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MEDIA RELEASE

STATEMENT OF THE CONTRACTOR GENERAL REGISTERING STRONG OBJECTION TO CABINET'S EXEMPTION OF CERTAIN PUBLIC ENTITIES FROM PROCUREMENT RULES

Kingston; October 2, 2008 – “The Office of the Contractor General (OCG) wishes to publicly register, in the strongest possible terms, its objection to certain procurement related measures which it understands the Cabinet, on August 25, 2008, has approved for implementation.

The measures, which were formally published in a Ministry of Finance (MOF) Circular, dated September 22, 2008, are intended to exempt certain procurements of Air Jamaica Limited, Petrojam Limited, the Jamaica Tourist Board and Jamaica Vacations Limited, from the application of the Government's Procurement Procedures Handbook (GPPH).

Instead of having to comply with the requirements of the GPPH, two of these Public Bodies have been authorized to execute certain procurements and award certain Government contracts using their own unique but un-specified “*internal procurement regimes*”, whereas the other two have been authorized to undertake certain procurement activities “*according to standard industry practice*”.

The exemption measure was one among several which had been previously considered and approved by the Cabinet in December 2007, without any prior reference or notice to the OCG. The measures were withdrawn after I had written to the Hon. Prime Minister, on December 20, 2007, to publicly protest the fact that the OCG had been wholly bypassed in the consultation process.

At the invitations of the Prime Minister, one of which was issued following after a second and repeated attempt by the MOF to circumvent the OCG, the OCG submitted two written Reports to Cabinet in which it outlined and substantiated the reasons why it was compelled to object to the measure. The Reports, which were respectively submitted on January 28 and June 9, 2008, were buttressed by a 2-hour presentation which was made by me to the Cabinet on June 16, 2008.

Despite the strong and vigorous objections of the OCG, the Government, however, seems determined to press ahead with the measure in so far as it relates to the named Public Bodies. Other Public Bodies which were previously listed for exemption were removed from the list, whereas the addition of the Jamaica Tourist Board and Jamaica Vacations Limited, to the original list, was only brought to the attention of the OCG on September 30, 2008, the very date on which notice of the measure itself was also given to the OCG.



The objections of the OCG to the measure are premised primarily upon the following considerations:

1. Section 4 (1) of the Contractor General Act mandates the Contractor General to monitor the award of Government contracts to ensure that they are awarded “*impartially and on merit*” and in circumstances which do not “*involve impropriety or irregularity*”. These are concepts which can only work effectively within a framework of a common set of established procurement rules which, it should be noted, successive administrations in Jamaica have maintained since 1963 for all Public Bodies.
2. Accordingly, the OCG does not support giving Public Bodies the flexibility to develop or to use their own procurement rules. Nor does it support the awarding of high value contracts in circumstances where there is no independent scrutiny at the pre-award stage.
3. In the interest of probity, transparency and accountability, and to ensure that the Tax-Payer gets value for money, the GPPH should be applied as the common regulatory tool for all Public Sector procurements. It is the OCG’s considered opinion that to do otherwise will create an imbalance which will undermine and defeat the very objectives of the GPPH and the Government’s Procurement Policy.
4. It is also instructive to note that historical reports of the Auditor General, and the Contractor General, have consistently brought forth empirical evidence which has proven that there does not currently exist in the Jamaica Public Sector, an acceptable environment in which self-regulation in public procurement and contracting can thrive and flourish.
5. Almost without exception, all Special Investigations which the OCG has conducted into the procurement practices of Public Bodies, over the past two (2) years, have disclosed wide-scale breaches and/or non-observance of the GPPH. Additionally, the OCG’s contract award monitoring activities have disclosed that in spite of recent improvements in their procurement systems, all of the exempted Public Bodies are currently exhibiting varying but un-acceptable levels of non-compliant self-regulation.
6. As an example, the Special Investigation that was recently concluded by the OCG into the procurement practices of Air Jamaica Ltd., has conclusively established that many of the Airline’s procurements lacked transparency and competition and, above all, compliance with contracting best practices. One of the glaring irregularities which was identified was the fact that the Airline had awarded several contracts to private contractors yet was unable to produce formal agreements evidencing the terms of same. (The Report of Investigation is available for reading on the OCG’s website at www.ocg.gov.jm).

Is this the type of “*internal procurement regime*” that the Cabinet is now signaling that it is satisfied with?

7. The OCG is concerned that if the Government proceeds with the exemptions, they will become the catalyst for the reversal of the significant gains which have been recently registered in the Public Sector procurement arena, particularly in terms of enhanced probity, rule compliance, accountability, transparency, independent scrutiny and competition in the award of Government contracts.
8. The OCG, therefore, views the measure as a step in the wrong direction. It is one which will most certainly inflict grave damage to the credibility of the administration’s public pronouncements that it is supportive of the principles of transparency, accountability and discipline in public contracting, and that it is all about strengthening the integrity of the procurement process.



9. The concept of permitting Public Bodies to do as they please in determining when, how, to whom and in what values Government contracts should be awarded, and to give Public Officers an unfettered hand in spending the Taxpayers' money, cannot, in the OCG's view, be countenanced in any country which values the rights of the Taxpayer and certainly not in any country which has just slipped 12 places on an internationally renowned corruption perception index to become the 96th least corrupt country in the world.
10. As a final consideration, the question needs to be asked as to what will become of these exempted Public Bodies if and when the present administration criminalizes breaches of the GPPH as it has promised to do. Since the exempted entities are exempted from the GPPH, it clearly follows that they and their Officers will also be exempted from any criminal culpability for their actions, whilst other non-exempt Public Bodies and their Officers will not be so lucky.

It is in light of all of the foregoing that the OCG is unable to give its support to the measure. If it stands, the country's procurement regulatory regime would have been compromised. Consequently, the OCG, in the discharge of its responsibilities under the Contractor General Act, will be obliged to utilize all the powers that are available to it to subject the exempted entities, their officers and their contracting practices, to an intensified and sustained level of scrutiny, the likes of which will be unprecedented in the 23 year history of the OCG.

Perhaps it should be stated at this juncture that the job of the Contractor General is not to fearfully, willingly or recklessly lend his acceptance to every measure or desire of the Government of the day.

Rather, it is the job of the Contractor General, as an Independent Commission of Parliament, to stand firmly, between the Government and the Taxpayer, as an inviolable check and balance. He must at all times act dispassionately, fearlessly and resolutely in ensuring that the interests of the Taxpayers are protected, whenever and wherever their money is being spent by Public Officials on the award of Government contracts.

On a final note, I am obliged to record that the primary justification which was advanced by the MOF for granting the exemptions is that "*the procurement procedures have severely impaired their (i.e. the entities') ability to conduct their businesses efficiently and in a manner consistent with the demands of their business environments*". The OCG has, however, categorically rejected this argument as one which is based upon (a) a fallacious reasoning, (b) a misunderstanding of the purpose and the ambit of the GPPH and (c) an apparent unwillingness on the part of the entities to be bound by any rules.

Further, in its several submissions to the Cabinet, the OCG has articulated numerous recommendations, inclusive of suggested modifications to the GPPH, all of which were designed to ensure expedition in the contract award process as well as to guarantee the financial and operational efficiency of the named entities.

The recommendations were also predicated on the premise of the maintenance of the general application of the GPPH and, thus, the preservation of the good governance elements of probity, accountability, transparency, competition, value for money and independent scrutiny in the entities' contracting processes".

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