is being taken by this Administration, with respect to its statutory requisitions.

Sincerely,

Craig Berdsford
Senior Director of Operations,
Corporate Communications and Special Projects
for and on behalf of the Contractor General

Copy: The Most Honourable Portia Simpson Miller, MP, ON, Prime Minister
The Honourable Andrew Holness, MP, Leader of the Opposition
Mrs. Jacqueline Samuels-Brown, QC, Firm Law
The Honourable Patrick Atkinson, QC, Attorney General



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

REF. No.:

TELEPHONE No. : 929-8560/6466
FAX No. : 929-7335
E-Mail: chari-thompson@ocg.gov.jm

OFFICE OF THE CONTRACTOR-GENERAL
PIOJ BUILDING, 16 OXFORD ROAD

P.O. Box 540

KINGSTON 5

JAMAICA, W.I.

September 17, 2012

Mrs. Hillary Alexander
Permanent Secretary
Ministry of Science, Technology, Energy and Mining
PCJ Building
36 Trafalgar Road
Kingston 10

Dear Permanent Secretary:

Re: Procurement for the Supply of LNG

Reference is made to a *Sunday Gleaner* article dated September 9, 2012, entitled "JPS to save the LNG Project?"

The referenced article stated, *inter alia*, that,

"... Jamaica Public Service Company (JPS) could be the one to save the Government's floundering liquefied natural gas (LNG) project..."

Having stuck to the letter of the law and prevented the parent company of the JPS, Marubeni Corporation, from bidding to supply LNG to Jamaica, the Government now seems ready to eat humble pie and beg the firm for help...

However, with the qualified bidders offering prices that would not lead to any appreciable decline in the cost of electricity to Jamaicans, it appears negotiations are set to be initiated with Marubeni.

"The prices quoted by the bidders are much higher than Jamaica can pay and would not attract the JPS or the bauxite companies," a source close to the talks told The Sunday Gleaner.

"So what will happen now is that efforts will be made to get a long-term deal for Marubeni to supply the gas at a cheaper price because that is the only way the country will see the introduction of LNG," added the source..."

With regard to the foregoing, the OCG hereby requests the following information:

1. Is there any merit to the information contained in the above-mentioned article?
2. If your answer to question #1 is yes, please provide an Executive Summary, detailing, *inter alia*:
 - a. The basis upon which negotiations with Marubeni will be/are being carried out;
 - b. The name(s), title(s), and position of the person(s) and/or the entity (ies) who/ which



- were/will be involved in the negotiations with Marubeni;
- c. The date(s) on which the negotiations with Marubeni will be/were initiated;
 - d. Whether any other Supplier has been considered, approached, negotiated with or contracted to provide LNG; and
 - e. A copy of all documents, Meeting Minutes and/or correspondence regarding any negotiations which have been undertaken with Marubeni or any other supplier for LNG to date.

In addition to the foregoing, the OCG continues to monitor the captioned, and hereby requests the following:

3. A copy of the signed Evaluation Report and individual Evaluator's summary sheets, if available, for the captioned procurement;
4. A copy of any other pertinent correspondence and/or documentation inclusive of letters, clarification requests or e-mailed correspondence, generated by the Ministry of Science, Technology, Energy and Mining, short-listed bidders or any other Public or Private Entity with regards to the LNG project, which has not already been submitted to this Office; and
5. Please provide current status update regarding the captioned procurement.

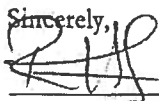
The Jamaica Gas Trust (JGT)

Further to the foregoing, and with regard to the formation of the Jamaica Gas Trust, as was envisioned for this project, the OCG is requesting the following information:

6. Has the Jamaica Gas Trust (JGT) been established?
7. If your answer to question #6 is yes, please provide the following:
 - a. The date on which the JGT was established; and
 - b. Please provide a copy of any contracts and/or other documentation relating to the establishment of the JGT.
8. If your answer to question #6 is no, please provide an indication as to when the JGT will be established.

Please forward the requisite documents to this Office by October 15, 2012.

The OCG thanks you in advance for your kind cooperation and looks forward to amicable relations as it seeks to increase efficiency, transparency and confidence in the Public Sector procurement process.

Sincerely,


Rackeal Hart-Thompson (Mrs.)
Senior Inspector (Acting)
for and on behalf of the Senior Director of Operations,
Corporate Communications and Special Projects



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

REF. No.:

TELEPHONE No. : 929-8560/6466

FAX No. : 929-7335

E-Mail: general@ocg.gov.jm

September 5, 2012

OFFICE OF THE CONTRACTOR-GENERAL

PIOJ BUILDING, 16 OXFORD ROAD

P.O. Box 540

KINGSTON 5

JAMAICA, W.I.

Mrs. Hillary Alexander
Permanent Secretary
Ministry of Science, Technology, Energy and Mining
36 Trafalgar Road
Kingston 10

Dear Permanent Secretary:

Re: Liquefied Natural Gas (LNG) Project – Floating Storage & Regasification Terminal

The Office of the Contractor General (OCG) writes with reference to the matter at caption.

The OCG has been monitoring the execution of the tender process related to the captioned project. Further to same, the Office has noted certain reports which have been aired in the media regarding the selection of a preferred bidder. In particular, concerns have been raised that the preferred bidder did not submit the lowest tendered amount.

As a component of its monitoring oversight responsibility, the OCG has conducted a review of the Evaluation Report which was submitted by your Office, under cover of letter dated August 9, 2012, and has noted the following:

1. Three (3) bidders submitted tenders by the stipulated date and time of April 27, 2012 at 3:00 p.m. The tender opening ceremony followed shortly thereafter.
2. An Evaluation Committee, comprising of seven (7) individuals was constituted, and was supported by the; LNG Project Advisors, LNG Commercial Advisors, LNG Financial Advisors and LNG Technical Advisors.
3. One (1) of the three (3) bidders, Sener, was deemed non-responsive to the requirements of the tender, as a Letter of Bid and the Bid Security was not submitted. The two (2) responsive bidders were Exmar and Samsung.
4. There were eight (8) Evaluation Criteria indicated in the Bidding Document, with the Project Cost representing forty (40) marks out of one hundred (100), being the highest weighted. The other criteria ranged between fifteen (15) and two point five (2.5) points.
5. With regards to Project Cost, Addendum # 8 had indicated that *“Project Cost will be evaluated on the proposed unit costs based on a throughput of Two and a Half million tonnes per annum (2.5MTPA) including the Demand Charge, Commodity Charge and Barge Charge as stated in the attached Term Sheet, including any LNG*



The OCG anticipates your usual prompt and cordial response to this matter and thanks you in advance for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to be 'Craig Beresford', written over a horizontal line.

Craig Beresford
Senior Director of Operations,
Corporate Communications and Special Projects
for and on behalf of the Contractor General

c.c Dr. the Honourable Carlton Davies, OJ, CD, Chairman, LNG Steering Committee



COPY

MINISTRY OF SCIENCE, TECHNOLOGY, ENERGY AND MINING

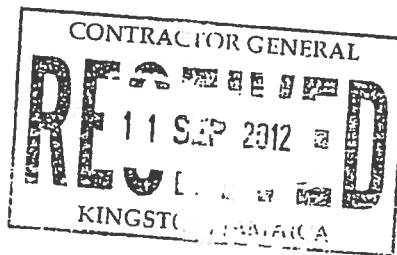
PCJ Building, 36 Trafalgar Road, Kingston 10, Jamaica W.I.
Tel. (876) 929-8990-9 Fax: (876) 960-1623
E-mail: info@mem.gov.jm Website: <http://www.mem.gov.jm>

September 11, 2012

The Contractor-General
Office of the Contractor General
16 Oxford Road
Kingston 5

Attention: Craig Beresford

Dear Sir:



Re: Liquefied Natural Gas (LNG) Project-Floating Storage & Regasification Terminal

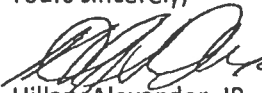
Reference is made to yours of September 5, 2012 requesting a response to be submitted by September 18, 2012.

As discussed, I will be off the island on official business for two weeks as at September 16, 2012, and an appropriate response will require sufficient time to retrieve and collate the required information. (8)

I therefore, with respect, seek an extension to October 12, 2012 which should give the MSTEM sufficient time to provide the information.

Thank you for the usual consideration.

Yours sincerely,


Hillary Alexander, JP
Permanent Secretary

Pls draft letter
quantifying extension
: RHT/STC
copy to
Sept 12/12
5:30pm
SO/BE
Sept. 12/12



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

REF. No.:

TELEPHONE No. : 929-8560, 6466

FAX No. : 929-7335

E-Mail: general@ocg.gov.jm

OFFICE OF THE CONTRACTOR-GENERAL

PIOJ BUILDING, 16 OXFORD ROAD

P.O. Box 540

KINGSTON 5

JAMAICA, W.I.

September 14, 2012

Mrs. Hillary Alexander
Permanent Secretary
Ministry of Science, Technology, Energy and Mining
36 Trafalgar Road
Kingston 10

Dear Permanent Secretary:

Re: Liquefied Natural Gas (LNG) Project – Floating Storage & Regasification Terminal

The Office of the Contractor General (OCG) writes to acknowledge receipt of your letter dated September 11, 2012, which was received by its Office on even date, requesting an extension for your response to the requisition of the OCG.

The OCG has considered your request, and having taken account of all relevant factors, hereby grants an extension to the deadline of September 18, 2012 previously stated in its letter of September 5, 2012, to October 12, 2012.

Sincerely,

Craig Beresford
Senior Director of Operations,
Corporate Communications and Special Projects
for and on behalf of the Contractor General



COPY

MINISTRY OF SCIENCE, TECHNOLOGY, ENERGY AND MINING

PCJ Building, 36 Trafalgar Road, Kingston 10, Jamaica W.I.

Tel. (876) 929-8990-9

Fax: (876) 960-1623

E-mail: info@mem.gov.jm

Website: <http://www.mem.gov.jm>

12th October 2012

BY FAX & MAIL

Mr Craig Beresford
Senior Director
Monitoring Operations, Corporate Communications
& Special Projects
Office of the Contractor General
16 Oxford Road
Kingston 5

Handwritten note: 057/1247
057/1247

Dear Mr. Beresford,

- Re: 1. Liquefied Natural Gas (LNG) Project (RFP#2011/L002) – Floating
Storage & Regasification Terminal
2. Procurement LNG Supply

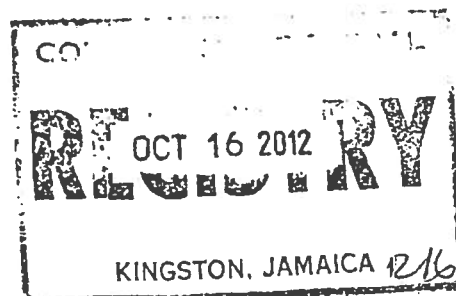
Reference is made to discussion (Beresford/McFarlane) of even date regarding responses to the captioned requisitions, which were due on October 12, 2012 and October 15, 2012 respectively and your agreement to grant an extension for these responses to October 18, 2012.

The Ministry of Science, Technology, Energy and Mining appreciates your kind cooperation in this matter and awaits confirmation, in writing, of the extensions granted.

Yours sincerely,

Handwritten signature of Hillary Alexander

Handwritten initials Hillary Alexander, JP
Permanent Secretary



Handwritten notes:
16/10/12
17.10.12



Exhibit 32

MINISTRY OF SCIENCE, TECHNOLOGY, ENERGY AND MINING

PCJ Building, 36 Trafalgar Road, Kingston 10, Jamaica W.I.
Tel. (876) 929-8990-9 Fax: (876) 960-1623
E-mail: info@mem.gov.jm Website: <http://www.mem.gov.jm>

October 17, 2012

BY FACIMILE & MAIL
URGENT & IMMEDIATE

Mr Craig Beresford
Senior Director
Monitoring Operations, Corporate Communications
& Special Projects
Office of the Contractor General
16 Oxford Road
Kingston 5

Dear Mr Beresford,

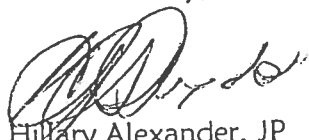
Re: 1. Liquefied Natural Gas (LNG) Project (RFP#2011/L002) – Floating
Storage & Regasification Terminal
2. Procurement LNG Supply

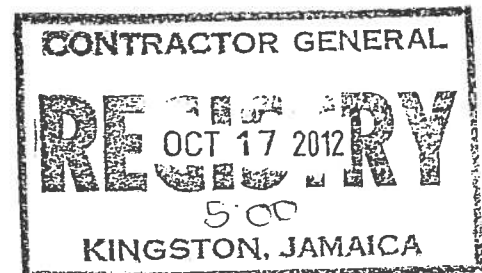
Reference is made to ours dated October 12, 2012 confirming the discussion (Beresford/McFarlane) regarding your permission to extend the date for submission of responses to the captioned requisitions to October 18, 2012.

Please be advised that the Ministry of Science, Technology, Energy & Mining ("MSTEM") has requested the advice of the Attorney General's Chambers ("AGC") in respect of the captioned requisitions. I was advised today that the AGC will not be able to provide that advice before October 18, 2012. In consequence, I am requesting that a further extension be granted to Wednesday, October 24, 2012.

The MSTEM anticipates that the usual kind consideration will be extended and would appreciate confirmation, in writing, of the extensions granted.

Yours sincerely,


Hillary Alexander, JP
Permanent Secretary





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

REF. No.:

TELEPHONE No.: 929-8560/6466

FAX No.: 929-7335

E-Mail: general@ocg.gov.jm

OFFICE OF THE CONTRACTOR-GENERAL

PIOJ BUILDING, 16 OXFORD ROAD

P.O. Box 540

KINGSTON 5

JAMAICA, W.I.

October 18, 2012

Mrs. Hillary Alexander, JP
Permanent Secretary
Ministry of Science, Technology, Energy and Mining
PCJ Building
36 Trafalgar Road
Kingston 10

Dear Permanent Secretary:

Re: (1) Liquefied Natural Gas (LNG) Project (RFP#2011/L002)-Floating Storage & Regasification Terminal and (2) Procurement LNG Supply

The Office of the Contractor-General (OCG) writes to acknowledge receipt of your letter, dated October 17, 2012, which was received on even date, requesting an extension of the deadline for your response to the requisition of the Office of the Contractor General (OCG).

The OCG has considered your request and having taken account of all relevant factors, hereby grants an extension to Wednesday, October 24, 2012.

Please feel free to contact the undersigned for any further assistance.

Sincerely,

Craig Beresford
Senior Director of Operations,
Corporate Communications and Special Projects
for and on behalf of the Contractor General



MINISTRY OF SCIENCE, TECHNOLOGY, ENERGY AND MINING

PCJ Building, 6 Trafalgar Road, Kingston 10, Jamaica W.I.
 Tel: (876) 929 8990-9 Fax: (876) 960 1623
 E-mail: info@mem.gov.jm Website: <http://www.mem.gov.jm>

October 23 '2012

BY FACIMILE & MAIL

Mr. Craig Beresford
 Senior Director of Operations, Corporate Communications & Special Projects
 Office of the Contractor General
 P/O Building 16 Oxford Road
 P.O. Box 540
 Kingston 5

Dear Mr. Beresford

Re: Liquefied Natural Gas ("LNG") Project - Floating Storage and Regasification Terminal ("FSRU") and the Procurement of the Supply of LNG

Reference is made to letters dated September 5 and 12, 2012 from your good office requisitioning this Ministry in relation to the FSRU and the LNG Supply respectively.

As we indicated in ours dated October 17, 2012, this Ministry requested the advice of the Attorney General's Chambers ("AGC") in respect of the captioned requisitions.

This Ministry is as of today in receipt of the advice of the AGC. In that regard, the AGC notes that your office is carrying out a monitoring function in relation to the pre-contractual stage of the procurement process, pursuant to section 4 of the Contractor General Act, and that no investigation has been launched. In these circumstances, the AGC has advised that the issue of your office's jurisdiction to monitor the pre-contractual stages of government contracts is presently the subject of judicial review proceedings in the Supreme Court (*The Minister of Transport, Works and Housing v. The Contractor General*).

In light of the foregoing, this Ministry has been further advised by the AGC to await the outcome of the judicial review proceedings in the Supreme Court.

Finally, please note that there will be no award of contract in relation to the FSRU or the LNG Gas Supply as both procurement processes have been terminated in accordance with clause A8.15 of volume 2 of the Handbook of Public Sector Procurement Procedures.

Yours sincerely

Hilary Alexander

Hilary Alexander, JP
 Permanent Secretary

fn



Exhibit 35

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

OFFICE OF THE CONTRACTOR-GENERAL

PIOJ Building

16 Oxford Road

P.O. Box 540

KINGSTON 5

JAMAICA, W.I.

No. :

TELEPHONE No.: 876-929-8560/6466

FAX No. : 876-929-2476

E-mail: general@ocg.gov.jm

October 16, 2012

COPY

The Hon. Phillip Paulwell
Minister of Science, Technology, Energy and Mining
Ministry of Science, Technology, Energy and Mining
PCJ Building
36 Trafalgar Road
Kingston 10

Dear Minister:

Re: Request for Clarification of Concerns which have been formally brought to the attention of the Office of the Contractor General (OCG) by the Former Chairman of the LNG Steering Committee and the Former LNG Project Manager, in regard to certain assertions contained in a Media Report which was published in the Jamaica Observer Newspaper of October 4, 2012

We write to formally advise you that the Office of the Contractor General (OCG) is in receipt of a letter dated October 8, 2012 from Mr. Christopher Zacca, former Chairman of the Government of Jamaica (GOJ) Liquefied Natural Gas (LNG) Steering Committee, as well as a letter dated October 5, 2012, from the former LNG Project Manager, Mr. Ernie Megginson. The referenced letters were both received in our Offices, via email, on October 8, 2012, and relate to the matter at caption.

Reference must also be made to a Newspaper Report which was printed in the Jamaica Observer on Thursday, October 4, 2012, which was entitled "Paulwell: JPS to source LNG". The referenced newspaper article, which extensively quoted you, in your capacity as Minister of Energy, reported, *inter alia*, as follows:

"ENERGY Minister Phillip Paulwell says that the Jamaica Public Service Company (JPSCo) will now be responsible for sourcing the Liquefied Natural Gas (LNG) needed to fuel its new generation plant...

... Also, he said the decision to continue with the LNG project, ten months into the new administration, was to preserve the country's integrity in the international marketplace.

"...It would have done severe damage to our integrity in the international LNG marketplace if a new government was to come and unravel everything, so we persisted," he said.

He also disclosed that discussions began with JPSCo from as early as March for the company to take over the process.

"While we were doing so we were very careful to be engaging with JPSCo all along and to get the assurance that if we fail, they would be able to step in," he said."

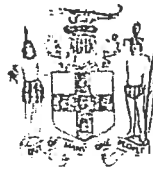


Having regard to the foregoing, the OCG must place upon the record the fact that the letter which was directed to you by the former Chairman of the LNG Steering Committee, Mr. Christopher Zacca, a copy of which is enclosed herein, expressed certain concerns regarding the implications of the statements which have been attributed to you. The referenced letter, advised, *inter alia*, that:

"If this article has accurately quoted what you said, this would create some concern for me as in fact I was still the Chairman as of March 2012. I would like to state clearly that at no time have I ever had any such discussions about taking over the LNG process with JPS or any other entity, and I am not aware of any such discussions being held with them by any other person. All discussions with JPS that I am aware of have focused on their role as a potential major off-taker i.e. customer, of the Jamaica Gas Trust which as you are aware was the conceptual commercial anchor of the LNG Project." (OCG Emphasis)

To further compound the matter, Mr. Ernie Megginson, former LNG Project Manager, in his letter which was dated October 5, 2012, a copy of which is enclosed herein, asserted, *inter alia*, that:

1. *"I do not want to get into any political debate regarding the recent decisions by Minister Paulwell related to the direction of the Jamaica LNG Project. However, I do want to point out some of the consequences of these actions. First is the damage caused in the international perception of the Government of Jamaica as a credible business partner and, second, in the lack of effort or transparency by the Government in assessing the true cost of the LNG project before it was cancelled and turned over to the Jamaica Public Services Company (JPSCo).*
2. *This LNG Project Team, including the local Jamaican team members, were tasked to conduct these two major RFPs in complete compliance with the Government's Procurement Guidelines, which are consistent with acceptable international standards for the procurement of goods and services. This task was done and the LNG Project Team responded fully and timely to each request for information from the Office of the Contractor General (OCG) who was closely monitoring these RFP processes. The international players praised the way that the LNG Steering Committee ran the RFP processes. One of the key comments was related to the transparency of the processes. Businesses are attracted to transparency. Investment flows to places where the rules are clear and the playing field is level for everyone.*
3. *...it was disturbing to read in the Observer yesterday morning a statement attributed to the Minister where he "disclosed that discussions began with JPSCo from as early as March for the company to take over the process. While we were doing so we were very careful to be engaging with JPSCo all along and to get the assurance that if we fail, they would be able to step in," he said." It should be noted that these discussions reportedly occurred during the middle of the RFP processes, with the bids for the LNG Terminal due on April 27, 2012 and the bids for LNG Supply extended to July 27, 2012. These bid dates were all approved by the Minister. While I was Project Manager, no members of the LNG Project Team, nor to the best of my knowledge, the LNG Steering Committee and, in particular the then-Chairman Christopher Zacca, had any discussions of this sort with JPSCo or any of their shareholders or connected entities.*
4. *The foibles of the handling of these current RFP processes, as well as the previous attempts to secure affordable natural gas for Jamaica, are followed closely in the international press, with subsequent negative impacts on Jamaica's credibility as a place to conduct business and invest.*
5. *Second, and probably most important, to my knowledge, the Government never engaged the bidders in any serious negotiations to determine whether an acceptable price could*



actually have been reached. The bid prices for the LNG Terminal and the lowest LNG Supplier would have resulted in a delivered price for natural gas at the plant gates of the end-users of approximately USD 14.00 per MMBtu, if both JPSCo and Alcoa/Jamalco had remained in the project. This figure is lower than the USD 15.60 per MMBtu price that the Minister presented to Parliament on Tuesday this week.

6. The international advisors presented data to the Government that would indicate that there was significant room for lowering the USD 14.00 per MMBtu price through negotiations.
7. The current direction of cancelling the RFP processes without any negotiations and the turning of the project over to JPSCo, without any certainty of competitive pricing or pricing transparency, is of great concern. (OCG Emphasis)

Given the content of the letters from the former Chairman of the LNG Steering Committee and the former LNG Project Manager, which have raised significant concerns, as well as the content of the Observer Newspaper article, it is incumbent upon the OCG, in the discharge of its ongoing monitoring activities, and having regard to the fact that the referenced LNG Project has now been aborted, to obtain better and further particulars, in regard to the veracity and substance of the statements, which have been attributed to you, and the circumstances surrounding the termination of the tender process.

The OCG's letter to you is, therefore, issued in furtherance of the provisions of the Contractor General Act. Section 4 (1) (a) of the Act expressly mandates a Contractor General, under oath, and on behalf of the Parliament of Jamaica, 'to ensure that Government contracts are awarded impartially and on merit, and in circumstances that do not involve impropriety or irregularity, and also to ensure that the said contracts are implemented in accordance with their terms'. In particular, and as the OCG will now be updating its files, it is critical that clarification be obtained in regard to, amongst other things, the termination of the process.

Further, and having regard to the national import of the LNG Project to Jamaica, the gravity of the concerns which have been raised by the then Chairman of the LNG Steering Committee and the former LNG Project Manager, and the impact which it portends for Jamaica's credibility in the international arena, *viz.* competitive tendering, the OCG is of the considered opinion that the matter is one which needs to be publicly clarified and ventilated in an effort to resolve the many questions which have now arisen and which, rightfully, ought not to be left in a shroud of uncertainty.

It is against the foregoing background that the OCG, in the discharge of its mandate and in the interest of public transparency, is raising the following questions with you, as a matter of urgency. We would, therefore, be grateful if you could provide the OCG with a response to the following questions.

1. Having regard to the newspaper article which was published in the Jamaica Observer on Thursday, October 4, 2012, please advise of the veracity of the statements which have been attributed to you. If the statements are in fact an accurate and truthful reflection, please provide responses to the following questions:
 - a. Please advise of what is meant by the term "take over the process" within the context of the disclosures which were made by you in the referenced Jamaica Observer Newspaper article;
 - b. On what date did the Government of Jamaica (GOJ) and/or anyone or entity acting on its behalf become involved in discussions with the Jamaica Public Service Company Limited to "take over the process", as referenced in the Jamaica Observer newspaper article?



- c. Please advise of the name(s) and title(s) of the person(s) and/or entity(ies) who/which initiated the discussion(s)/meetings in regard to the Jamaica Public Service Company Limited *"taking over the process"*;
 - d. Please provide the name(s) and title(s) of the GOJ representative(s) who was/were involved in the referenced discussion(s);
 - e. Please provide the name(s) and title(s) of the Officers of the Jamaica Public Service Company Limited and/or the particulars of anyone/entity acting on its behalf, who/which was involved in the referenced discussion(s)/meeting(s);
 - f. Please advise of the date(s) on which such meeting(s) and/or discussion(s) was/were held and the location(s) of any such meetings and/or discussion(s);
 - g. Please provide particulars of any undertakings and/or commitments which were made by the GOJ during the course of the referenced meetings and the projected timelines by which the said undertaking and/or commitments were to be fulfilled; and
 - h. Please advise whether the Jamaica Public Service Company Limited provided any assurances and/or guarantees to the GOJ in regard to the sourcing and supply of LNG. If, in any case, promises and/or guarantees were provided to the GOJ, please provide full particulars of same.
2. Please advise of the particulars of the instructions, if any, which were given by you, in regard to the conduct of discussion(s) and/or meeting(s) with the Jamaica Public Service Company Limited with the intent of the said company *"taking over the process"*. If any such instruction(s) was/were given, please provide responses to the following questions:
 - a. Please advise of the date(s) on which such instructions were given;
 - b. Please provide the name(s) and title(s) of the Public Officer(s)/Official(s) to whom such instructions were given; and
 - c. Please advise of the rationale for issuing the referenced instruction(s) to the named Public Officer(s)/Official(s).
 3. In light of the fact that a formal tender procedure was ongoing, with the selection of a preferred bidder announced in July 2012, please advise of the appropriateness of having 'side' discussions with the Jamaica Public Service Company Limited in regard to a matter which was the subject of the formal tender process.
 4. The referenced Observer Newspaper article quoted you as follows, *"There can be no legal battle as we're fully protected. Both companies, if they really had wanted to secure a deal, would have offered significantly lower prices. Those prices were too high. We are in touch and they fully understand our situation," he said.*

In light of the aforementioned, please provide responses to the following questions:

- a. Was any attempt made by the GOJ to negotiate the prices/costs with the selected preferred bidder? If yes, please advise of the particulars of such negotiations and the outcome of same;



and

- b. If no attempt was made to negotiate with the preferred bidder, please advise of the rationale for same and the name(s) and title(s) of the person(s) who made the decision not to conduct any such negotiations.

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

Given the gravity of the matter which has been brought to the attention of the OCG we are, hereby, by way of copy of this letter, bringing the concerns which have been raised with the OCG, by Mr. Zacca and Mr. Megginson, to, amongst others, the specific attention of the Most Hon. Prime Minister, Mrs. Portia Simpson Miller, O.N., M.P., and to the attention of the Leader of the Opposition, Mr. Andrew Holness, M.P.

Should you have any questions, please do not hesitate to contact me.

Very respectfully yours,

Mr. Craig Beresford
Senior Director of Operations,
Corporate Communications and Special Projects
for and on behalf of the Contractor General

Copy: The Most Honourable Portia Simpson Miller, O.N., M.P., Prime Minister
Mr. Andrew Holness, M.P., Leader of the Opposition
Dr. Carlton Davis, Former Chairman, LNG Steering Committee
Mr. Christopher Zacca, Former Chairman, LNG Steering Committee
Mr. Ernie Megginson, Former LNG Project Manager, Jamaica LNG Project

Enclosures – Copy of a letter from Mr. Christopher Zacca, which is dated October 8, 2012.
Copy of letter from Mr. Ernie Megginson, which is dated October 5, 2012.



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

REF. No.:

TELEPHONE No.: 929-8560/6466
FAX No.: 929-7335
E-Mail: general@ocg.gov.jm

OFFICE OF THE CONTRACTOR-GENERAL

PIOJ BUILDING, 16 OXFORD ROAD

P.O. Box 540

KINGSTON 5

JAMAICA, W.I.

November 6, 2012

The Hon. Phillip Paulwell
Minister
Ministry of Science, Technology, Energy and Mining
PCJ Building
36 Trafalgar Road
Kingston 10

Dear Minister:

Re: Request for Clarification of Concerns which have been formally brought to the attention of the Office of the Contractor General (OCG) by the Former Chairman of the LNG Steering Committee and the Former LNG Project Manager, in regard to certain assertions contained in a Media Report which was published in the Jamaica Observer Newspaper of October 4, 2012

Reference is made to the Office of the Contractor General's (OCG) letter in relation to the captioned matter, which was dated October 16, 2012.

To date, you have failed to acknowledge and/or respond to the lawful requisition of the OCG.

In this regard, the OCG now requests that you provide it with the relevant information by no later than Monday, November 12, 2012.

Sincerely,

Mr. Craig Beresford
Senior Director of Operations,
Corporate Communications and Special Projects
for and on behalf of the Contractor General

Copy: The Most Honourable Portia Simpson Miller, O.N., M.P., Prime Minister
Mr. Andrew Holness, M.P., Leader of the Opposition
Dr. Carlton Davis, Former Chairman, LNG Steering Committee
Mr. Christopher Zacca, Former Chairman, LNG Steering Committee
Mr. Ernie Megginson, Former LNG Project Manager, Jamaica LNG Project



COPY

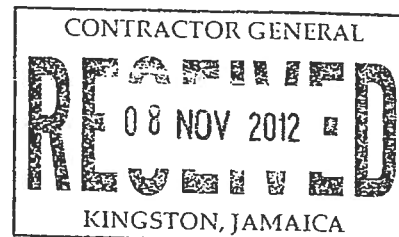
MINISTRY OF SCIENCE, TECHNOLOGY, ENERGY AND MINING

PCJ Building, 36 Trafalgar Road, Kingston 10, Jamaica W.I.
Tel. (876) 929-8990-9 Fax: (876) 980-1623
E-mail: info@mem.gov.jm Website: <http://www.mem.gov.jm>

November 16, 2012

BY FACIMILE & MAIL

Mr. Craig Beresford
Snr. Director of Operations, Corporate Communications & Special Projects
Office of the Contractor General
PIOJ Building, 16 Oxford Road
P.O. Box 540
Kingston 5



Dear Mr. Beresford:

Re: **Liquefied Natural Gas ("LNG") Project - Floating Storage and Regasification Terminal ("FSRU") and the Procurement of the Supply of LNG**

Reference is made to letters dated October 16, 2012 and November 6, 2012 from your good office requisitioning me in relation statements I made in relation to the captioned.

It is my understanding that your office is carrying out a monitoring function in relation to the pre-contractual stages of the procurement process, pursuant to section 4 of the Contractor General Act, and that no investigation has been launched.

In these circumstances, the Attorney General's Chambers ("AGC") has advised that the issue of your office's jurisdiction to monitor the pre-contractual stages of government contracts is presently the subject of judicial review proceedings in the Supreme Court (*The Minister of Transport, Works and Housing v. The Contractor General*).

In light of the foregoing, I have been further advised by the AGC to await the outcome of the judicial review proceedings in the Supreme Court before responding to the above-mentioned requisitions.

Finally, please note that there will be no award of contract in relation to the FSRU or the LNG Gas Supply as both procurement processes have been terminated in accordance with clause A8.15 of volume 2 of the Handbook of Public Sector Procurement Procedures.

Yours sincerely,

Phillip Paulwell
Minister



OFFICE OF THE CONTRACTOR-GENERAL

1ST FLOOR, PIOJ BUILDING

16 OXFORD ROAD

P.O. BOX 540

KINGSTON 5

JAMAICA, W.I.

TELEPHONE No.: 929-0075
929-6460/6

E-Mail: kjones@ocg.gov.jm

FACSIMILE TRANSMISSION

☐ urgent

☐ for your comment

☐ please reply

☐ for your information

DATE: November 8, 2012

TO: The Hon. Phillip Paulwell, MP – Minister

AGENCY/COMPANY: Ministry of Science, Technology, Energy and Mining

FAX NUMBER: (876) 929-8103

FROM: Kadian Jones, Administrative Assistant to the Contractor-General
for and on behalf of the Contractor-General

FAX NUMBER: (876) 929-2476

TOTAL PAGES (including cover sheet): 3

COMMENTS:

Please see letter dated November 8, 2012, hardcopy will follow.

fax confirmed @ 3:20pm by Simone Heur

[Signature]
8/11/12



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

OFFICE OF THE CONTRACTOR-GENERAL

PIOJ Building

16 Oxford Road

P.O. Box 540

KINGSTON 5

JAMAICA, W.I.

No. :

TELEPHONE No.: 876-929-8560/6466

FAX No. : 876-929-2476

E-mail: gchristie@ocg.gov.jm

COPY

November 8, 2012

The Hon. Phillip Paulwell
Minister of Science, Technology, Energy and Mining
Ministry of Science, Technology, Energy and Mining
PCJ Building
36 Trafalgar Road
Kingston 10

Dear Minister:

Re: Request for Clarification of Concerns which have been formally brought to the attention of the Office of the Contractor General (OCG) by the Former Chairman of the LNG Steering Committee and the Former LNG Project Manager, in regard to certain assertions contained in a Media Report which was published in the Jamaica Observer Newspaper of October 4, 2012

We write to acknowledge receipt of your letter, dated "November 16, 2012" (we suspect you meant November 6, 2012), regarding the captioned matter. The referenced letter, which was written in response to the Office of the Contractor General's (OCG's) letters of October 16, 2012 and November 6, 2012, was received today, via facsimile, at approximately 9:00 a.m.

The OCG has noted your stated position that you have been advised by the Attorney General's Chambers that "...the issue of your office's [the OCG's] jurisdiction to monitor the pre-contractual stages of government contracts is presently the subject of judicial review proceedings in the Supreme Court (*The Minister of Transport, Works and Housing v. The Contractor General*)."

Your letter has further advised the OCG that "In light of the foregoing, I have been further advised by the AGC to await the outcome of the judicial review proceedings in the Supreme Court before responding to the above-mentioned requisitions."

Having regard to the aforementioned, the OCG must respectfully bring to your attention the case of *Lawrence v. Ministry of Construction (Works) and the A.G. (1991) 28 J.L.R. 265*, in which the Supreme Court of Jamaica was moved by way of Originating Summons, at the instance of the then Contractor General, to rule on the very point which is now the subject of your contention. Mr. Justice Courtney Orr, in that case, held unequivocally as follows:

"The proper interpretation of the (Contractor General) Act is one which empowers the Contractor General to monitor the pre-contract stages of government contracts and to obtain information from public bodies prior to the award of such contracts (OCG emphasis)... The ordinary meaning of the words of the statute in light of the context and grammar suggest no other interpretation".



As you are no doubt aware, it is a trite principle of the law that until and unless a Court of competent jurisdiction rules contrary to the aforementioned and/or the Parliament of Jamaica changes the law to reflect your contentions, the application which your Learned Attorney General has filed before the Court does not and cannot possibly render the settled law void or lacking in its efficacy and validity. With respect, the Learned Attorney General's Application is a mere Application – nothing less and nothing more.

Indeed, if your assertions were to be taken to their logical conclusion, then they would suggest that the mere filing of an Application for Judicial Review would render any applicable law, which is the subject of the said Application, a nullity and of no moment. Such a posture would, to say the least, be ludicrous as any subject of the State could then do as he, she or it pleases, simply by filing an Application before the Court to contend that the law is what he thinks it should be, as opposed to what, in reality, it already is. Such a posture, no doubt, Honourable Minister, would be a perfect recipe for anarchy.

The OCG respectfully contends that the Rule of Law should and must, at all times, take primacy of place in the discharge and the administration of the affairs of the State, especially by its principal functionaries, among whom you, as a Senior Member of the Cabinet, stand.

Consequently, the OCG would request that you honour, in all of its terms, the lawful Statutory Requisition of the OCG – which is an Independent Commission of the Parliament of Jamaica – which has been issued to you.

In the premises, and without prejudice to the foregoing, the OCG is hereby extending the deadline date by which you are to fully comply with its Statutory Requisition until Wednesday, November 14, 2012 by 3:00 p.m.

Given the very important national interest considerations which are associated with this matter, the gravity of the positions which you have taken and the lack of efficacy that is associated therewith, the OCG is hereby, by way of copy of this letter, bringing its considered positions, to the specific attention, among others, of the Most Hon. Prime Minister, the Leader of the Opposition, the Speaker of the House, the President of the Senate, the Director of Public Prosecutions and the Learned Attorney General.

Please be guided accordingly.

Very respectfully yours,

Greg Christie
Contractor General

Copy: The Most Hon. Portia Simpson Miller, O.N., M.P., Prime Minister
The Hon. Andrew Holness, M.P., Leader of the Opposition
The Hon. Michael Peart, MP, Speaker of the House of Representatives
Rev. Senator the Hon. Stanley Redwood, President of the Senate
Ms. Paula Llewellyn, CD, QC, Director of Public Prosecutions
The Hon. Patrick Atkinson, Q.C., M.P., Attorney General of Jamaica
Ambassador the Hon. Douglas Saunders, C.D., O.J., Cabinet Secretary
Mrs. Jacqueline Samuels-Brown, Q.C., Attorney-at-Law, FirmLaw



COPY

MINISTRY OF SCIENCE, TECHNOLOGY, ENERGY AND MINING

PCJ Building, 36 Trafalgar Road, Kingston 10, Jamaica W.I.

Tel. (876) 929-8990-9

Fax: (876) 960-1623

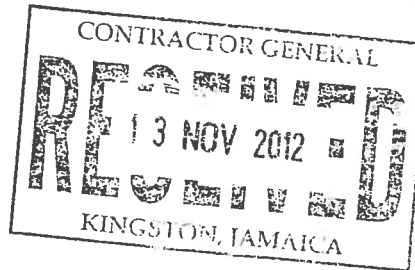
E-mail: info@mstem.gov.jm

Website: <http://www.mstem.gov.jm>

November 10, 2012

BY HAND
URGENT & IMMEDIATE

Mr. Greg Christie
Contractor General
Office of the Contractor-General
PIOJ Building
16 Oxford Road
Kingston 5



Dear Contractor General:

Re: Liquefied Natural Gas (LNG) Project – Floating Storage and Regasification Terminal ("FSRU") and the Procurement of the Supply of LNG

Reference is made to yours dated November 8, 2012, the contents of which are duly noted.

Please be advised that while I stand ready to respond to your requisitions and be absolutely forthcoming in so doing, I have sought the further advice of the Attorney General's Chambers. That advice is expected to be forthcoming presently. However, you should also be aware that I will be overseas on official business and will not return until Sunday, November 18, 2012.

In light of the foregoing, it is proposed that the deadline date of Wednesday, November 14, 2012 at 3:00 pm be extended to Tuesday, November 20, 2012 to facilitate my response being forwarded to your good office.

Your understanding and cooperation is anticipated.

Regards,


Phillip Paulwell
Minister

Copy: The Hon. Patrick Atkinson, Q.C., Attorney General

SO/113/ck/Gef
14/11/12
9.00am



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

OFFICE OF THE CONTRACTOR-GENERAL

PIOJ Building

16 Oxford Road

P.O. Box 540

KINGSTON 5

JAMAICA, W.I.

No. :

TELEPHONE No.: 876-929-8560/6466

FAX No. : 876-929-2476

E-mail: gchristie@ocg.gov.jm

URGENT AND IMMEDIATE

COPY

November 15, 2012

The Hon. Phillip Paulwell, MP
Minister of Science, Technology, Energy and Mining
Ministry of Science, Technology, Energy and Mining
PCJ Building
36 Trafalgar Road
Kingston 10

Dear Minister:

Re: Request for Clarification of Concerns which have been formally brought to the attention of the Office of the Contractor General (OCG) by the Former Chairman of the LNG Steering Committee and the Former LNG Project Manager, in regard to certain assertions contained in a Media Report which was published in the Jamaica Observer Newspaper of October 4, 2012

We write to acknowledge our receipt of your letter, dated November 10, 2012, in the captioned regard, which was written in response to ours of November 8, 2012. Your letter was received in our offices at approx. 4:20 pm. on November 13, 2012.

You have advised that while you *"stand ready to respond to (the OCG's) requisitions and (to) be absolutely forthcoming in so doing"*, you have, nevertheless, *"sought the further advice of the Attorney General's Chambers"*.

You have also advised that, in light of the foregoing and the fact that you will be overseas on official business until Sunday, November 18, 2012, *"it is proposed that the deadline date of Wednesday, November 14, 2012, at 3:00 pm be extended to Tuesday, November 20, 2012, to facilitate (your) response being forwarded to (my) good office"*.

Please be assured, Honorable Minister, that having regard to the circumstances which you have outlined, we would have absolutely no difficulty whatsoever in granting to you the extension in time which you have requested and I would, therefore, ask that you accept this letter as my formal confirmation of same.

However, I am obliged to reiterate, for the record, the OCG's positions in this matter as are set out in my letter to you of the 8th instant.



I am also constrained to advise that while it is perfectly in your right to seek the legal advice to which you have alluded, the OCG, as an Independent Anti-Corruption Commission of the Parliament of Jamaica is, nevertheless, barring a Court Order or Ruling to the contrary, obliged to act independently, in good faith and in a manner which it deems to be consistent with (a) its statutory responsibilities and mandates, (b) the provisions of the Contractor General Act by which it is circumscribed, and (c) the prior decisions of the Supreme Court of Jamaica and, in particular, the decision that was handed down in *Lawrence v. Ministry of Construction (Works) and the A.G. (1991) 28 J.L.R. 265*, against the Attorney General of Jamaica, which, to the best of the OCG's knowledge, continues to stand as the settled law regarding the matter which is the subject of our communications.

In the premises, should you fail to fulsomely comply with the lawful Requisitions of the OCG in this matter, within the extended time that has been herein allowed, the OCG will be left with no alternative but to invoke the enforcement and/or sanctioning provisions of the Contractor General Act, particularly those which are provided for in Section 29 (b) of the Act, and to issue an appropriate public announcement regarding the matter.

We would, therefore, with respect, ask that you be guided accordingly as we await your promised compliance with the OCG's Requisitions which would, irrespective of what advice you receive, be in keeping with the principles of transparency and accountability in the affairs of Government – a posture which was so vigorously espoused by the Most Hon. Prime Minister, your Government, as well as by your good-self, not too long ago.

Very respectfully yours,

Greg Christie
Contractor General

Copy: The Most Hon. Portia Simpson Miller, ON, MP, Prime Minister
The Hon. Andrew Holness, MP, Leader of the Opposition
The Hon. Michael Peart, MP, Speaker of the House of Representatives
Rev. Senator the Hon. Stanley Redwood, President of the Senate
Ms. Paula Llewellyn, CD, QC, Director of Public Prosecutions
The Hon. Patrick Atkinson, QC, M.P., Attorney General of Jamaica
Ambassador the Hon. Douglas Saunders, CD, OJ, Cabinet Secretary
Mrs. Jacqueline Samuels-Brown, QC, Attorney-at-Law, FirmLaw



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

TELEPHONE No.: 929-0075
929-6460/6

E-Mail: kjones@ocg.gov.jm

FACSIMILE TRANSMISSION

☐ urgent

☐ for your comment

☐ please reply

☐ for your information

DATE: November 15, 2012

TO: The Hon. Phillip Paulwell, MP – Minister, MSTEM

Cc: Ms. Paula Llewellyn, C.D., Q.C. – Director of Public Prosecution
The Hon. Patrick Atkinson, Q.C., M.P. – Attorney General
Amb. Douglas Saunders, C.D., O.J. – Cabinet Secretary
Mrs. Jacqueline Samuels-Brown, Q.C. – Attorney-at-Law

FAX NUMBER: (876) 929-8103, 922-4318, 754-5158, 929-8459, 922-4343

FROM: Kadian Jones, Administrative Assistant to the Contractor-General
for and on behalf of the Contractor-General

FAX NUMBER: (876) 929-2476

TOTAL PAGES (including cover sheet): 3

COMMENTS:

Please see letter dated November 15, 2012, hardcopy will follow.

Paulwell's fax confirmed by S. Edwards @ 3:10pm
DPP's fax confirmed by Mrs. Rodriguez @ 3:20pm
Saunders' fax confirmed by Sonia Morgan @ 3:24pm
Atkinson's fax confirmed by Ms. Harris @ 3:25pm
Kjones' fax confirmed by Alicia Martin @ 3:27pm

FOR: 9292476

OCG

NOV-16-2012 FRI 02:54 AM

SEND

DATE	START	RECEIVER	TX TIME	PAGES	NOTE
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TRANSACTION REPORT

NOV-16-2012 FRI 02:59 AM

FOR: 9292476

OCG

SEND

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FOR: 9292476

OCG

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TRANSACTION REPORT

NOV-16-2012 FRI 03:04 AM

FOR: 9292476

OCG

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FOR: 9292476

OCG

NOV-16-2012 FRI 03:15 AM

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NOV-16	03:14 AM	9224318	1' 17"	3	OK
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Greg Christie

From: firmlaw@cwjamaica.com
Sent: Friday, November 16, 2012 02:01 PM
To: cberesford@ocg.gov.jm
Cc: gchristie@ocg.gov.jm
Subject: Legal Opinion dated November 16, 2012

COPY

Attachments: Contractor General Opinion dated November 16, 2012.docx



Contractor General
Opinion dat...

Mr. Beresford,

Herewith please find opinion as per your instructions. If there are any questions arising please let me known.

Yours truly,

Jacqueline Samuels Brown QC

50/1751 24/11/2012 22:01 GC
19/11/12 8:30 AM

OPINION

1. I have been asked to render an opinion relative to the refusal by Government Departments/Officers to answer requisitions issued by the Office of the Contractor General (OCG), more particularly, requisitions directed to the Cabinet Office in relation to:
- (a) Approval for the Continuation of the North South Link of Highway 2000 (b) Gordon Cay Container Transshipment Hub (c) Fort Augusta Container Terminal (d) the Establishment of an Oversight Panel to Oversee the Award of Government Contracts (e) Extension of the Operating Agreement with Blue Diamond Hotels and Resorts Inc – Braco Resorts Hotel (formerly Breezes Rio Bueno) Trelawny and (f) the Liquefied Natural Gas (LNG) Project – Floating, Storage & Regasification Terminal.
2. In declining to respond the Cabinet Office has stated that advice from the Attorney General “...indicates that the Supreme Court was asked to interpret certain parts of the statute governing the Office of the Contractor [sic] in “Minister of Works vs. The Contractor General” [hereafter the pending application], and that the Courts ruling in the matter will impact the advice to the Cabinet concerning the OCG’s requisitions for Cabinet Documents...in the circumstances, the advice awaited by the Cabinet will not be forthcoming until after the Court has delivered its ruling in the aforementioned case”.
3. Requisitions had been issued prior to June 22, 2012 relative to the matters itemised at (a)-(d) which relate to projects undertaken between the Government of Jamaica and the new China Harbour Company. At first the Cabinet Secretary had been compliant with the requisitions simply asking for time within which to respond, but subsequently in the month of June it took the position that it would not cooperate as advice obtained from the Attorney General indicated that the Office of the Contractor General [hereinafter referred to as OCG] had no jurisdiction to investigate or monitor pre-contract

arrangements. Subsequently on June 22, 2012 the Ministry of Transport and Works [hereinafter referred to as MOTW] filed an Application for leave to apply for Judicial Review. In the written application filed the MOTW sought an interim injunction to restrain the Contractor General from *inter alia* further requisitions. Had this been successfully pursued, the Contractor General would have been bound to suspend any further requisitions of the MOTW relative to the China Harbour Projects. It could be said that by extension, the Contractor General ought to refrain from making requisitions of other public bodies and individuals (although in strict law he could as they are not parties to the application) so as not to, through the backdoor, undermine the effect of any such conservatory order by the Court.

4. In the same vein the Permanent Secretary; Ministry of Science, Technology, Energy and Mining has declined to respond to requisitions from the OCG concerning the LNG Regasification Terminal and Supply of Gas. The OCG requested certain particulars concerning said matters. In doing so it has stated, *inter alia*, that “[T]he Ministry is as of today in receipt of the advice of the AGC. In that regard, the AGC notes that your office is carrying out a monitoring function in relation to the pre-contractual stage of the procurement process, pursuant to section 4 of the Contractor General Act, and that no investigation has been launched. In these circumstances, the AGC has advised that the issue of your office’s jurisdiction to monitor the pre-contractual stages of government contracts is presently the subject of judicial review proceedings in the Supreme Court [the pending application]...”
5. The pending Application being referred to and relied on by both the Cabinet and the Permanent Secretary; Ministry of Science, Technology, Energy and Mining for Judicial Review and was filed pursuant to the Civil Procedure Rules 2002. Essentially it challenges the jurisdiction of the Contractor General to monitor and investigate at the pre-contract stage seeking declarations to that effect as well as orders quashing

the requisitions and prohibiting the Contractor General from taking further steps relative to the requisitions.

6. The Application was first listed for hearing on July 10, 2012, was adjourned without any hearing to July 27, 2012, when full arguments were made by both sides. The judge then further adjourned the application to consider arguments and make his decision and Counsel were told that they would be later informed as to the date when the judge will give his decision. We have heard nothing from the learned judge since then.
7. In order to answer the question posed, what is required is an analysis of the relevant sections of the **Contractor General Act**, any case law on the point, and the impact of the pending application on;
 - i. further requisitions of the MOTW; and or
 - ii. requisitions of other public bodies touching the subject matter of that litigation; and or
 - iii. requisitions relative to other government contracts.
8. The powers of the Contractor General to monitor and investigate government contracts are mainly to be found in Sections 4, 15 and 18 of the **Contractor General Act**. Relevant extracts from the sections are reproduced here for convenience.

Section 4(3): *“For the purposes of subsection (2) the Contractor-General shall have power to require any public body to furnish in such manner and at such times as may be specified by the Contractor-General, information with regard to the award of any contract and such other information in relation thereto as the Contractor-General considers desirable.”*

Section 4(4): *“For the purposes of paragraphs (d) and (e) of subsection (2) the Contractor-General shall have power to require any public officer or any other person to furnish in such manner and at such times as may be specified by the Contractor-General, information with regard to the grant, issue,*

suspension or revocation of any prescribed licence and such other information in relation thereto as the Contractor-General considers desirable.”

Section 15(1) provides: “Subject to subsection (2), a Contractor-General may, if he considers it necessary or desirable, conduct an investigation into any or all of the following matters-

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

Section 18 authorizes the Contractor-General to summon “any officer, member of a public body or any other person” to furnish information or produce documents relevant to his investigation.

A Government Contract is defined in Section 2 of the **Contractor General Act** as:

“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 of for the supply of any goods of services;”

A public body is also defined as a “ministry department or ... agency of government; ... a statutory body or authority or... registered company... in which the government... is in a position to influence the policy of the company”.

9. On the face of it therefore the Contractor General is empowered to monitor and to investigate government contracts as defined by

the Act. The case of **Lawrence v. Ministry of Construction (Works) and the Attorney General [1991] 28 J.L.R. 265** is the only decision of the Jamaican Supreme Court in which the ambit of the Contractor General's power to monitor the award of contracts is considered and ruled upon. There the Court ruled that "[T]he proper interpretation of the Act is one which empowers the Contractor-General to monitor the pre-contract stages of government contracts and to obtain information from public bodies prior to the award of such contracts." (Emphasis added).

10. Having regard to the clear language of the Statute and the decision in the **Lawrence case** (*supra*) the law, as it now stands, is that, the monitoring functions of the Contractor General includes activities at the pre contract stage. Although the question that the Court was asked to consider, related directly to the Contractor General's monitoring function, it is submitted that it applies equally to his investigatory powers as clearly, a comprehensive investigation would, in appropriate cases, encompass things done at the pre-contract stage.

11. By its pending Application for leave to file a claim seeking Judicial Review of certain requisitions made of the MOTW by the Contractor General, the Attorney General is in effect asking the Court for leave to allow him to have the Court reconsider the law as stated in the **Lawrence case** (*supra*). However, while this Application is still pending the law remains as stated in the **Lawrence case** (*supra*) and the OCG as well as governmental officers and departments are bound by it.

12. The Ministry of Science, Technology, Energy and Mining cannot therefore rely on the pending Application filed by MOTW as a basis on which to refuse to comply with the requisitions, and with all due respect to the Honourable Attorney General his advice given, cannot supersede or supplant the law as pronounced by the Court. In any event it is to be noted that neither the Cabinet nor the Ministry of Science, Technology, Energy and Mining has suggested that they have received advice that the Contractor General has no power to issue the requisitions.

13. As noted before, in the pending Application, the Minister of Transport and Works has included an application for interlocutory injunctions restraining the Contractor General from continuing to monitor and investigate the activities of the IOP and from issuing any further requisitions in relation to the activities of the IOP.

14. However, this was not pursued in the oral arguments and at the adjournment no interim injunction was asked for by the Attorney General or ordered by the judge. In any event, it has been the Respondent's position that the interim injunction sought are not as a matter of law available on an application for Judicial Review; although other interim relief (perhaps of a similar effect) may be granted by the judge to either the applicant or the respondent.

15. In summary unless and until **Lawrence** (*supra*) has been overruled public bodies are bound to respond to requisitions by the Contractor General in carrying out statutory functions of monitoring and investigation relative to government contracts, including matters at the pre-contract stage.

16. Further, while the Court may suspend the application of **Lawrence** (*supra*) in relation to a public body that has initiated litigation challenging the powers of the Contractor General, that suspension can only arise by order of a judge granting interim relief or a stay of the proceeding.

17. In plain language the Minister, Cabinet Secretary, and all public bodies are by law obligated to respond to the requisitions of the Contractor General as aforesaid. Failure to so respond amounts to an offence as contemplated by Section 29 of the **Contractor General Act**.

18. It is therefore for the Contractor General to decide whether as a matter of policy it will refrain from insisting on its requisitions being answered, taking into account all the circumstances. However, he is not by law obliged to do so.

JACQUELINE SAMUELS BROWN QC
16TH DAY OF NOVEMBER, 2012



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

OFFICE OF THE CONTRACTOR-GENERAL

PIOJ Building

16 Oxford Road

P.O. Box 540

KINGSTON 5

JAMAICA, W.I.

No. :

TELEPHONE No.: 876-929-8560/6466

FAX No. : 876-929-2476

E-mail: gchristie@ocg.gov.jm

COPY

URGENT AND IMMEDIATE

November 19, 2012

Ambassador the Hon. Douglas Saunders, OJ, CD
Cabinet Secretary
Office of the Prime Minister
1 Devon Road
Kingston 10

Dear Cabinet Secretary:

Re: Queen's Counsel Legal Opinion - Refusal of Cabinet Secretary, the Minister of Science, Technology, Energy and Mining, and the Permanent Secretary in the Ministry of Science, Technology, Energy and Mining, to comply with Lawful Requisitions of a Contractor General Referencing Advice of the Learned Attorney General and the Judicial Review Application Proceedings instituted by the Minister of Transport and Works Against the Contractor General Challenging the Power of the Contractor General to Monitor the Pre-Contract Stages of Government Contracts and to Obtain Information from Public Bodies, Public Officials and other Persons Prior to the Award of Such Contracts

I write with reference to the Office of the Contractor General's (OCG's) several pieces of correspondence in the captioned regard, ending with the OCG's letters to the Honourable Minister of Science, Technology, Energy and Mining of November 8 and 15, 2012, both of which were copied to you.

In the referenced correspondence, the OCG has taken issue with your refusal, on more than one occasion, and that of the Honourable Minister of Science, Technology, Energy and Mining and his Permanent Secretary, to comply with the lawful Requisitions of the OCG regarding the provision of information in connection with the pre-award stages of certain prospective Government contract awards.

In each such instance, you, the Honourable Minister and his Permanent Secretary have refused to comply with the Requisitions of the OCG on the ground that you have been advised by the Learned Attorney General to await the outcome of the above referenced Judicial Review Proceedings.

The OCG has been consistent in its considered positions, communicated to you, that notwithstanding the advice of the Learned Attorney General, and the fact of the Minister of Transport and Works' pending Judicial Review Application before the Courts, until and unless the Court overrules the decision that was handed down in the Supreme Court case of Lawrence v. Ministry of Construction (Works) and the A.G. (1991) 28 J.L.R. 265, or otherwise restrains the OCG from proceeding with its Requisitions, a failure by you, the Minister or by any other person or authority to comply with the said OCG Requisitions amounts to a flagrant violation of the Rule of Law and constitutes a criminal offence under Section 29 of the Contractor General Act.



In support of its considered contentions, the OCG now hereby encloses, herewith, for your records, information and guidance, a Courtesy Copy of a formal Legal Opinion in the matter at the hand of Queens Counsel, Mrs. Jacqueline Samuels-Brown.

The Legal Opinion, which speaks for itself, will be utilized by the OCG to buttress those of its positions which have been previously communicated to you, the Hon. Minister of Science, Technology, Energy and Mining, and his Permanent Secretary.

Relying upon same, we now hereby place you upon formal notice that the Office of the Cabinet will be issued, in very short order, with resurrected Requisitions in respect of which the OCG will anticipate your fulsome and comprehensive response, failing which the OCG, as an Independent Anti-Corruption Commission of the Parliament of Jamaica, will be left with no alternative but to enforce your compliance with its statutory mandates, the relevant provisions of the Contractor General Act, and the decisions of the Supreme Court of Jamaica.

By copy hereof, we now also likewise formally place the Permanent Secretary in the Ministry of Science, Technology, Energy and Mining upon notice that resurrected OCG Requisitions will be issued to her with an expectation that they will be fully complied with in a timely fashion..

By copy hereof, the OCG is also bringing the enclosed Legal Opinion to the formal attention of the Hon. Phillip Paulwell, who, as you are aware, has been required to provide fulsome and comprehensive responses to the OCG's lawful Requisitions, that have been issued to him, by no later than 3:00 pm on Tuesday, November 20, 2012.

We ask that you be guided accordingly.

Very respectfully yours,

Greg Christie
Contractor General

Copy: The Most Hon. Portia Simpson Miller, ON, MP, Prime Minister
The Hon. Andrew Holness, MP, Leader of the Opposition
The Hon. Michael Peart, MP, Speaker of the House of Representatives
Rev. Senator the Hon. Stanley Redwood, President of the Senate
The Hon. Phillip Paulwell, MP, Minister of Science, Technology, Energy and Mining
Dr. the Hon. Omar Davies, MP, Minister of Transport, Works and Housing
Mrs. Hilary Alexander, JP, Permanent Secretary, Ministry of Science, Technology, Energy and Mining
Ms. Paula Llewellyn, CD, QC, Director of Public Prosecutions
The Hon. Patrick Atkinson, QC, M.P., Attorney General of Jamaica
Mrs. Jacqueline Samuels-Brown, QC, Attorney-at-Law, FirmLaw

Enclosure



OFFICE OF THE CONTRACTOR-GENERAL
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P.O. BOX 540
KINGSTON 5
JAMAICA, W.I.

TELEPHONE No.: 929-0075
929-6460/6

E-Mail: kjones@ocg.gov.jm

FACSIMILE TRANSMISSION

☐ urgent

☐ for your comment

☐ please reply

☐ for your information

DATE: November 19, 2012

TO:

Amb. Douglas Saunders, C.D., O.J. – Cabinet Secretary *Ms. Nivens*
The Hon. Phillip Paulwell, M.P. – Minister, MSTEM *Simone Henry*
Mrs. Hillary Alexander, J.P. – Permanent Secretary *Sandra Deer*

Cc:

Ms. Paula Llewellyn, C.D., Q.C. – Director of Public Prosecution *Ms. Livingston*
The Hon. Patrick Atkinson, Q.C., M.P. – Attorney General *Ms. Bailey*
Mrs. Jacqueline Samuels-Brown, Q.C. – Attorney-at-Law *Ms. Benjamin*

FAX NUMBER:

(876) 929-8459, 929-8103, 960-1623, 922-4318, 754-5158, 922-4343

FROM:

Kadian Jones, Administrative Assistant to the Contractor-General
for and on behalf of the Contractor-General

FAX NUMBER:

(876) 929-2476

TOTAL PAGES (including cover sheet): 3

COMMENTS:

Please see letter dated November 19, 2012, hardcopy will follow along with Legal Opinion.

fax confirmed by
Ms. Nivens
Simone Henry
Sandra Deer
Ms. Livingston
Ms. Bailey
Ms. Benjamin
Kadian Jones
19/11/12
11:28

TRANSACTION REPORT

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FOR: 9292476

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Telephone: (876) 906-2414
 Facsimile: (876) 754-5158
 E-Mail: attorneygeneral@agc.gov.jm
 Reference Number:

ATTORNEY GENERAL'S CHAMBERS
 2nd Floor – North Tower
 NCB Towers
 2 Oxford Road
 Kingston 5

November 20, 2012

WITHOUT PREJUDICE

CONFIDENTIAL

COPY

Mr. Greg Christie
 Contractor General
 Office of the Contractor General
 PIOJ Building
 16 Oxford Road
 Kingston 5

Dear Contractor General,

Re: Queen's Counsel Legal Opinion – Refusal of Cabinet Secretary et al

I have received a copy of your letter dated November 19, 2012, together with a copy of the legal opinion of Queen's Counsel, Mrs. Jacqueline Samuels-Brown, Q.C., who I note argued on your behalf in the matter of the Minister of Transport, Works and Housing v The Contractor General - Claim No. 2012 HCV 03501. That matter has been duly filed, the application for leave has been argued and the Supreme Court has reserved its judgment. The matter is clearly Sub Judice.

Mrs. Samuels-Brown, Q.C. advanced to the Court all the arguments proffered in her opinion. I opposed those arguments before the Court and I still respectfully disagree with her opinion in this matter.

What is glaringly missing from the many letters you have written in this matter, is the fact that in the Minister of Transport, Works and Housing matter, there is also a claim that the Contractor General acted unlawfully and in contravention of the Contractor-General Act in publishing comments, conclusions and recommendations regarding matters he is investigating.

I note your insistence on the right to issue Media Releases but I am also aware that much of the information you seek is confidential and can be prejudicial to negotiating parties at the pre-contract stage.

The Lawrence case which you cited with much frequency is not a binding authority and no Supreme Court Judge is obliged to follow it. Its effect is merely persuasive. The statute which was interpreted in the Lawrence case has been amended in a significant way.

CCW - 1:30

Mr. Greg Christie
Contractor General

Page No.2
November 20, 2012

Re: Queen's Counsel Legal Opinion – Refusal of Cabinet Secretary et al

Having regard to all the circumstances, I have advised the **Cabinet, the Minister of Transport, Works and Housing and the Ministry of Science, Technology, Energy & Mining** that compliance with your request should await the Supreme Court's decision in the matter of the Minister of Transport, Works and Housing v The Contractor General - Claim No. 2012 HCV 03501. In these circumstances, I am requesting that your office should also await the court's decision before making any further demands on the offices in question.

As the Principal Legal Advisor to the Government of Jamaica and Attorney General, I am advising you as head of an agency of the Jamaican Parliament that the matter being Sub Judice, it is inappropriate for you to comment on its merit in the media.

Respectfully,



Patrick Atkinson, Q.C.
Attorney General

- c: The Most Hon. Portia Simpson Miller, O.N., M.P., Prime Minister
Amb. Douglas Saunders, O.J., C.D., Cabinet Secretary, Office of the Cabinet
The Hon. Phillip Paulwell, M.P., Minister of Science, Technology, Energy & Mining
Dr. The Hon. Omar Davies, M.P., Minister of Transport, Works & Housing
Ms. Paula Llewellyn, C.D., Q.C., Director of Public Prosecutions

FIRMLAW

Attorneys-at-Law

JACQUELINE SAMUELS-BROWN, Q.C., LLB. (Hons.)

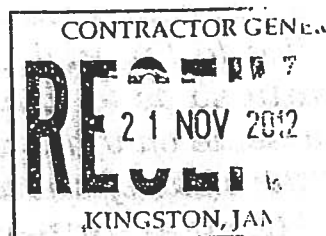
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Email: firmLaw@cwjamaica.com

Telephone: (876) 967-0493,
(876) 922-4346,
(876) 967-1258
Telefax: (876) 922-4343

November 21, 2012

The Hon. Patrick Atkinson, M.P., Q.C.
Attorney General
Attorney General's Chambers
NCB Towers 1st Floor
2 Oxford Road
Kingston 5

Dear Hon. Attorney General,



COPY
501751 DEC 11, 3:01 PM
J
21/11/12
5:15 PM

Re: Queen's Counsel Legal Opinion-Refusal of Cabinet Secretary et al

I act on behalf of the Contractor General herein and have to hand your letter of November 20, 2012 addressed to the Contractor General and to which, as per instructions, I now reply. We continue to have due regard for your position as Attorney General and your duties as chief advisor to the government. However, as you have noted in my capacity as counsel for the Contractor General, as it is my duty to so, I have tendered independent advice on the basis of my own researches and my considered opinion arising there from.

We continue to await the court's ruling but in the meantime the business of government must go on. It is public knowledge that this has obtained is so in relation to the implementation of contractual arrangements between the government and relative to the North/South Highway, a matter in relation to which litigation is still pending before the court. On the other hand, the work of the Office of the Contractor General must also continue and on my instructions my clients are determined to carry on with their obligations to the Parliament and the People of Jamaica. It is pursuant to this that the requisitions have been made and I have considered it my duty to advise the Office of the Contractor General

that this remains within the ambit of that office's powers.

In relation to the media releases I agree with you that it would be inappropriate to comment on the merits of the pending case in the media. However, this in no way detracts from the public's right to information regarding the status of pending litigation, particularly when the litigation relates to matters of national importance. In my advice to the Contractor General, I have been guided by the principles laid out in **Attorney-General v. Times Newspapers Ltd.**[1972 H. No. 8335] - [1973] Q.B. 710 in terms as follows:

"it is undoubted law that no one shall comment on litigation pending and actively in suit in such a way as to create a real and substantial danger of prejudice to the trial or settlement of an action or bring pressure on a party so as to force him to drop his complaint or give up his defence or settle on terms which he would not otherwise have entertained. But the issue of a writ does not necessarily put a stop to all comment...". The court further held that:

"... the public interest in a matter of national concern had to be balanced against the parties' interest in a fair trial or settlement; and on the evidence in the present case the public interest in fair comment outweighed the possible prejudice to a party...".

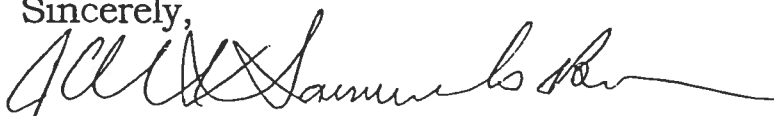
On my further instructions in the instant matter, the Office of the Contractor General (OCG) would not be commenting upon the particulars of a case, but would merely be advising the Public that, in the discharge of its statutory duties, it has referred a Public Official for his/her failure to comply with the lawful request of a Contractor General.

Although lawyers (including judges) will differ in their interpretation of the law from time to time, as all parties here are concerned with good governance and fulfilling the trust placed in them by the Jamaican populace, I trust some common ground may be found.

As you have copied your aforementioned letter to The Most Hon. Portia Simpson Miller, O.N., M.P., Prime Minister; Amb. Douglas Saunders, O.J., C.D., Cabinet Secretary, Office of the Cabinet; The Hon. Phillip Paulwell, M.P., Minister of Science, Technology, Energy & Mining; Dr. The Hon. Omar Davies, M.P., Minister of Transport, Works & Housing; Ms. Paula Llewellyn, C.D., Q.C., Director of Public Prosecutions, permit me the liberty of doing so with this

response on behalf of the Contractor General as well.

Sincerely,



JACQUELINE SAMUELS BROWN, Q.C.

- c: The Most Hon. Portia Simpson Miller, O.N., M.P., Prime Minister
 Amb. Douglas Saunders, O.J., C.D., Cabinet Secretary, Office of the Cabinet
 The Hon. Phillip Paulwell, M.P., Minister of Science, Technology, Energy &
 Mining
 Dr. The Hon. Omar Davies, M.P., Minister of Transport, Works &
 Housing
 Ms. Paula Llewellyn, C.D., Q.C., Director of Public Prosecutions

Exhibit 45



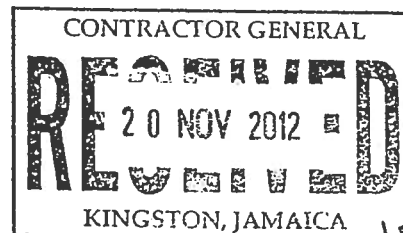
MINISTRY OF SCIENCE, TECHNOLOGY, ENERGY AND MINING

PCJ Building, 36 Trafalgar Road, Kingston 10, Jamaica W.I.
Tel. (876) 929-8990-9 Fax: (876) 960-1623
E-mail: info@mem.gov.jm Website: <http://www.mem.gov.jm>

November 20, 2012

BY HAND
CONFIDENTIAL

Mr. Greg Christie
Contractor General
Office of the Contractor General's Office
PIOJ Building
16 Oxford Road
P.O. Box 540
Kingston 5



Dear Contractor General:

Re: Request for Clarification of Concerns – Liquefied Natural Gas ("LNG") Project

Reference is made to all previous correspondence ending with yours dated November 19, 2012 addressed to the Cabinet Secretary and copied to me, regarding the matter at caption.

Before answering the specific questions posed in letter dated October 16, 2012, over signature of your Mr. Craig Beresford, I wish to place the matter in the following context:

1. The discussion with JPSCO did not involve Mr. Megginson or Mr. Zacca;
2. The JPSCO was never involved in the GOJ-lead procurement processes, as a bidder or otherwise, for the Floating Storage and Regasification Unit ("FSRU"), the Gas Supply or the Placement Agent and therefore the procurement would not have been impugned by a discussion with JPSCO;
3. JPSCO was not in any way officially a part of the GOJ-lead LNG Project; and
4. I consider it to be the duty of a responsible and prudent Minister to consider the alternatives should the GOJ-lead LNG Project not be successful in yielding the indicative prices that would realise the overall reduction in electricity prices.

①

In direct response to questions posed in letter dated October 16, 2012, please see below:

Question 1

- a. "Take over the process" was intended to refer to the possibility of the JPSCO providing its own LNG and infrastructure for electricity generation;
- b. In or around April 16, 2012;
- c. I initiated a brief discussion, in passing, during the April 16, 2012 meeting, which was convened to discuss the 360 MW Plant with the JPSCO;
- d. The GOJ representatives involved in the referenced discussions were:
 - Dr. The Hon. Peter Phillips, Minister of Finance and Planning;
 - Dr. The Hon. Omar Davies, Minister of Transport, Works & Housing;
 - Dr. Carlton Davis, Advisor to the Hon Prime Minister;
 - Dr. Wesley Hughes; Financial Secretary;
 - Mrs. Hillary Alexander, Permanent Secretary (Min. of Science, Technology, Energy & Mining);
 - Mr. Christopher Cargill, Advisor to the Minister of Science, Technology, Energy & Mining; and
 - Mr. Fitzroy Vidal, Principal Director, Energy (Ministry of Science, Technology, Energy & Mining).
- e. The representatives of the JPSCO with whom this discussion was held are:
 - Mr. Hisatsugu Hirai, Chairman of JPSCO;
 - Mrs. Kelly Tomblin, President & CEO;
 - Mr. Sang Kie Cho, Director of Korea East West Power Company Limited;
 - Mr. Valentine Fagan, Vice President of Generation Expansion;
 - Mr. Sam Davis; Head of Govt. & Regulatory Affairs; and
 - Miss Katherine Francis, General Counsel and Corporate Secretary.
- f. There was one meeting held in or around April 16, 2012 at the Ministry of Finance and Planning;
- g. No commitments or undertakings were made by the GOJ; and

- h. The JPSCO gave the oral assurance that should the GOJ-lead LNG Project not be successful, they would consider "taking over the process".

Question 2

No instructions were given to me in respect of my discussion or meeting with the JPSCO.

Question 3

The formal tender process was in no way impugned as the JPSCO was never intended to participate in any of the three (3) Requests for Proposals that were issued in relation to the GOJ-lead LNG Project. The JPSCO was a third party whose only role would be as a potential off-taker/purchaser of the LNG. I therefore do not consider my discussion with the JPSCO regarding the possibility of it "taking over the process" as being inappropriate in any way but rather prudent and responsible in all the circumstances.

Question 4

- a. A meeting was held with Samsung (FSRU) and they indicated that the prices could not be lowered. Samsung outlined their concept of an alternative configuration which the GOJ indicated it could not entertain because that would be different from the technical specifications contemplated in the Requests for Proposals.
- b. No negotiations were held with Shell (Gas) as the LNG Steering Committee Chairman, Dr. Carlton Davis, recommended that there was little scope to achieve the indicative prices of the intended off-takers, since the composite price of LNG was, at best US\$15.00 per MMBtu. Please see Dr. Davis' report attached hereto as Appendix 1.

Question 5

- a. My concern that the GOJ-lead LNG Project would not be able to yield the indicative prices of the off-takers arose in consequence of the March 11, 2011 Fukushima incident and the resultant escalation of the price of LNG in the international market;

- b. Consequent on the above changes in the international market, I also explored the possibility of sourcing gas from Angola and Trinidad & Tobago. Both Mr. Christopher Zacca and Ernest Megginson were aware of the visits I made to these countries and my intention to discuss alternatives;
- c. I was advised, since January, by the LNG Steering Committee, which was itself advised by international technical advisors, on the matters referenced herein and I relied on their expertise and recommendations on the captioned matter; and
- d. I would like to reiterate that the GOJ-lead LNG Project involved no impropriety or irregularity. This project was an inherited one, which I sought to facilitate to preserve Jamaica's credibility in the international market-place, in spite of my concerns as to the ability of the GOJ-lead LNG Project to deliver the ultimate objective of lowering the cost of electricity.

Yours sincerely,



Phillip Paulwell
Minister

Attachment

Copy: The Most Honourable Portia Simpson Miller, O.N., M.P., Prime Minister
Mr. Andrew Holness, M.P., Leader of the Opposition
Dr. Carlton Davis, Former Chairman, LNG Steering Committee
Mr. Christopher Zacca, Former Chairman, LNG Steering Committee
Mr. Ernest Megginson, Former LNG Project Manager, Jamaica LNG Project

Appendix 1
(Report – Dr. Carlton Davis)

MEMORANDUM

TO: The Hon. Phillip Paulwell, MP
Minister of Science, Technology, Energy & Mining

FROM: Ambassador/Special Envoy

DATE: September 5, 2012

RE: **Liquefied Natural Gas (LNG) Project**

At a meeting of the LNG Steering Committee, last Friday, August 31, which was called primarily to hear the report of the evaluation of the bids for the supply of LNG, it was agreed that I should communicate to you the conclusions we have come to in regard to the project.

In regard to the **LNG bids**, an **Evaluation Committee** comprising Dr the Hon. Vin Lawrence, OJ; Mr. Phillip Armstrong; Mr. Christopher Bicknell; Mr. Christopher Cargill; and Mr. Peter Melhado, came to the conclusion that of the two qualified bids (one, **Marubeni** was eliminated for making a submission beyond the appointed time), **Shell International Trading, Middle East Limited (Shell)** compiled a higher mark than **Morgan Stanley** within the rating guidelines which were previously set.

The consensus, however, was that both bids were somewhat conditional. For example, in **Shell's Applicants Cover Letter**, the following is stated:

'As advised by the Government of Jamaica, the intention is that the LNG buyer will be the 'Jamaica Gas Trust' (JGT); we note that the Government has approved the formation of the JGT, with the intention that it secures at least \$100million in private sector capitalization. The exact definition of JGT, its shareholding, capitalization, credit support from third parties credit standing, banks and other information is required to finalize the SPA. We note that in the draft SPA provided by the Government of Jamaica is left blank. We will need a detailed proposal for credit support to be provided JGT to the LNG supplier in order to fully assess the proposed SPA. We have prepared our offer on the assumption that the JGT will provide full securitization of its contractual obligations'.

Morgan Stanley, for its part, termed its principal proposal as 'Non-Binding'. It says, elsewhere, that it was "unable to supply a '**best and final**' proposal at this time" and listed a number of factors for its position.

In consequence, it is fair to conclude that the proposals were both tentative.

The respective proposals which were evaluated could be expressed in formula as:

$$y = mx + b$$

Where: y = the price of LNG per MMBtu delivered in Jamaica

m = a factor of 1.15

x = the Henry Hub price of natural gas

b = an addition to the Henry Hub price

In **Shell's case**, the price for delivery to Jamaica was 1.15 Henry Hub + 0.05111 Brent crude, in the amount of 830,000 tonnes per annum for 15 years.

In **Morgan Stanley's case**, 1.15 Henry Hub + US\$6.50, in the amount of 830,000 tonnes per annum for 20 years.

Using projected pricing data, these quotations amounted to: Shell- **US\$10.79 per MMBtu**; Morgan Stanley- **US\$11.89**.

When one takes into account the quotations received for **regasification** on the basis of 2.5 million MMBtus of LNG, **US\$0.95 per MMBtu** (Samsung), and **US\$0.84 per MMBtu** (Exmar), a price of **US\$3 per MMBtu** seems likely for 830,000 tonnes per annum of LNG and more if JAMALCO opts out leaving only the electricity providers who require 510,000 tonnes per annum.

Further, with so much emphasis on the capitalisation of the JGT as additional security to both the **LNG** and **Regasification** providers it has been estimated that some US\$200 million of capitalisation (at an indicative interest rate of 20%) would be required. This would add an additional cost of US\$40 million or **US\$1 per MMBtu**.

In the case of JAMALCO it is estimated that the **pipeline cost** would add an additional **US\$0.50 per MMBtu**.

In sum, therefore, LNG to the user could be in the order of over **US\$15 per MMBtu**. This immediately rules out JAMALCO's 320,000 tonnes per annum, as the company had a ceiling of **US\$10 per MMBtu** "at the burners", up from their earlier position of **US\$7.50 per MMBtu**.

The projected price of US\$15 (or over) would be well above JPSCo's projection that at **US\$12.50 per MMBtu** it could deliver electricity to the Jamaican consumer at an average price of **25c/kwh** which is better than the current level of **35c-40c/kwh** but still below the level we want to get to improve the competitiveness of the economy.

The matter of **cross subsidisation** has been bandied about: that is to say, a higher price would be charged to the electricity providers, and a lower one to JAMALCO which unlike the electricity providers, has to compete internationally. However, to meet JAMALCO's ceiling of **US\$10 per MMBtu** average and given the indicative price of **US\$15 per MMBtu**, the price to JPSCo would be in the order of **US\$18 per MMBtu**.

In light of the foregoing the view of the Committee is that:

1. You should apprise the respective off-takers, JPSCo and Alcoa, but especially the former (since Alcoa is looking at a **coal** or **Compressed Gas Liquid**) that the quotations and estimates so far indicate a price of US\$15.
2. JPSCo could: (a) seek a cheaper source of LNG (although its affiliate, Marubeni's quotation which come in late, was in the order of US\$11 per MMBtu); (b) negotiate with Samsung and or Exmar for a lower price for regasification; (c) seek to reduce the financial security cost on the basis of its own balance sheet, letters of credit etc. with the aim of achieving a price at or under the ceiling of **US\$12.50 per annum**.
3. The Ministry should work with both Alcoa and JPSCo to see whether the energy from the fuel used by one or other operation can be optimised (for example using steam generated from a nearby JPSCo unit for the alumina plant or permitting Alcoa to export excess electricity to the national grid).
4. The work on the Gas Regulatory Framework should be approached in a 'generic' way with the possibility of natural gas being used in Jamaica on the basis of: (a) **being piped** from elsewhere (Chevron intimated this to the Prime Minister in Colombia); (b) being supplied as **LNG** and regasified by a **land or marine-based terminal** (and in the latter case allowing for the use of **cryogenic energy**); (c) **Compressed Natural Gas (CNG)**; (d) being supplied as **Compressed Liquid Gas (CLG)**. (Pace/Global/Sea One/ BP).

Given where we are at the point I see no further need for the Steering Committee, save and except for the need to close off some outstanding matters connected with the project and the firms which bid for one aspect or the other.

cc. The Most Hon. Portia Simpson Miller, ON, MP
Ambassador the Hon. Douglas Saunders, OJ, CD, JP
Permanent Secretary Ms. Onika Miller
Permanent Secretary Mrs. Hillary Alexander, JP



MINISTRY OF SCIENCE, TECHNOLOGY, ENERGY AND MINING

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 E-mail: info@mstem.gov.jm Website: <http://www.mstem.gov.jm>

November 27, 2012

Mr. Craig Beresford
 Senior Director, Monitoring Operations,
 Corporate Communications & Special Projects
 Office of the Contractor General
 PIOJ Building
 16 Oxford Road
 PO Box 540
 Kingston 5



BY HAND & E-MAIL

Re: Liquefied Natural Gas (LNG) Project - Floating Storage & Regasification Terminal and the Procurement for the Supply of LNG

Reference is being made to all previous correspondence ending with your letter dated November 20, 2012, which made reference to the requisitions contained in letters dated September 5 and 17, 2012 regarding the matters at caption.

In response to the requisitions contained in your September 5, 2012 letter regarding the Floating Storage and Regasification Unit ("FSRU"), please see responses below:

Requisitions in September 5, 2012 Letter

Question A

As it concerns the Evaluation Criteria, with specific reference to the Project Cost, the OCG notes that the highest score which was allocated by Evaluation Committee members to the bids, for both Samsung and Exmar, was thirty (30) points. In this regard, and given that the Bidding Instructions had indicated that the points to be allocated to the bidder, with the lowest overall project cost, would have been forty (40), it appears that the Evaluators had pro-rated the scores assigned.

As such, please advise whether the points allocated were in fact pro-rated. If so, please indicate the following; (a) the basis upon which the Evaluators would have pro-rated the points allocated, and (b) the basis cost which was used, and how same was derived.

Response

I am not aware of the Evaluation Committee pro-rating the points allocated.

Question B

Is the Ministry of Science, Technology, Energy and Mining, confident that; (i) the bid from Exmar was substantially responsive to the requirements of the tender, and as such, should have been evaluated in detail and (ii) the evaluation was conducted in accordance with the requirements of the tender, with particular reference to the project cost component.

Response

The Evaluation Report states that the majority of members of the Evaluation Committee were of the view that the deviations in the Exmar bid were not material and as such did not render it non-responsive. The Ministry perceives no basis to be in doubt that the evaluation was conducted in accordance with the requirements of the tender as it relates to the cost component.

Requisitions in September 17, 2012 Letter

As it relates to the requisitions contained in letter dated September 17, 2012, it is my understanding that the supply of LNG is an international commodity and consequently an exception to the procurement rules in accordance with clause 1.2.1(j) of volume 1 of the Handbook of Public Sector Procurement Procedures. Responses to questions 3, 4 and 5 have therefore been omitted.

Question 1

Is there merit to the information contained in the above-mentioned article¹?

Response

The Gleaner article dated September 9, 2012 entitled "JPS to save the LNG Project", has merit only in respect of the Ministry adhering to the letter of the law in not accepting the bid from Marubeni Corporation, which arrived late and the LNG Steering Committee indicating to the Minister that the prices quoted by the bidders would not realize any appreciable decline in the cost of electricity.

Question 2

If your answer to question #1 is yes, please provide an Executive Summary, detailing...

Response

I am not aware of any negotiations being held by the Government of Jamaica with Marubeni Corporation to supply LNG to Jamaica.

¹ ".....Jamaica Public Service Company (JPS) could be the one to save the Government's floundering liquefied natural gas (LNG) project....Having stuck to the letter of the law and prevented the parent company of the JPS, Marubeni Corporation, from bidding to supply LNG to Jamaica, the Government now seems ready to eat humble pie and beg the firm for help...However, with the qualified bidders offering prices that would not lead to any appreciable decline in the cost of electricity to Jamaicans, it appears negotiations are set to be initiated with Marubeni. "The prices quoted by the bidders are much higher than Jamaica can pay and would not attract the JPS or the bauxite companies," a source close to the talks told *The Sunday Gleaner*. "So what will happen now is that efforts will be made to get a long-term deal for Marubeni to supply the gas at a cheaper price because that is the only way the country will see the introduction of LNG," added the source....".

Question 6

Has the Jamaica Gas Trust ("JGT") been established?

Response

The JGT has not been established.

Question 7

If your answer to question #6 is yes, please provide the following:

- a) The date on which the JGT was established; and
- b) Please provide a copy of any contracts and/or other documentation relating to the establishment of the JGT.

Response

Please see response to question 6.

Question 8

If your answer to question #6 is no, please provide an indication as to when the JGT will be established.

Response

The Government of Jamaica has taken the decision, based on the recommendations of the LNG Steering Committee, to terminate the procurement processes associated with the Jamaica LNG Project and all bidders have been notified accordingly. In light of the foregoing, the JGT will not be established.

Yours sincerely,



Hillary Alexander, JP
Permanent Secretary

Copy: Phillip Paulwell, Minister of Science, Technology, Energy & Mining
Dr. the Honourable Carlton Davis, OJ, CD, Special Advisor to the Honourable Prime Minister
Mrs. Nicole Foster-Pusey, Solicitor General



Exhibit 47

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

OFFICE OF THE CONTRACTOR-GENERAL

PIOJ Building

16 Oxford Road

P.O. Box 540

KINGSTON 5

JAMAICA, W.I.

No. :

TELEPHONE No.:876-929-8560/6466

FAX No. : 876-929-2476

E-mail:general@ocg.gov.jm

November 28, 2012

The Hon. Phillip Paulwell
Minister of Science, Technology, Energy and Mining
Ministry of Science, Technology, Energy and Mining
PCJ Building
36 Trafalgar Road
Kingston 10

COPY

Dear Minister:

Re: Request for Clarification of Concerns which have been formally brought to the attention of the Office of the Contractor General (OCG) by the Former Chairman of the LNG Steering Committee and the Former LNG Project Manager, in regard to certain assertions contained in a Media Report which was published in the Jamaica Observer Newspaper of October 4, 2012

We write to acknowledge receipt of your letter dated November 20, 2012, regarding the captioned matter. The referenced letter, which was written in response to the Office of the Contractor General's (OCG's) Statutory Requisition of October 16, 2012, was received in our Office, on November 20, 2012 at approximately 2:40 p.m.

Reference is also made to your letter of November 10, 2012, in which you advised the OCG, *inter alia*, that "... while [you] stand ready to respond to your [the OCG's] requisitions and be absolutely forthcoming in so doing, [you] have sought the further advice of the Attorney General's Chambers. That advice is expected to be forthcoming presently."

The OCG must also place upon the record, for the sake of completeness, a letter dated November 20, 2012, which was received under the hand of the Attorney General of Jamaica, in which he sought to advise the OCG that, instructions had been given to you, amongst other Public Officials, that compliance with the OCG's requests in the instant matter, *inter alia*, should await the Supreme Court's decision in the matter of the Minister of Transport, Works and Housing v The Contractor General – Claim No, 2012 HCV 03501.

The OCG is indeed grateful, that despite the foregoing advice, you have, as a Senior Government Minister and Member of the Cabinet, and in keeping with the commitment which was made by you, in your letter of November 10, 2012, provided the OCG with a complete and forthright response to its lawful Statutory Requisition.

In particular, the OCG must reiterate its considered opinion that your actions have augured well for the



good governance principles of transparency and accountability, the dictates of the Rule of Law, the Contractor General Act as well as the current and binding decisions of the Supreme Court of Jamaica which are attendant to the instant matter.

Indeed, the OCG is confident that your actions have served as an exemplar for your Permanent Secretary in the Ministry of Science, Technology, Energy and Mining, Mrs. Hilary Alexander, who has, on November 27, 2012, subsequent to the OCG's receipt of your response, complied with the OCG's requisition concerning the Liquified Natural Gas (LNG) Project.

Your cooperation in the matter is greatly appreciated.

Very respectfully yours,

A handwritten signature in black ink, appearing to be 'G. Christie'.

Greg Christie
Contractor General

Copy: The Most Honourable Portia Simpson Miller, O.N., M.P., Prime Minister
The Hon. Andrew Holness, M.P., Leader of the Opposition
Ambassador Douglas Saunders, C.D., O.J., Cabinet Secretary
Mrs. Hilary Alexander, J.P., Permanent Secretary, Ministry of Science, Technology, Energy and Mining
Mrs. Jacqueline Samuels-Brown, Q.C., Attorney-at-Law, FirmLaw



Exhibit 48

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

No. :

TELEPHONE No.: 876-929-8560/6466

FAX No. : 876-929-2476

E-mail: general@ocg.gov.jm

OFFICE OF THE CONTRACTOR-GENERAL

PIOJ Building

16 Oxford Road

P.O. BOX 540

KINGSTON 5

JAMAICA, W.I.

COPY

November 29, 2012

Ambassador the Hon. Douglas Saunders, O.J., C.D., J.P.
Cabinet Secretary
Office of the Cabinet
1 Devon Road
Kingston 6
Jamaica

Dear Cabinet Secretary:

Re: Requisitions of the Office of the Contractor General regarding Cabinet Submissions and Decisions

We write to acknowledge receipt of a letter which was dated November 26, 2012, regarding the captioned matter. The referenced letter, which was signed by a Ms. K. Sewell Mills, 'for the Cabinet Secretary', was received in our office on Tuesday, November 27, 2012, and requested a further extension of the deadline for your response to the Requisitions of the Office of the Contractor General (OCG), as outlined in our letter of November 20, 2012.

In particular, the OCG has noted the assertion in the second paragraph of the referenced letter, in which you have advised the OCG that *"in [your] letters to [the OCG] dated 25th April 2012 and 13th September 2012, you were reminded that only the Cabinet can authorize the release of its documents. The Cabinet Office is therefore not in a position to release such documents without the express approval of the Cabinet. It is expected that the matter will be considered by the Cabinet on 3rd December 2012. Accordingly, request is hereby made for an extension to the time-line indicated in your letter under reference, to 10th December 2012"*

The OCG has considered the request and, having taken account of all relevant factors, inclusive of the high respect and regard which it holds for the Cabinet of Jamaica and the fact that the *"matter will be considered by the Cabinet on 3rd December 2012"*, hereby grants an extension to the November 27, 2012 deadline previously stated in its letter of November 20, 2012, to Monday, December 10, 2012 by 4:00 pm.

Without prejudice to the foregoing, the OCG must reiterate the fact that in keeping with the provisions of the Contractor General Act and, in particular, Section 19 of the said Act, there exists no prohibition in law which would authorize the Cabinet from providing the requested documentation to the OCG.

In point of fact, and in keeping with the provisions of the law, Section 19 (1) (b) of the Contractor General



Act is the only provision upon which the Cabinet could rely in not providing certain classifications of documents to the OCG. The referenced provision states as follows:

"Where the Secretary to the Cabinet at the direction of Cabinet...

- (b) *certifies that the giving of any information or the answering of any question or production of any document or thing would prejudice the security or defence of Jamaica, a Contractor-General shall not further require such information or answer to be given or such document or thing to be produced."*

Given the foregoing, we must respectfully remind you that the matters and documentation which the OCG currently requires from the Cabinet Office does not fall within the ambit of the referenced provision of law.

As such, we would like to thank you in advance for your full and anticipated cooperation in this endeavor.

Yours respectfully,

Greg Christie
Contractor General

Copy: The Most Honourable Portia Simpson Miller, O.N., M.P., Prime Minister of Jamaica
The Hon. Andrew Holness, M.P., Leader of the Opposition
Ms. Paula Llewellyn, Q.C., C.D., Director of Public Prosecutions
Mrs. Jacqueline Samuels-Brown, Q.C., Attorney-at-Law, FirmLaw



Exhibit 49

CABINET OFFICE

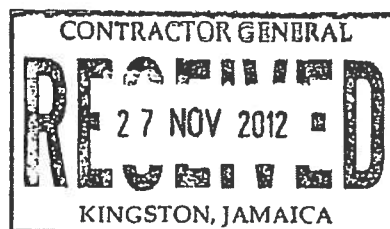
1 DEVON ROAD,
P.O. BOX 272
KINGSTON 6, JAMAICA

NO. CS11/2012-10

COPY

26th November 2012

The Contactor-General
Office of the Contractor-General
PIOJ Building
16 Oxford Road,
Kingston 5



*CO: SD/MB
2012*

ATTN: Mr Craig Beresford

Dear Contractor-General,

RE: Requisitions of the Office of the Contractor General regarding

Cabinet Submissions and Decisions

Reference is made to correspondence ending with your letter dated 20th November 2012, concerning the matter at caption.

You will recall that, in our letters to you dated 25th April 2012 and 13th September 2012, you were reminded that only the Cabinet can authorize the release of its documents. The Cabinet Office is therefore not in a position to release such documents without the express approval of the Cabinet. It is expected that the matter will be considered by the Cabinet on 3rd December 2012.

Accordingly, request is hereby made for an extension to the time-line indicated in your letter under reference, to 10th December 2012.

Please be assured of the commitment of the Cabinet Office to the principles of transparency and accountability in the GOJ procurement process.

*CO: P...
2012*

Yours sincerely,

K. Sewell Mills (Ms)

for: Cabinet Secretary



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

OFFICE OF THE CONTRACTOR-GENERAL

PIOJ Building

16 Oxford Road

P.O. Box 540

KINGSTON 5

JAMAICA, W.I.

No. :

TELEPHONE No.: 876-929-8560/6466

FAX No. : 876-929-2476

E-mail: general@ocg.gov.jm

URGENT AND IMMEDIATE

December 3, 2012

The Most Honourable Portia Simpson Miller, O.N., M.P.
Prime Minister of Jamaica
Office of the Prime Minister
1 Devon Road
Kingston 10

COPY

Dear Madame Prime Minister:

Re: Requisitions of the Office of the Contractor General regarding Cabinet Submissions and Decisions

I write directly to you in my capacity as Acting Contractor General concerning a matter which has been, and which continues to be of grave concern to the Commission of the Contractor General of Jamaica.

On June 21, 2012, the Government of Jamaica (GOJ), through the Minister of Transport and Works, initiated court proceedings against the Office of the Contractor General (OCG) regarding its lawful jurisdiction to, *inter alia*, monitor GOJ pre-contract award activities. It is the considered opinion of the OCG that while it is the Government's or any citizen's constitutional right to institute such a challenge, it is not their right, barring a court injunction, to circumvent the provisions of the settled law. The OCG's position in this matter is buttressed by the Legal Advice and Opinion which it has received from Queens Counsel.

Such a situation, Madame Prime Minister, if allowed to prevail, and taken to its natural conclusion, has the potential of creating anarchy in any society.

The OCG has, for approximately seven (7) months, been obstructed by the GOJ concerning its lawful request for the provision of certain Cabinet documents concerning matters for which the OCG has a statutory interest.

The Cabinet Office's last correspondence, dated November 26, 2012, and the OCG's response thereto, dated November 29, 2012, regarding the instant matter, refers. As it now stands, the final deadline for submission of the requested documentation and information is Monday, December 10, 2012.

By way of letter dated November 26, 2012, the Cabinet Secretary sought to remind, and has placed the OCG on formal notice, that "...only the Cabinet can authorize the release of its documents. The Cabinet Office is therefore not in a position to release such documents without the express approval of the Cabinet."



It is the foregoing position of the Cabinet Office which has warranted my penning this letter to you directly.

Consequently, in the instant matter, I seek your immediate and urgent intervention, as the OCG, pursuant to the law by which it was created, and circumscribed, must act in accordance with same.

Please accept my kind regards and highest considerations for yourself and the Office of the Prime Minister.

Very respectfully yours,

Mr. Craig Beresford
Acting Contractor General

Copy: Ambassador the Hon. Douglas Saunders, C.D., O.J., Cabinet Secretary
Mrs. Jacqueline Samuels-Brown, Q.C., Attorney-at-Law, FirmLaw



OFFICE OF THE CONTRACTOR-GENERAL

1ST FLOOR, PIOJ BUILDING

16 OXFORD ROAD

P.O. Box 540

KINGSTON 5

JAMAICA, W.I.

TELEPHONE No.: 929-0075
929-6460/6

E-Mail: kjones@ocg.gov.jm

FACSIMILE TRANSMISSION

☐ **urgent**

☐ **for your comment**

☐ **please reply**

☐ **for your information**

DATE: November 21, 2012

TO: The Most Hon. Portia Simpson-Miller, O.N., M.P. – Prime Minister
Amb. Douglas Saunders, C.D., O.J. – Cabinet Secretary

Cc: Mrs. Jacqueline Samuels-Brown, Q.C. – Attorney-at-Law

FAX NUMBER: (876) 929-0005, 929-8459, 922-4343

FROM: Kadian Jones, Administrative Assistant to the Contractor-General
for and on behalf of the Contractor-General

FAX NUMBER: (876) 929-2476

TOTAL PAGES (including cover sheet): 3

COMMENTS:

Please see letter dated December 3, 2012, hardcopy will follow.

PM's fax confirmed by Ms. Bennett @ 10:48Am
Cabinet Secretary's fax confirmed by Ms. Nivens @ 10

3/12/12

TRANSACTION REPORT

DEC-03-2012 MON 10:41 PM

FOR: 9292476

OCG

SEND

DATE START RECEIVER TX TIME PAGES NOTE

DEC-03	10:39 PM	9224343	1' 18"	3	OK
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TRANSACTION REPORT

DEC-03-2012 MON 10:39 PM

FOR: 9292476

OCG

SEND

DATE	START	RECEIVER	TX TIME	PAGES	NOTE
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TRANSACTION REPORT

DEC-03-2012 MON 10:37 PM

FOR: 9292476

OCG

SEND

DATE START RECEIVER TX TIME PAGES NOTE

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Exhibit 51

PRIVATE & CONFIDENTIAL**COPY****CABINET OFFICE**

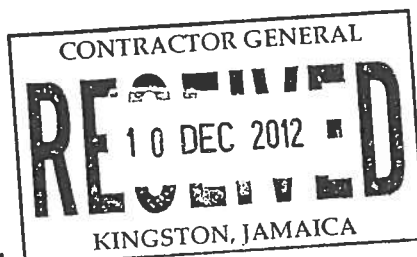
1 DEVON ROAD,

P.O. BOX 272

KINGSTON 6, JAMAICA

NO. CS12/2012-05

Mr Craig Beresford
Acting Contactor-General
Office of the Contractor-General
PIOJ Building
16 Oxford Road,
Kingston 5

10th December 2012

Copy: Strategy Team
Dec 11/12

Dear Mr Beresford,

RE: Requisitions of the Office of the Contractor General regarding**Cabinet Submissions and Decisions**

Reference is made to correspondence ending with your letter dated 29th November 2012, concerning the matter at caption.

The Cabinet, at its meeting today, considered the resurrected requisitions of the OCG for the relevant Cabinet Submissions and Decisions, including the legal issues raised by way of the latter's letter dated 19th November, 2012, and has requested further advice on the matter from the Attorney General.

Accordingly, request is hereby made for an extension to the time-line indicated in your letter under reference, to 14th January, 2013, in order to allow for that advice to be considered by the Cabinet.

I take this opportunity to extend to you and the staff of the Office of the Contractor-General, best wishes for the season and beyond.

Yours sincerely,

Douglas Saunders

Cabinet Secretary

