



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: communications@ocg.gov.jm

OFFICE OF THE CONTRACTOR-GENERAL

PIOJ Building

16 Oxford Road

P.O. BOX 540

KINGSTON 5

JAMAICA, W.I

MEDIA RELEASE

Official Statement of the Office of the Contractor General Regarding Assertions Made by Dr. the Hon. Omar Davies In Parliament On April 24, 2012

Kingston; April 27, 2012 - The Office of the Contractor General (OCG) is deeply troubled by certain statements which have been attributed to Dr. the Hon. Omar Davies, the Minister of Transport, Works and Housing, during his Presentation to Parliament on April 24, 2012. At the time, he announced the Government's intention to embark upon three (3) major US multi-million dollar investment projects – the North-South Link of Highway 2000, the Gordon Cay Container Trans-shipment Hub, and the Fort Augusta Container Terminal.

In the interest of clarity, the OCG has expressed concerns, which have been documented, with respect to only the first two (2) investment projects, one of which includes the Government's expressed intention to award, without international competitive tender, a Sole Source US\$600 million contract to China Harbor Engineering Company (CHEC) for the construction of the North/South Link of Highway 2000, and a consequential award of a fifty (50) year toll-road concession. The OCG has no institutional knowledge of the third project, the Fort Augusta Container Terminal.

The OCG's positions, and concerns, and its credible justifications for same, as regards the first two (2) projects, will be publicly disclosed in a separate Media Release which will be issued shortly, as the matter that has to be addressed herein is so grave that it warrants special and detailed attention.

During his presentation, Dr. Davies announced the establishment of a so-called 'independent oversight panel to expand the framework for monitoring the award of Government contracts'. He said that the three (3) person, hand-picked, civilian panel, will give "*oversight*" to the award and implementation of certain specified Government contracts, to ensure "*value for money, transparency, accountability, effective monitoring, and controls, while providing project evaluation and technical advice*".

Of critical importance, is the fact that Dr. Davies has reportedly said that the panel was established because he and his Administration would not accept impotence as an option, and that his Government refuses to '*allow the OCG to be a stumbling block in the engagement of private entities as the state moves to take advantage of investment opportunities*'. (Daily Gleaner –Wednesday, April 25, 2012).

Against the background of the foregoing, and the decisions that have been taken by the Administration to disregard the OCG's considered and documented positions on the referenced North/South Link of



Highway 2000 matter, the OCG wishes to now publicly express the following positions:

- (1) The OCG takes strong offence and exception to any suggestion that is made that by virtue of the discharge of its lawful mandates, under the Contractor General Act, as is prescribed by the Parliament of Jamaica, and which it is sworn to do, that it is impeding economic growth and development in Jamaica.

On the contrary, the OCG is of the view that economic development must be pursued in a sustainable and responsible manner, and within an appropriate system of institutionalized and independent checks and balances which will ensure that the Jamaican Taxpayer can be guaranteed value for money and that all Government commercial transactions will withstand the highest levels of scrutiny and probity.

The OCG is the established oversight authority which is expressly mandated by law to ensure that Government of Jamaica contracts and licences are void of irregularity, impropriety and corruption. Consequently, where any Government contract exhibits symptoms of same, the OCG is duty bound to bring its positions to the attention of the Parliament and the Taxpayers of Jamaica. The OCG wishes to be clear that it will not be intimidated or placed into fear or inaction by any person or authority from dispassionately discharging its sworn statutory responsibilities under the Contractor General Act.

- (2) The OCG considers the Administration's establishment of its so-called *independent contract oversight panel* as a brazen but, as will be seen, a futile attempt to usurp, undermine and circumvent the lawful Government contract monitoring authority and mandate of the OCG – a mandate which, it must be emphasized, is vested, by law, exclusively in what is an Independent Anti-Corruption Commission of the Parliament of Jamaica.
- (3) The OCG further questions the authenticity of the '*independence*' which has been bestowed upon the panel by the Administration, particularly in light of the fact that the panel is being asked to scrutinize the contracting activities of the Executive arm of the State, the very authority which has appointed it, and to whom it must report.
- (4) The Administration's establishment of an "*independent oversight panel ...to expand the framework for monitoring the award of contracts*" is a wasted duplicity of effort – an effort which will, itself, become an additional layer of bureaucracy, since the OCG is vested, by Statute, with a similar mandate to monitor the award and implementation of all Government contracts with a view, *inter alia*, "*to ensure*" that such contracts are awarded '*impartially and on merit and in circumstances which do not involve impropriety or irregularity*'.

While the OCG is a Quasi-Judicial Commission that is encloded with the powers of a Judge of the Supreme Court of Jamaica, the referenced civilian panel has no authority or power which is recognized by any law, inclusive of the power of sequestration, discovery, subpoena, enquiry



or search, to “*ensure value for money, transparency and accountability*” in its attributed oversight role in the award and implementation of Government contracts.

Additionally, and also unlike the OCG, which is a sixty (60) person professionally staffed national Anti-Corruption Commission, the referenced three (3) person civilian panel has neither the resources, nor the required professional competencies, knowledge or skill-sets, to satisfactorily fulfill the specialized Government contract monitoring and implementation mandate that has been illegitimately assigned to it by the Executive arm of the State.

Consequently, and if the Minister’s words may be borrowed, the panel will not only be ‘*impotent*’ to effectively secure its stated objectives, but the considerations which have been outlined above would suggest that the establishment of the panel is simply an attempt to bypass the scrutiny of the OCG, and to sanitize the Government’s contracting actions, whilst presenting a public façade of transparency, value for money and accountability in selected Government contracting processes.

The foregoing should present real concerns for the three (3) men who have reportedly accepted appointments to the referenced panel. Additionally, it is the OCG’s considered view that they are likely to place themselves, as well as their hard earned integrity, at possible risk should their interventions be construed as a criminal obstruction of the Contractor General under Section 29 (b) of the Contractor General Act, or should their ‘findings’ or activities become subject to the lawful investigations of the OCG, particularly in respect of any matter in which the said ‘findings’ may run counter to the substantiated determinations of the Commission.

- (5) The OCG is also obliged to register its alarm at the contradictory posturing which has been exhibited by the ruling Portia Simpson-Miller led Administration, considering that less than five (5) months ago, while in Opposition, Mrs. Simpson-Miller, as the then Opposition Leader, stridently declared that “... *when I’m returned to power, as Prime Minister, I will ensure the strengthening of these institutions, like the Office of the Contractor General, and all the institutions having to investigate corruption and deal with corruption when they are reported*”. (Televised General Elections Leadership Debate, held on December 20, 2011).

In the premises, the OCG, with respect, considers the actions of the Administration in this matter to be not only unlawful, but to be dangerous, unprecedented and ominous.

The conduct of the Administration would suggest that it is not prepared to abide by the Rule of Law, but to govern, instead, by arbitrary executive edict, as it has set in place its own hand-picked civilian oversight panel to obviously ‘over-rule’ or supplant the country’s leading Independent Anti-Corruption Commission by rubber-stamping, legitimizing or sanitizing what could otherwise be perceived or held by the OCG to be suspicious, irregular, improper, illegal or corrupt Government contracting practices.



This is a retrograde step in the fight against corruption in Jamaica – a country which for the past ten (10) years has been consistently ranked by Transparency International as one of the most corrupt countries in the Western Hemisphere. It is the thin edge of the wedge which could potentially portend what is to come. If it is not roundly challenged and summarily rejected by all well-thinking Jamaicans, the country will come to regret it.

The OCG wishes to use this opportunity to respectfully remind the Administration that it was not established to be used as a rubberstamp for the sanitization of irregular Government contract processes. If this is the Government's desire, it would be a clear indication to the Nation that the current Administration is not serious about sustainable national economic development, since it is a trite principle that corruption and real economic development cannot co-exist.

The OCG also wishes to respectfully implore the Administration to disband the referenced panel, and to publicly affirm its unbridled commitment to not only internationally accepted best practices in public procurement oversight, but also to systems of accountability and open government, and to faithfully comply with the existing laws and regulations of the country, even as it pursues national economic development opportunities for Jamaica.

Should it fail to do so, it will run the risk of being viewed by Jamaicans, the country's bilateral partners, the multi-lateral financing community, foreign private investors and the international anti-corruption movement, as an Administration which is complicit in the deep and stagnant cesspool of corruption that Jamaica is currently perceived to be buried in, and as an Administration that is seemingly reluctant to break the back of the stubborn links which have long existed in Jamaica between politics, public contracting, corruption and organized crime.

- END -

Contact: The Communications Department, Office of the Contractor General of Jamaica
C/o Craig Beresford, Senior Director of Monitoring Operations, Corporate Communications and Special Projects
E-mail: communications@ocg.gov.jm. Tel: 876-929-8560; Direct: 876-926-0034; Mobile: 876-564-1806