



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:-

No. :

TELEPHONE No.:876-929-8560/6466

FAX No. : 876-929-2476

E-mail: dharrison@ocg.gov.jm

URGENT AND CONFIDENTIAL

May 4, 2015

Ms. Paula Llewellyn, CD, QC
Director of Public Prosecutions
Office of the Director of Public Prosecutions
King Street
Kingston

Dear Ms. Llewellyn:

Re: Special Report of Investigation Conducted into the Circumstances Surrounding Allegations of Nepotism, Conflicts of Interest, Irregularity and/or Impropriety in the Award of Government Contracts at the Hanover Parish Council to Persons Affiliated with the then Mayor of the Hanover Parish Council

Reference is made to the captioned matter and to your letter, which I am in receipt of, dated April 23, 2015.

Could you kindly advise whether our letter dated March 27, 2015 was received. Please further advise whether due consideration was given to "...whether the aforesaid circumstances amount to an attempt to pervert the course of justice", as was requested in the referenced letter.

I wish to formally ask you to review your opinion dated April 23, 2015 as is stated on pages 5 -7, beginning with paragraph 14, "**Public Sector Procurement Regulations, (2008)**," (herein after referred to as the Regulations), with specific reference to following section:

Circular No. 16 (Ministry of Finance and Planning) Increased Approval Threshold for Public Sector Procurement. Dated May 14, 2012 (Extract)

"Procurement of Goods, Works and General Services

Contract Value Threshold

Procurement Method

Approval Requirements

Up to \$500,000.00

Direct Contracting

Head of Procuring Entity"



Further, at pages 6 - 7, reference is made to Sections 36 and 40 of the Regulations and a discussion, stating the following:

'Discussion

These regulations only apply where the contract amount is above the approval threshold. In 2012, this threshold was five hundred thousand dollars (\$500,000.00).

The highest award that was made for a contract consequent on recommendations made by Miss Haughton was for the amount of three hundred thousand dollars (\$300,000.00). In the circumstances therefore we are of the view that section 40 of the Regulations does not apply."

The statement that *"These regulations only apply where the contract amount is above the approval threshold."* is not an accurate statement.

Section 3 of the Regulations state as follows:

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

It is submitted, therefore, that there is no lower limit which is excluded from the Regulations, as has been stated in your letter of April 23, 2015.

Further, the very Regulations, at Section 7, stipulate that *"Tender Proceedings for prospective government contracts shall be conducted according to the procedures outlined in the Handbook."*

Section 8 (2) and (3) of the Regulations provides as follows:

"(2) The following procurement methods apply to procurement of general services, goods and works-(a) open tendering (the default method);(b) selective tendering;(c) limited tendering; and(d) direct contracting or sole source.(3) Each method shall be utilized in accordance with the thresholds and established criteria through circulars by the Ministry responsible for Finance and as prescribed in the Handbook."

It is both stated and accepted, in the 2012 Procurement Handbook, that for contract values **up to \$500,000** the Direct Contracting methodology is the recommended procurement method. Same is an established methodology, recommended for use within an established threshold and, therefore, one which falls within the ambit of the Regulations, as stated above.

Neither Section 36 nor Section 40 make specific reference to any threshold or methodology, be it, *inter alia*,



Direct Contracting, Limited Tendering, Select Tendering, Local Competitive Bidding, or Emergency Contracting procurement methodologies.

In fact, Section 40 of the Regulations is not limited to any particular methodology but, instead, has overall applicability to the principles and requirement of government contracting as detailed in the Handbook and the Regulations. However, the view has been posited in your discussion section, that *“The highest award that was made for a contract consequent on recommendations made by Miss Haughton was for the amount of three hundred thousand dollars (\$300,000.00). In the circumstances therefore we are of the view that section 40 of the Regulations does not apply.”*

I have been unable to locate any part of this Regulation that says it only applies to the Direct Contracting Methodology, Limited Tendering, Select Tendering, Local Competitive Bidding, or Emergency Contracting procurement methodologies and, moreso, in relation to the statement above, only to contract awards above the \$500,000 threshold.

The Direct Contracting Methodology is a device to advise procuring entities and bidders of the engagement objectives, that is, as to how contractors are engaged or how tenders are accepted. It is both directory and mandatory. The Regulations do not stipulate a monetary threshold nor do they stipulate a methodology for applicability and enforcement for which the Regulations become applicable.

I humbly submit that Sections 36 and 40 apply to any monetary sum to include the sum of Three Hundred Thousand Dollars (\$300,000.00) and more importantly to all public officers/officials irrespective of the methodology utilized.

Also, I wish to bring to your attention Section 38 of the Regulations:

“In addition to standards of behaviour otherwise lawfully prescribed, a public officer who is concerned with any aspect of public sector procurement shall comply with the standards set out in the First Schedule”

The ethical standard mentioned herein refers to *“...a public officer who is concerned with any aspect of the process of public procurement...”* and I submit that Direct Contracting is an aspect of the public sector procurement.

I reiterate my humble request and ask for a review of your findings accordingly.

Very respectfully yours,

Dirk Harrison
Contractor General