

THE CONTRACTOR GENERAL'S INTRODUCTORY REMARKS

The Commission of the Contractor General of Jamaica is mandated under Section 28 (2) of the Contractor-General Act, to “*submit to Parliament an annual report relating generally to the execution of his functions...*” This, the 27th Annual Report of the Commission of the Contractor General, is being submitted to the Honourable Houses of Parliament of Jamaica, as a report on the operations of the Office of the Contractor General (OCG) during the calendar year 2013.

Having received feedback in relation to the packaging of the Annual Report of 2012 regarding the inclusion of sections of the Annual Report on Compact Disc (CD) instead of in hardcopy form as in previous years, the OCG has again included a CD with each hard copy of its Annual Report. As with the Annual Report for 2012, the CDs contain details of projects monitored, Summary Tables and Charts related to the OCG's operations during 2013. The hardcopy of the Annual Report therefore contains the Executive Summaries for all Divisions within the OCG. It should be here noted that packaging the Annual Report in this way has resulted in a less costly undertaking in relation to the publication and printing of the subject Report.

What exactly is corruption? The definition offered by the Commission for the Prevention of Corruption (CPC) in its “Guide to the Corruption (Prevention) Act 2000 & Regulation 2002,” defines Corruption as “*the misuse of public office for private gain for the benefit of the holder of the office or some third party.*” Transparency International (TI), the premier international organisation reporting on the combatting of corruption, defines corruption as “*the abuse of entrusted power for private gain.*” TI further states that corruption “*hurts everyone who depends on the integrity of people in a position of authority.*” Corruption of course has to be viewed through the lens of the cultural/social context of the respective country. More importantly, it is important to state that different entities may adopt different definitions, i.e., the United Nations, Transparency International, the World Bank. Consequently, a definition being referred to must be read in the context that it might not have or be of universal application.

In nearly all jurisdictions however, fighting corruption is a mammoth task by any measure. The fact that different organisations are established to counter different forms of corruption within the same territory, speaks to the magnitude of its permeation into societies. Locally, the ugliness of corruption has seemingly seeped into the psyche of Jamaicans who continue to have a difficulty with accepting certain actions as being corrupt; simply because it has become a social norm. In some instances however, persons deliberately perform acts of corruption, as ultimately, the rewards are worth (and far outweigh) the risk. In the minds of many, certain forms of corruption are acceptable, as they have existed and have ‘worked’ for many from time immemorial. As such, why change it? The general sentiment is that unless one is directly affected negatively by the act of corruption, then it is a non-issue.

It is not ‘lost on me’ that in many instances, some Jamaicans fail to see their deliberate actions as corrupt, out of ignorance as to what constitutes corruption through a deliberate act or choosing not to discern right from wrong and/or not feeling compelled to being bound by rules, laws or regulations. This reality, coupled with the fact that some practices are not subject to punishment in our society, would likely result in some persons believing that certain practices are acceptable norms and beyond incrimination.

It is perceived that corruption has cost Jamaica tremendously over the years, as millions is presumed to have been lost owing to varying acts of corruption. To put it into the context of procurement, it should be noted that the GOJ Procurement Policy is governed by seven (7) *Key Principles*; namely, (1) Value for Money, (2) Economy, (3) Efficiency, (4) Equity, (5) Fairness, (6) Transparency/Accountability (Ethical Standards) and (7) Reliability. An impartial process would therefore allow for all procurement principles to be observed and measured.

Where an entity is awarded a contract without being made to compete against other qualified Bidders, there is no way to determine whether the principles of procurement were achieved. Further, where a Bidder is furnished with information intimate to the process, which allows them to have an advantage over all other Bidders, then the integrity of the process is compromised and confidence in legitimate processes is lost, should same be discovered.

Where political persuasion influences whether one's Bid on a procurement opportunity is successful or where contracts are awarded to Contractors who are not qualified or skilled in certain areas, then there is reason for concern. Clearly, where it concerns Works contracts, if the successful Contractor is unable to perform the works in accordance with industry standards, then monies would be lost, as the works performed generally result in remedial works having to be carried out to address the purported 'completed' works. In such a case, the remedial Works would not be budgetted for, it becomes the expense of the citizens of the nation. There are of course multiple other ways in which procurement processes have been undermined but I shall not get into the details here. Suffice it to say that corruption or its perception in varying forms can take place at any stage of a procurement process.

Once a Contract has been formally awarded, even where it has been found that same was improperly awarded, the powers of termination do not reside with me. While I am aware that reversing the status quo would require changes in law to address possible implications and also dictate the circumstances under which such action could be taken, I am of the view that termination of improperly-awarded contracts should be seriously considered. Where this is the case, Government entities would ensure that greater care is taken in undertaking the procurement activity at all stages of the process. Where a contract is terminated, depending on the circumstances, the opportunity should be either re-tendered or the other previously submitted eligible Bids fairly re-evaluated and due consideration being made in the awarding of the contract.

Further, where it is found that a Contract was improperly awarded, the Officer(s) responsible should be held accountable, once it is determined that the actions of the Officer(s), in awarding the Contract, was deliberate and meant to eliminate the possibility of any other Bidder being awarded the Contract.

COMPLAINTS AND APPEALS PROCESS

Currently, the OCG receives on average, five (5) complaints on a monthly basis, all alleging irregularity in procurement processes. Complaints are generally reported by Bidders, potential Bidders or concerned citizens. Once a recommendation is made relative to 'correcting' any missteps, the onus is on the public body to act in accordance with the recommendation. The fact, however, that the matter is brought to their attention, generally results in most public bodies complying with the recommendations proffered by the OCG.

It should be here noted that the procurement process in Jamaica, though having a mechanism for complaints to be received and for appeals to be made relative to any procurement process, the mechanism is not utilised to its fullest extent. It would appear that Contractors and potential Contractors are not aware of the complaints/appeal process in its entirety. In this regard, I hereby use this opportunity to direct Contractors and Procuring Entities alike to Part VIII (*Review and Appeals Process*), Sections 29, 30, 31 and 32 of the GOJ Public Sector Procurement Regulations (2008), which outlines the process in detail.

In summary, a disgruntled Contractor or prospective Contractor may initially lodge a complaint with the Procuring Entity. Where the decision by the Procuring Entity is not deemed to be satisfactory, the complainant may then escalate the complaint to the NCC. If the decision arrived at by the NCC is still found to be unsatisfactory by the complainant, then the complaint may be further escalated to the Procurement Appeals Board. Section 32 (2) of the said Regulations states that, "...Should the NCC and the Procuring Entity fail to comply with the recommendations of the Procurement Appeals Board, the Contractor may institute proceedings for judicial review." The process is also outlined in Volume 1, Section 2.5 (Complaints and Appeals) of the GOJ Handbook of Public Sector Procurement Procedures (hereinafter referred to as 'The Procurement Handbook').

The OCG routinely and impartially reviews each and every complaint received to determine whether there is any merit. The internal process established by the OCG, allows for a comprehensive analysis of the respective procurement processes and based on the findings, makes recommendations where necessary. In this regard, there are instances where it is determined that there is no merit to complaints received, for example, the complainant failed to consider all variables which were outlined in the Evaluation Criteria, notwithstanding the fact that they may have submitted the lowest Bid. It is to be pointed out however, that based on the nature of the complaint or concern, the matter in question is either handled by the coordinator of the Enquiry Management portfolio within the Inspectorate Division or is escalated to the Special Investigations Division for a more comprehensive review.

In some jurisdictions outside of Jamaica, Bidders who feel that they have been disenfranchised during a procurement process, have the option of protesting the contract award, resulting in immediate action which affects the progress of the process. In the United States for instance, the filing of a protest to the relevant agency, halts the subject procurement process automatically, where the contract has not been awarded. Conversely, where there has been an award, the filing of a protest prevents the awarded Contractor from implementing the Contract. Where it is determined that the procuring entity 'erred' in awarding the Contract, a recommendation is generally made regarding remedial action to be taken. This often results in the procurement opportunity being re-tendered. It should be noted however that in all instances, conditions are attached.

Where a protest is successful, 'monetary damages' in terms of possible 'lost profits' are not awarded. However, there have been instances where 'protesters' have been reimbursed for the amounts expended in preparing the respective Proposal and sometimes the costs associated with protesting the award, to include Attorney fees. The logic behind this stance is that there is no guarantee that the protester would ultimately be deemed the preferred Bidder and actually 'win' the contract once the procurement opportunity is re-tendered, hence 'lost profits' cannot be claimed.

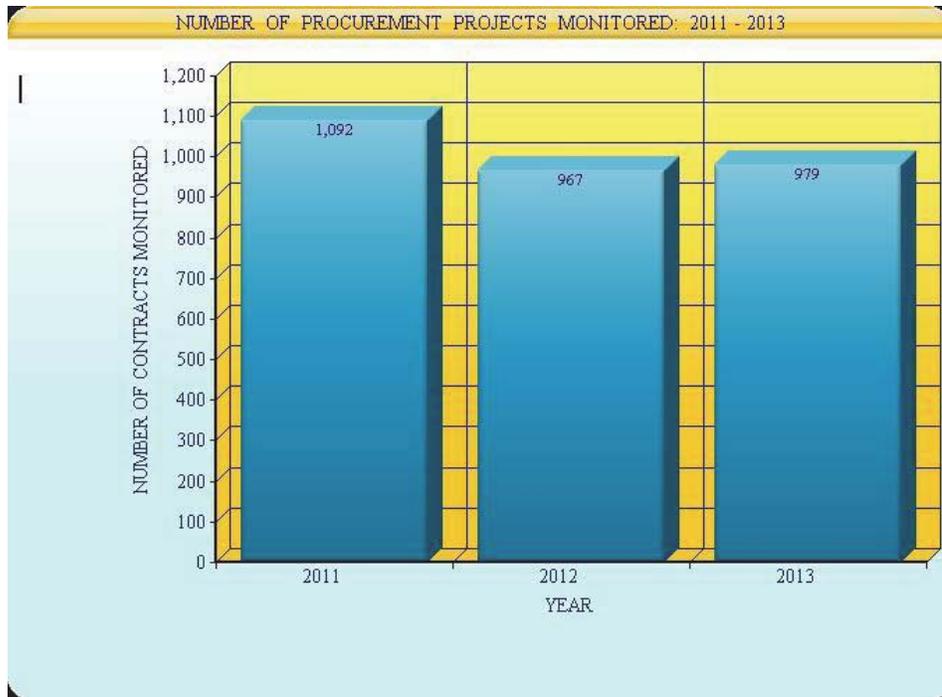
France, is a study in contrast, whereby, along with compensation for costs associated with preparing the Bid, the system allows for unsuccessful Bidders to obtain compensation for 'loss of profit' where it is determined that the procuring entity was at fault in awarding the contract to an 'undeserving' Contractor. It should be pointed out that in France, the complainant simply has to prove: (i) a breach of a procurement provision during the tendering procedure, (ii) loss and (iii) a causal link between the two (2), to be awarded damages. The legal system in France thus favours the Claimant, as under French Administrative Law, any form of breach of the law is deemed as a fault. Naturally, several factors are considered in arriving at whether any compensation is due to the complainant/Claimant.

'The Integrity Commission Act, 2014', which is the Act that will govern the impending Single Anti-Corruption Agency, once established, proposes stiffer penalties for those found guilty of committing acts of corruption. Fines and prison terms are set to be significantly increased and as such, it is my hope that the revised penalties will encourage fair and transparent procurement practices and strongly discourage manipulated outcomes.

CONTRACT MONITORING

The year 2013 saw the OCG monitoring the process of a total of nine hundred and seventy-nine (979) procurement opportunities undertaken by public bodies. Of the 979 procurement opportunities monitored, six hundred and four (604) were non-construction opportunities, while the remaining three hundred and seventy-five (375) were construction-related. This number surpasses that monitored in 2012 but clearly is a small fraction of the procurement opportunities undertaken by government bodies in 2013.

The Chart below illustrates the number of procurement projects monitored by the OCG between 2011 and 2013:



Like all public bodies, the OCG operates with limited resources, including human resources. The OCG therefore tries to monitor as many procurement opportunities as is possible.

It is to be here noted that monitoring of procurement processes is undertaken by the Inspectorate Division by a total of ten (10) Inspectors, with five (5) assigned to Works-related (Construction) contracts and five (5) to Non-Works (Non-Construction) contracts.

These ten (10) Inspectors also have the added responsibility of managing and monitoring assigned Portfolios. The Portfolios managed by the Inspectorate Team in 2013 include, GOJ Asset Divestment opportunities, GOJ Land Divestment opportunities, Public Private Partnerships, Quarterly Contract Awards (QCA), GOJ Prescribed Licences, Constituency Development Fund (CDF) projects, Works Quality Management and the Enquiry Management portfolio, which looks into complaints/allegations of impropriety or irregularity in GOJ procurement processes. Special programmes/projects undertaken by the GOJ such as the Jamaica Development Infrastructure Programme (JDIP), the Jamaica Emergency Employment Programme (JEEP) and the Major Infrastructure Development Programme (MIDP) are also monitored by the very Inspectors.

As a norm, once matters of concern arise in relation to any stage of a procurement process, this Office communicates the concern to the offending public body. Over the years, the Office during its monitoring, has identified multiple instances of deviation from the GOJ procurement procedural guidelines and in all cases, communicated same to the respective public bodies and made recommendations regarding corrective action to be taken.

Details of select procurement opportunities/projects monitored by the Inspectorate Division are highlighted in this Report under Appendices III to VI, which may be found on the accompanying Compact Disc to this Report.

Public Bodies' Non-Adherence to GOJ Procurement Procedures

During its monitoring activities in 2013, it was recognised that some public Procuring Entities continue to either disregard or are ignorant to the GOJ procurement stipulations. The areas of concern in this regard are as follows:

1. The Non-Utilisation or Improper utilisation of the Standard Bidding Document
2. Improperly-prepared or no Evaluation Criteria included in Bidding Document
3. The Non-Preparation of Comparable Estimates
4. The Non-Disclosure of Comparable Estimates at Tender Opening Ceremonies
5. Improperly-conducted Tender Opening Ceremonies
6. The failure of Public Bodies to utilise the GOJ-approved Bid Receipt and Bid Opening forms or where modified, to account for critical areas of disclosure during opening of Bids/Tenders
7. The failure of Public Bodies to establish Evaluation Committees
8. The failure of Public Bodies to obtain documented Head of Entity Approval of contract award recommendations
9. The failure of Public Bodies to prepare Contract documents

Standard practice is that where deviations are identified, the OCG formally communicates with the offending public body, advising them of same and recommending remedial action to be taken by them in addressing the matter(s) in keeping with The Procurement Handbook. It is however of great concern that some public bodies are seemingly not at the required level to conduct a proper procurement exercise. The MoFP and to a lesser extent, the OCG, have over time, been conducting information sessions in one form or another to keep GOJ Procuring Entities abreast of standard practices in procurement. It is however not lost on the OCG that the information which is being shared with public bodies is contained in The Procurement Handbook, which it is presumed is used by all GOJ procurement personnel.

Further, where Procuring Entities are unsure of the way forward in undertaking procurement activities, it is always advisable to make contact with procurement personnel in parent Ministries or other public bodies for guidance.

While the OCG tries to assist Procuring Entities where clarification is required in undertaking procurement exercises, I wish to use this forum to remind these entities that the primary role of the OCG is to monitor the procurement process from inception through to completion and also to conduct investigations into procurement processes where it is alleged that impropriety or irregularity are involved.

Where Procuring Entities consult with the OCG for advice or guidance in undertaking certain activities in relation to procurement, this Office, depending on the nature of the request, and so as not to be in conflict with its mandate, generally refers public bodies to the Procurement and Asset Policy Unit (PAPU) within the MoFP. The OCG has however, often been forced to listen to procurement personnel regularly lamenting about their inability to reach persons in the Unit and where they are successful in doing so, the response is never generally timely. This unit (PAPU) too has been affected by human resource constraints, which ultimately affects the extent to which they can assist external procurement personnel on a daily and timely basis. It is for this reason that I recommend that procurement personnel within and across Public Entities, establish working relationships with each other and assist each other where clarification or guidance is required. This of course will only be of value where the relevant parties being consulted are *au fait* with 'proper' and current procurement procedures.

In light of the foregoing state of affairs, it is becoming increasingly clear that PAPU is woefully under-staffed to carry out their mandate effectively. While they are to be commended for their achievements to date under the circumstances, it cannot be that public bodies are left to fend for themselves in navigating the 'procurement maze', as, during our monitoring it has been noted that not all procurement personnel are educated in 'proper' procurement practices. As such, they will require assistance from-time-to-time, until they are able to function independently.

The Non-Construction Contracts, Licences And Permits Unit Of The Inspectorate Division

The Non-Construction Contracts, Licences and Permits (NCCLP) Unit, monitored a total of six hundred and four (604) procurement undertakings through varying stages during 2013. This represents a marginal increase over last year's figure of six hundred (600). The Unit also has responsibility for the management of certain Portfolios which are outside of the core procurement activities undertaken by public bodies. The main Portfolios managed and/or monitored by the Unit are: GOJ Asset Divestments, GOJ Land Divestments, Public Private Partnerships, GOJ Prescribed Licences and Enquiry Management, which treats with complaints/allegations of impropriety or irregularity in GOJ procurement processes. The Quarterly Contract Awards (QCA) Portfolio is also managed by the NCCLP Unit.

In 2013, the Non Construction Unit monitored a total of thirty-two (32) Asset Divestment and sixty-three (63) Land Divestment opportunities. The processes of three (3) Prescribed Licences were also monitored, along with four (4) Public Private Partnerships. Further, the Enquiry Management Portfolio saw a total of fifty-five (55) new procurement-related complaints being received in 2013. This was in addition to sixty-three (63) complaints which were brought forward from 2012, bringing the total number of complaints on record for 2013, to one hundred and eighteen (118).

Summary Reports of monitoring activities undertaken by the Unit, as well as details pertaining to the named portfolios may be found in the section of this Report which is entitled "*Monitoring of Non-Construction Contracts, Licences, Permits and Concessions.*" It is to be noted that portfolio monitoring reports represented in this Annual Report are for those undertakings which saw significant activity during 2013 and not all documented items on record for each portfolio. Further, details pertaining to the Asset and Land Divestment undertakings reported on for 2013 may be found in Appendices IX and X respectively, which are included on the compact disc attached to this Report.

Quarterly Contract Awards (QCA) Submissions

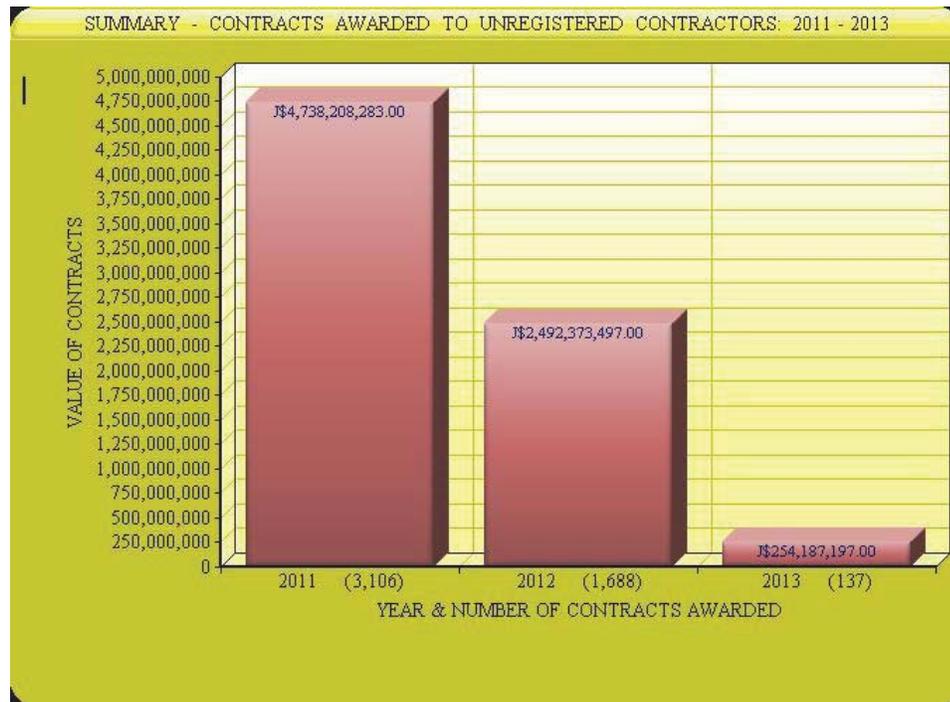
In relation to the QCA Portfolio, public bodies are required to submit to the OCG on a quarterly basis, particulars of all contracts awarded by them, which are in excess of J\$500,000.00. Reports are submitted to the OCG by way of its Web Portal. In this regard, the OCG saw 100% reporting compliance from public bodies in all quarters of 2013. All information submitted by public bodies is added to the QCA Consolidated Database as is.

Based on the information submitted by public bodies, 8,622 contracts were reported in 2013, at a total value of J\$45,445,481,023.75. Of this amount, J\$36,185,554,551.17 represented Goods and Services contracts, with the remaining J\$9,259,926,472.58 representing Works contracts. Additional statistics pertaining to contract information submitted through the Web Portal may be found in Appendix XI which is included on the aforementioned compact disc.

Procurement Breaches Identified Through the Review of QCA Submissions

Reports submitted via the Web Portal revealed breaches of the GOJ procurement stipulations in the award of contracts in 2013. Among the breaches noted by the OCG, was the engagement of one hundred and thirty-seven (137) unregistered Contractors by public bodies, amounting to J\$254,187,197.38. This is significantly lower than that which was reported in 2012 when a total of one thousand six hundred and eighty-eight (1688) contracts were awarded to unregistered Contractors at a combined value of J\$2,492,373,496.64, having come down from three thousand one hundred and six (3,106) in 2011, which amounted to J\$4,738,208,283.00. Though reduced in numbers, it is a grave concern that public bodies continue to award contracts to Contractors not registered with the NCC to conduct business with the GOJ.

The Chart below illustrates the number of contracts awarded to Unregistered Contractors between 2011 and 2013, along with the related Contract Values:



Another breach identified, was the failure of public bodies to obtain the requisite approvals prior to awarding Contracts within particular threshold values. For instance, it is a requirement for public bodies to seek and obtain prior approval from the NCC for the utilisation of the Limited Tender procurement methodology, for amounts in excess of J\$15M. In this regard, the OCG noted five (5) instances where the NCC was not engaged in the process as required.

In accordance with GOJ procurement stipulations, Head of Entity approval for the utilisation of the Direct Contracting procurement methodology is permissible up to a maximum value of J\$5M. Where this value is exceeded, the pre-approval of the NCC is required. It was however observed that there were seventy-one (71) instances of public bodies breaching this requirement, thus not obtaining the prior approval of the NCC under the circumstances.

It is to be noted however, that amendments made to The Procurement Handbook in early 2014, particularly addresses the engagement of unregistered Contractors under specific circumstances. The requirement for the prior approval of the NCC for the utilisation of the Direct Contracting procurement methodology has also been addressed. In this regard, stakeholders are advised to consult Appendix 6 of Volume 2 of The Procurement Handbook for the necessary details.

Land Divestment

The OCG, as part of its mandate, through the Inspectorate Division, monitors the divestment of Government lands. Details of select divestment undertakings are documented in Appendix X, which is included on the accompanying Compact Disc to this Report.

Further to the issues identified in relation to select procurement projects being monitored by the OCG, there are also concerns related to the divestment of Government lands.

My primary concern is with the fact that there is yet to be an official Land Divestment Procedural document which guides the divestment of Government-owned lands. That being the case, public bodies have had to craft their own procedures, with the hope that the process undertaken will be deemed transparent and aboveboard. The *'Draft Policy Framework and Procedure Manual for the Divestment of Government-Owned Lands'* has been in existence for several years; however, same is yet to be passed into Law. This Office is aware that the document has gone to Cabinet for its approval on several occasions and has been reviewed and returned for further revision. It is the OCG's considered view that the approval of this important document is to be fast-tracked as a matter of priority to allow for uniformity of process across public land divesting entities.

Notwithstanding the foregoing, the OCG during its monitoring, has noted instances where Cabinet Approval has been pending for a considerable number of years on certain land divestment opportunities. In this regard, reference is made to properties being divested by Factories Corporation of Jamaica (FCJ), where the divestment of at least two (2) properties has been awaiting Cabinet Approval since 2011. In addition, the sale process for another divestment by the FCJ that had been awaiting Cabinet Approval was terminated owing to the lengthy delay. The OCG noted letter dated November 5, 2013 from the Attorneys representing the then Purchaser, which stated in part, *"This is to advise that it is a condition precedent to the sale of the above property that Cabinet grant its approval. Deposit was paid in June 2011 and to date you have not obtained Cabinet approval. The Purchaser has instructed me that they wish to withdraw from the purchase and have the deposit refunded to them which I have done."* The matter was subsequently withdrawn from those pending Cabinet Approval and the deposit refunded. The properties in question are Lot 11 Hague Industrial Estate, Trelawny, Lot 1 Corletts Road, Spanish Town, St. Catherine and Lot 138C & E Boundbrook, Port Antonio, Portland, respectively.

The state of affairs relative to the lengthy delay in approving the referenced property sales is deeply concerning, as, as demonstrated in the case of the Boundbrook property, the other two (2) sales could potentially suffer the same fate, and should this occur, the Purchasers could not be faulted for having lost interest.

In October 2013, the National Water Commission (NWC) advertised nine (9) properties for divestment. The Opening Ceremony for Offers received was conducted on November 26, 2013. The NWC under cover of letter dated November 26, 2013, in response to the OCG's request for information pertaining to the divestments, advised that the Offers received had not been evaluated, as Ministerial Consent for divestment of the properties had been requested on November 18, 2013 and was being awaited. The status of the divestments remained unchanged as at December 31, 2013. The lands referred to, are: Lot 147 Poinciana Close, Orange Bay Country Club, Hanover, Windsor Road, Spanish Town, St. Catherine, Coleyville, St. Andrew, Lots 34, 36, 37, 38, 40 and 41 Hermitage Dam Road, Red Gal Ring, St. Andrew.

While it is noted that there is no official process governing the divestment of State lands, I here submit that I am of the belief that it would have been more prudent for the NWC to have sought Ministerial consent prior to advertising the properties for sale. That said, there is no telling when same will be granted and in the meantime, prospective purchasers will be expected to wait patiently until Ministerial consent is obtained.

In addition to the foregoing matters that are of concern to the OCG, it has been noted that Government properties are being divested without the use of current Valuation Reports. The OCG has noted Valuation amounts from 2010 being utilised as benchmark figures for property divestments. For instance based on information submitted to the OCG, the aforementioned properties located on Hermitage Road, Coleyville and Poinciana Close which were advertised by the NWC in 2013, had Valuation Reports dated 2010, while that for the Windsor Road property was dated 2011.

While there is no official valuation period to be considered for property divestment, owing to the absence of a GOJ Manual on the divestment of State lands, it is my considered view that a Valuation conducted three (3) years prior should not be utilised to determine the current value of a property, let alone, be used as the actual value of the property, as same is dated and is highly unlikely to reflect the true value of the property. Standard practice is for property Valuations to be between six (6) months to one (1) year old to be considered valid and acceptable. It is therefore being recommended that until the GOJ Procedures Manual for land divestment is approved and implemented, this period be adopted.

The Construction Unit Of The Inspectorate Division

The Construction Contracts Unit monitored a total of three hundred and seventy-five (375) procurement undertakings through varying stages during 2013. This is a slight increase when compared to the 2012 figure of three hundred and sixty-seven (367).

Like the NCCLP Unit, the Construction Unit along with its regular monitoring duties, has responsibility for the management of certain portfolios. The main Portfolios managed and/or monitored by the Unit are: Constituency Development Fund (CDF) projects, Works Quality Management and select programmes/projects undertaken by the GOJ, such as the Jamaica Development Infrastructure Programme (JDIP), the Jamaica Emergency Employment Programme (JEEP) and the Major Infrastructure Development Programme (MIDP). The Unit also closely monitors Contract Cost Overruns and Variations (CCOV).

Owing to the nature of the Unit, Inspectors are required to, as often as our resources allow, be in the field visiting Work Sites and also attending scheduled Site Meetings. These are critical aspects of the procurement and contract implementation processes and serve to aid Inspectors in (1) properly monitoring assigned projects, (2) allowing for intimate knowledge of the projects and (3), identifying any matter of concern relative to the Works being performed.

Contracts Awarded Utilising the Emergency Contracting Procurement Methodology

The Unit undertook a special assignment which required certain public bodies to submit details of contracts awarded utilising the Emergency Contracting procurement methodology. The exercise was undertaken in an effort for the OCG to gain an appreciation of how these entities were utilising the methodology and in so doing, if same was being done in accordance with the GOJ procurement procedure. The response also allowed for the OCG to ascertain the values of the contracts awarded.

The public bodies from which the referenced information was requested were: Petrojam Limited, National Water Commission, National Works Agency, National Solid Waste Management Authority, The National Housing Trust, The Ministry of National Security and the Ministry of Local Government and Community Development (including all Parish Councils and Municipal Offices). Details of the individual submissions by each entity may be found in the section entitled "*Monitoring of Construction Contracts*" of this Report pertaining to the subject Unit. Based on the information submitted to the OCG, a combined value of approximately J\$2.02 Billion was either expended or awarded as contracts by the entities.

Amendments made to The Procurement Handbook in early 2014, address the matter of contracting under emergency circumstances and as such, stakeholders are encouraged to visit Section 1.1.5, Volume 2 of The Procurement Handbook.

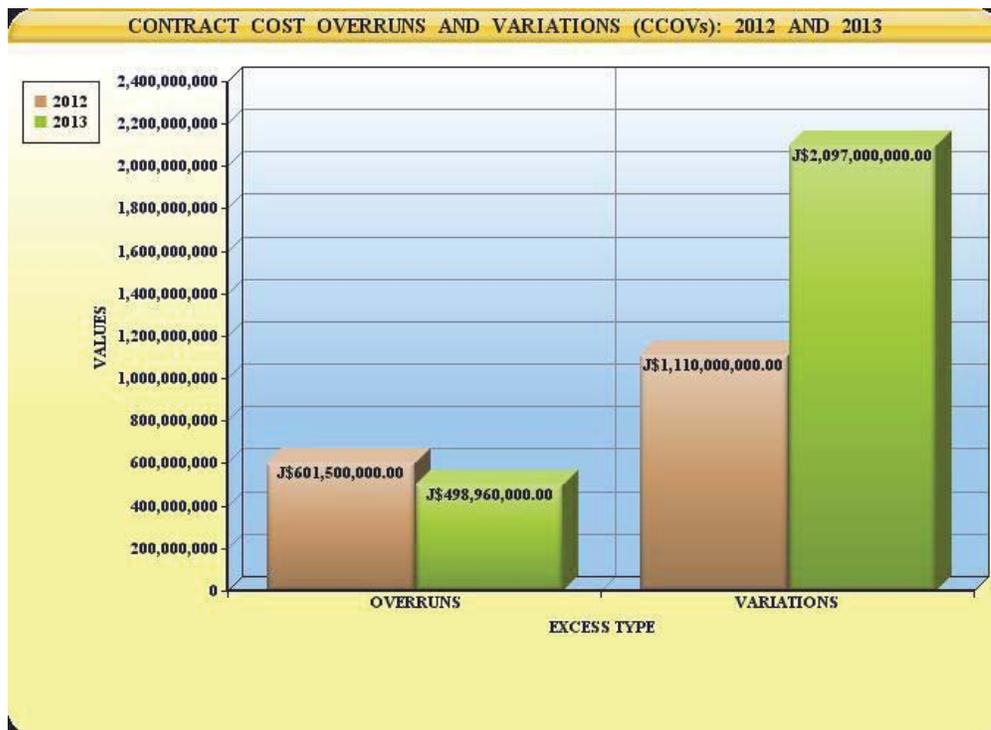
Contract Cost Overruns and Variations

With regard to Contract Cost Overruns and Variations (CCOV), a total of two hundred (200) public bodies were requisitioned for information pertaining to the procurement of goods, services and works valuing in excess of J\$500,000.00 in 2013.

Of the 200 entities requisitioned, one hundred and one (101) reported contracts with an approximate combined value of J\$19 Billion, with occurrences of CCOV at a combined value of approximately J\$2.59 Billion.

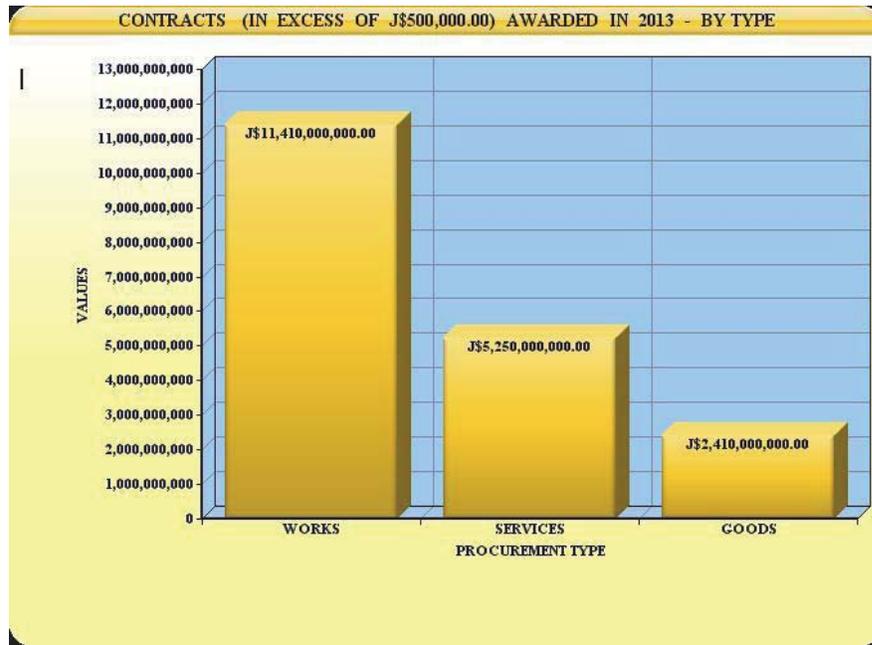
Of this amount, approximately J\$499.0 Million was for Contract Cost Overruns, while approximately J\$2.1 Billion was for Contract Variations.

The Chart below illustrates the values of CCOVs for Contracts awarded in 2013, which were in excess of J\$500,000.00:

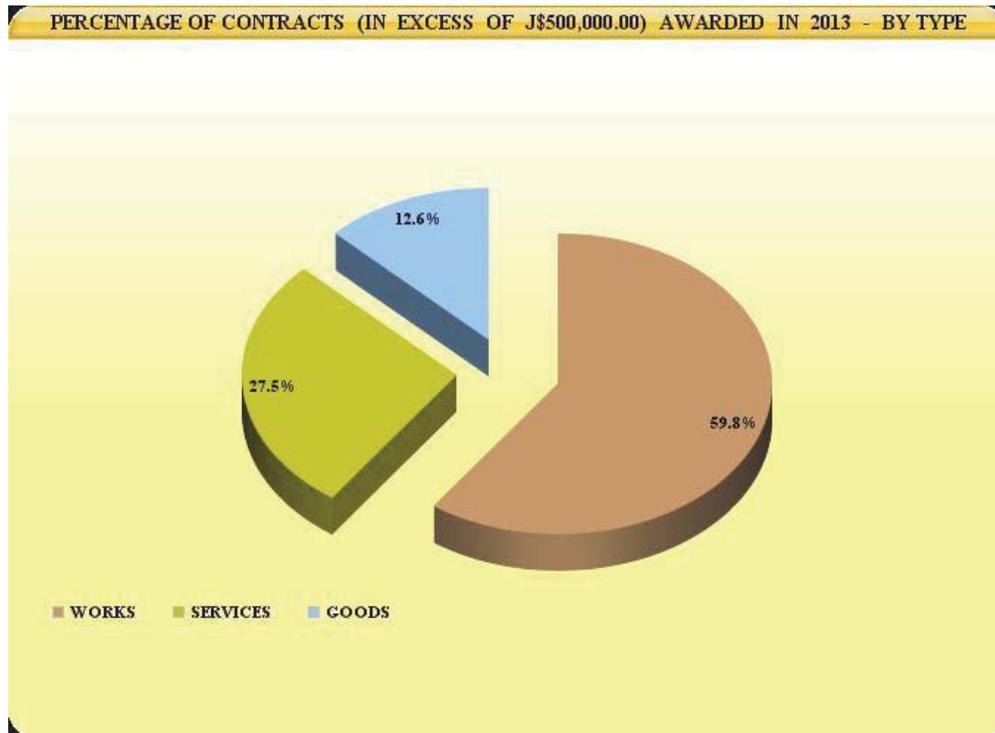


Works Contracts accounted for J\$11.41 Billion (59.8%), Services Contracts, for J\$5.25 Billion (27.5%) and Goods Contracts, J\$2.41 Billion (12.6%).

The Chart below illustrates the combined value of Contracts awarded in 2013, which were in excess of J\$500,000.00:



The Chart below illustrates the percentage of Contracts awarded in 2013, which were in excess of J\$500,000.00:



Summary Reports of monitoring activities undertaken by the Unit, providing further details pertaining to the named Portfolios and more detailed information on CCOVs may be found in the section of this Report which is entitled 'Monitoring of Construction Contracts'. Additionally, certain major projects and undertakings of national import are specially highlighted in the said section.

Circulars Pertaining To Procurement Issued By The Ministry Of Finance And Planning In 2013

In December 2013, the Ministry of Finance and Planning (MoFP) issued *Circular No.: 33*, which served to remind public bodies that Procurement Notices were to be published through the Jamaica Information Service (JIS). The Circular read in part:

“The JIS is solely responsible for the issuance of GOJ procurement notices via the Public Procurement Page. No Procuring Entity is to advertise procurement opportunities outside of this facility.”

The Circular further stated that:

“... Procurement Notices ...must also be publicized as follows:-

- a) On the respective Procuring Entity’s website or on its Portfolio Ministry’s website; and*
- b) The Office of the Contractor General’s (OCG) Government of Jamaica Electronic Procurement Notice Board...*

Failure to adhere to the directives contained in this Circular will constitute a breach of the GoJ Public Sector Procurement Regulations, 2008”

This directive from the Ministry was as a result of this Office writing to said Ministry which functions as the Manager and Owner of the GOJ Public Sector Procurement Procedures, advising them that the OCG through its monitoring, had noted that public bodies had not been complying with the dictates of *Circular No.: 28*, which was issued in October 2013 and were instead publishing Procurement Notices directly. *Circular No.: 28* served to centralise the publication of Procurement Notices by public bodies, thus mandating all public bodies to advertise procurement opportunities through the JIS.

In spite of the issuance of both Circulars however, the OCG found itself having to write to several public bodies, advising them of the contents of said Circulars, while at the same time informing them of their having breached the directives contained therein. In all instances in this regard, the offending public bodies stipulated, that they were ignorant to the existence of the Circulars and subsequently adhered to them only as a result of this Office making them so aware.

The MoFP has been consistent in including in its Circulars, that *“Permanent Secretaries, Heads of Department, Chief Executive Officers and Heads of Procuring Entities are advised to bring this circular to the attention of all affected personnel”* or a variation of same. In addition to being forwarded to Ministries of Government, Circulars are also published on the website of the MoFP once issued. However, in spite of this, the OCG has noted other instances of procurement personnel within public bodies not being aware of Circulars issued by the MoFP in relation to procurement matters.

In light of the foregoing, it is advisable that Heads of Entities ensure that someone is identified internally to occasionally check the Ministry’s website for any newly-issued Circulars specific to procurement. In so doing, the relevant parties will be kept abreast of any amendments or advisories in relation to procurement matters.

Procurement Processes Monitored Which Are Of Concern To The OCG

I have taken the liberty of here highlighting a few projects monitored, which were of concern to the OCG during 2013. Though the processes related to the progress of these procurement undertakings have been documented in detail in the referenced Appendices, the issues identified are worth highlighting, as they are of concern, to say the least.

My aim here is not to embarrass or discredit any Government institution but to bring to the attention of all concerned, the importance of proper planning and due diligence relative to all aspects of proposed procurement undertakings. It is hoped that the respective organisations have since put the necessary measures in place to guard against similar occurrences and that other entities will note the deficiencies indicated and take steps to ensure that the same 'errors' are not made by them.

1. Ministry of Justice – Consultancy Services for Justice Square – Demolition Works and Interior Construction at 52-54 King Street, Kingston

The details of the preliminary stages of this project may be found on Pages 580-582 (Reference Number: PPCM-552) of the OCG's Annual Report of 2011 and is indicated as GCM-5552 in this, the Annual Report of 2013.

Monitoring of this procurement opportunity by the OCG commenced in 2010, however the Tender process was undertaken in 2009 and the Limited Tender procurement methodology, which was approved by the National Contracts Commission (NCC), was utilised to invite eight (8) potential Bidders. At the submission deadline, three (3) Tenders were received and subsequently evaluated. Upon evaluation, Harold Morrison + Robert Woodstock Associates Limited was recommended and subsequently awarded the Contract in the amount of J\$52,110,000.00, after negotiations. It should be here noted that the Comparable Estimate for the project was J\$52,600,000.00 and the original amount proposed by the successful Consultant was J\$55,110,000.00.

The OCG noted that though the Consultant commenced offering its services in July 2009, the Contract was signed on November 24, 2009. This observation was communicated by the OCG to the Ministry, and we were advised that the Consultants were informed that Cabinet Approval of the contract award had been obtained and as such, *"they accepted in good faith our request to commence the process..."*

The OCG further noted that a completion date **was not** indicated in the Contract. The then Project Manager indicated that the duration of the Consultant's Contract was contingent on the completion of Works by the Contractors for the various phases, of which there were three (3).

The OCG also noted with concern, the payment terms of the Consultant's Contract, which specified a "Cost of Services Ceiling" of thirteen percent (13%) of the final construction cost of the project. This concern was further heightened upon receipt of a Project Update Report in March 2011, which indicated that the Consultant informed the Ministry that the Construction Phase had advanced with cost estimates for Phase 1 amounting to \$698,476,552.54 (the cost estimates were the cumulative proposed contract prices of the selected construction Contractors). The construction cost had increased from the original estimate of J\$402,000,000.00, to an estimated J\$698,676,552.54. Based upon the payment terms of the Consultant's Contract, the Consultant's fees would amount to an estimated sum of J\$90,801,851.83.

The OCG, in an effort to gain a better appreciation of the Terms and Conditions of the subject Contract, invited representatives of the Ministry to a meeting in April 2011. Based on the matters arising out of said meeting, the OCG in August 2011 wrote to the Ministry, outlining thus:

- "i. There are no provisions outlined in the Contract, for the management of variations in the Consultant's contract, in light of potential increases in the construction costs for the project;*
- ii. No payment schedule was included, which would guide the MOJ in the administration of payments to the Consultant;*
- iii. The Contract document does not distinguish the scope of work to be included in Phase 1 and Phase 2 of the project; and*

- iv. *No project milestone schedule was included, which would guide the progress of the Consultant's deliverables and the construction phase of the project*
- ...given the variable nature of the aforementioned payment terms... the value of the Contract was intrinsically unrestrained and does not allow for the levels of control which are required for proper budgeting.*
- ...the OCG questioned the MOJ's ability to respond to the increase in the cost of the project and, by extension, to the estimated increase in the Consultant's fees.*
- ...Having regard to the foregoing, the OCG strongly recommends, that the MOJ carefully reviews the conditions of contract for all future procurement opportunities of this nature, with particular reference to the Terms of Payment."*

In light of the estimated amount which was to be paid to the Consultant, the Ministry in July 2011, requested the endorsement of the Contract Variation, as indicated above.

The NCC, upon receipt of the referenced letter, requested further and better particulars, which were provided. The matter was considered by the NCC in October 2011, which recommended that the Ministry negotiate a reduced percentage based on the significantly increased scope of works.

However, the Ministry advised the NCC in November 2011, that *"...a meeting was convened with the Consultant/Architect on November 4, 2011. After very lengthy discussions, the Consultant/Architect agreed to negotiate on future works; however, there is no change to the percentage on works already completed and billed to the Ministry of Justice. Therefore, the fee of \$90,801,591.83 stands ..."*

In light of the foregoing, the NCC, at its meeting held on November 23 2011, offered its 'no objection' to the aforementioned amount for work already completed. Cabinet Approval was received on December 5, 2011.

The OCG, in keeping with its monitoring activities continued to request updates on the Consultancy Contract over time. It was noted that the information received from the Ministry, in large part, was in relation to the construction aspect of the project. As such, direct communication was made with the then Project Manager to clarify the matter. However, upon once again receiving construction-related information from the Ministry, under cover of letter dated August 28, 2013, which was in response to the OCG's request of August 14, 2013, the OCG wrote to the Permanent Secretary under cover of letter dated October 16, 2013, stating the Ministry's failure to satisfy the OCG's request and thus requested information specific to the Consultant.

The Ministry submitted a Status Report specific to the Consultant as requested, along with supporting documentation, under cover of letter dated October 31, 2013.

The following statements are extracted from the Ministry's response and brings into sharp focus, the monitoring (**or lack thereof**) of the Consultant's performance by the Ministry and the questionable Terms under which the Consultant was engaged

- “o ...based on complaints received from end users...it is clear that expectations were not being met.*
- o During the design and planning of the project there are issues that are normally considered, in best practice, that were clearly not considered...*
- o ...it is the opinion of the Ministry that the consultants fell short of what can be considered, reasonable expectations.*

- o ... the consultants should have provided the leadership required of them as professionals in their field; as it became clear to the Ministry, shortly after construction had started, that the proposed phasing was poorly conceived...
- o Of concern to the ministry however, was the day to day supervision of the project, and so it was recommended to the consultants that a Clerk of Works be appointed...The consultants took the view that the Ministry should undertake that appointment. A clerk of Works was never appointed.
- o Insufficient detail on payment certificates for Contractors on site
- o Complaints from contractors regarding unresponsiveness of consultants
- o It is the opinion of the Ministry that, with respect to the Contract between the Consultants and the Ministry, there were many areas of weakness.
- o It is felt that insufficient attention was paid to advising the Ministry about changes in the project budgets, and the impact that those changes would ultimately have on Professional fees. There is no record to show that they fulfilled their obligation to inform the Ministry when critical financial milestones in the life-cycle of their contract were reached.
- o Despite many attempts the consultants have always been unwilling to renegotiate fees on a project that has seen final construction estimates in the order of four (4) times the figures originally projected.

... Where in the opinion of the Ministry, the consultants have done a satisfactory job with the administration of the construction contracts; the Ministry's view that the administration of their own contract and the fulfilling of their responsibilities to the Ministry were unsatisfactory."

The Ministry further stated that the Consultants had produced work which was "aesthetically pleasing to all those who have had the opportunity to see it. However, there are areas of functionality... that in the Ministry's opinion, are not adequate."

Based on the foregoing, the OCG on December 18, 2013, enquired of the Ministry, *inter alia*, what, if any action had been taken by the Ministry against the Consultant in relation to its unsatisfactory performance and whether legal advice had been sought by the Ministry in negotiating with the Consultant.

In response, the Ministry advised that the contract with the Consultant was terminated on October 9, 2013 and that the Consultancy aspect of the project was taken over by the Project and Allied Services Unit within the Ministry. The OCG was further advised that, "No legal support was procured by the Ministry to assist in the negotiation of the contract." The Ministry advised however, that advice was sought from both its Internal Audit and Legal Services Units in settling the Contract.

As at December 31, 2013, a total of J\$112,271,382.02 had been paid to the Consultant and there was an outstanding balance of J\$14,623,624.20. Upon final payment, the total amount will therefore be J\$126,895,006.22.

2. National Water Commission - Procurement of an Integrated Water Management System (IWMS)/Supervisory Control And Data Acquisition (SCADA) System - KMA Water Supply Improvement Programme

The details of the preliminary stages of this project may be found on Page 467 (Reference Number GCM-7392) of the OCG's Annual Report of 2012 and is indicated as PPCM -15121 in this, the Annual Report of 2013.

The subject procurement opportunity was originally for the Kingston and St. Andrew System and was advertised in July 2012. However, the Scope of Works was subsequently expanded into an island-wide system and as such, the original submission deadline was extended from September 11, 2012 to October 18, 2012. The Projected/Budget was also increased from US\$9,500,000.00 to US\$18,000,000.00, owing to the change in the Scope of Works.

Seven (7) Tenders were received at the submission deadline, which were evaluated. The evaluation of the Technical Proposals had two (2) stages, Stage 'A1' was based on literature submitted in relation to the proposed system and Stage 'A2' involved physical on-site visits to overseas facilities where Bidders had their respective proposed systems installed. This stage allowed National Water Commission (NWC) personnel to witness the operation of Integrated Water Management System (IWMS)/Supervisory Control and Data Acquisition (SCADA) systems, to determine their suitability for the NWC.

Three (3) Tenders were deemed non-responsive upon completion of Stage A1 and as such, were not considered for the second stage of the Technical Evaluation. The second stage of the Technical Evaluation saw visits being made to four (4) overseas facilities to observe on-site operations of the systems.

Upon completion of the Technical Evaluation, only two (2) advanced to the opening of the Financial Proposals. The Inter-American Development Bank (IDB) granted its Non-Objection in February 2013. The evaluation process for Financial Proposals was completed in March 2013, upon which the Tender attaining the highest score was recommended for the award of contract. Procurement Committee approval was obtained in March 2013.

Documentation obtained by the OCG indicates that the recommendation for contract award was submitted to the NWC's Board of Directors, upon receipt of which, they communicated their concerns to the Management Team. Among the concerns expressed by the Board were the:

- *"Scale/Cost of implementation*
- *NWC's readiness for SCADA*
- *Risk of implementation as it relate [sic] to other works that may be required at the facilities where SCADA is to be implemented*
- *Security at some of the proposed facilities*
- *Purpose of the audit in the RFP"*

In an effort to satisfy the concerns highlighted by the Board and to gain an appreciation of the SCADA System, a second Site Visit was conducted to facilities in Florida, USA, with similar systems. Two (2) members of the Board as well as NWC Management personnel visited the Sites.

Subsequent to the referenced Site Visits, the NWC in an Addendum to the Evaluation Report, advised thus:

"With respect to concerns regarding the NWC's readiness of SCADA [sic] and the expectations from the audit, it was contemplated that either an individual Consultant or internal resources of the NWC could be utilised to do a preliminary audit. Efforts were made to engage a Consultant and we received IDB's non objection in July 2013 for this; however it was subsequently felt that an individual would not be able to conduct such an audit as one person would not possess expertise in the different technical areas required to satisfactorily address the concerns.

Subsequently, a rapid desk study was undertaken by NWC personnel to provide a status of the facilities. Resource constraints however did not make it feasible for NWC to do a thorough audit of all the facilities in a timely manner. The efforts to address the concerns delayed a decision being taken by the Board.

After further consideration of all the issues, the NWC's Board did not approve the IWMS/SCADA procurement at its meeting on November 6, 2013. They expressed concerns regarding the approach to implementation as proposed as well as the scale of the implementation."

Based on the Board's deliberations, the subject procurement process was aborted.

3. Ministry of Youth and Culture - Construction of Youth Information Centre and National Youth Service Training Centre, 42 Young Street, Spanish Town

The details of this procurement undertaking are indicated as PPCM - 4401 in this, the Annual Report of 2013.

The subject procurement opportunity was for the construction of a Youth Information Centre, and National Youth Service Training Centre which comprises a two-storey structural steel and concrete framed building with concrete and steel foundation, block and steel and gypsum infill walls and roof of concrete on metal deck, mechanical services for air conditioning/ventilation and plumbing for toilets and kitchenette along with electrical and data services.

The procurement opportunity was advertised for a second time in April 2011; the previous process having been terminated. Five (5) Tenders were received at the submission deadline in May 2011, which were evaluated and the contract subsequently awarded to Rogers Land Development Limited in January 2012, in the amount of J\$70,801,165.00. The project commenced on February 20, 2012 and was scheduled to be completed on January 30, 2013.

Documents obtained by the OCG indicate that errors and omissions in the Bill of Quantities (BQ), along with unforeseen and new Works, resulted in two (2) significant Variations totalling J\$18,876,160.47, which increased the Contract Sum to J\$89,667,325.00. The process related to the corrections to the BQ and approval of the Variations which took approximately six (6) months to be completed, was a major contributor to the delays experienced over the period.

The following were cited by the Ministry as being among the major challenges experienced in relation to the project:

1. Unforeseen Architectural challenges which had to be corrected before Works could proceed;
2. Omissions from the BQ and inadequate Architectural details, which resulted in the true cost of the project being understated and ultimately in Variations which had to be approved by Cabinet;
3. Resource constraints on the part of the Contractor which translated to:
 - a) Expiration of the Contractor's Performance Bond and Insurance, the renewal of which took approximately three (3) months, during which time no work could be done on site;
 - b) Contractor's inability to purchase required materials and supplies;
 - c) Unsatisfactory response time (on occasion) to queries and processing of Claims on the part of the Architect and the Project Manager (Construction);

- d) The protracted time taken by the Ministry to sign-off on the Cabinet Submission and forwarding same to the Cabinet Office for approval. As such, *"...No items of work included in the variations could be implemented until approval was received (December 2, 2013; PIU notified December 23, 2013)."*

The Ministry informed the OCG that, *"the NWA advised against terminating the Contract in mid-2013 (when it became apparent that the Contractor was experiencing resource constraints) on the grounds that:*

- a. *at the time the problem was widespread for Grades 1 and 2 contractors and*
- b. *the potential costs of terminating the contract and finding another contractor would further escalate the cost of the project."*

The Ministry further reported that, in light of the foregoing, they initiated the use of direct payments (to Suppliers) from the PIU (treated as payments to the Contractor). The Project Management Team (NWA) was reconfigured and a revised approach to the supervision of the project was undertaken.

As at December 31, 2013, the project was significantly behind schedule owing to the challenges experienced.

4. Ministry of Transport, Works and Housing - Jamaica Development Infrastructure Programme (JDIP) - Fern Gully Restoration & Rehabilitation Programme , Stage III, Civil Works

The details of this procurement undertaking are outlined in PPCM-8452 in this, the Annual Report of 2013.

The subject procurement opportunity *involved the construction of reinforced concrete storm water drains, box culverts, pedestrian sidewalks, protective handrails and the rehabilitation of the existing asphaltic concrete roadway.*

This, the Fern Gully Restoration and Rehabilitation Project is one of the major projects under the Jamaica Development Infrastructure Programme (JDIP), for which China Harbour Engineering Company Limited (CHEC) is the main Contractor.

On August 20, 2009, the Contract was signed between the then Ministry of Transport and Works (MTW) and CHEC. Y.P. Seaton & Associates Company Limited (YPS) was engaged as the Sub-Contractor for the Works to be carried out on the project. The work was divided into two (2) phases and was reported to have been executed concurrently.

At the end of 2012, the National Works Agency (NWA) reported that, *"the works in the Fern Gully were fraught with challenges ranging from land acquisition issues, dust issues, the inclement weather and complaints from Tourism interests in the town of Ocho Rios... The construction of the culverts, as well as the rehabilitation of Milford Road is progressing as vehicular traffic can once again use the road. As for the progress of works, this is estimated to be 71% complete and under a revised programme is projected to be completed by the end of February 2013."* It is to be noted that Works on the project was suspended between January 2012 and May 2012.

Details in relation to the Works undertaken on the subject project prior to 2013, is outlined in PPCM-8452, which may be found on pages 234-235 of the Annual Report of 2012.

Documents obtained by the OCG indicate that during 2013, progress on the project was significantly behind schedule owing to challenges faced by the Contractor and the failure of to fulfill certain obligations. For instance, it was noted that at the Site Meetings of May 2, 2013, June 6, 2013, July 4, 2013 and up to the final Site Meeting for 2013 on October 3, 2013, the Contractor was reminded to undertake Works related to the patching of Breadnut Hill. Similarly, the Contractor was repeatedly reminded that the concrete joints in Stage II of the project needed to be sealed. Matters related to the relocation of NWC pipes were also cause for concern as progress of same was repeatedly reported as being protracted. There were also issues pertaining to the quality of the works performed, particularly as it relates to finishing. It was further noted that the NWA Resident Engineer/Meeting Chairman, at all Site Meetings, expressed concern regarding the general slow progress of the Works.

At the Site Meeting of September 5, 2013, the project was estimated at 94% complete. The Final Site Meeting for 2013 was held on October 3, 2013.

In a letter which was dated December 27, 2013, the OCG wrote to the NWA regarding the "*Fern Gully Restoration and Rehabilitation Project, "Take-Over Inspection"*" which was conducted on November 7, 2013. The OCG stated, *inter alia*, that:

"...during the referenced activity, the OCG's representatives observed that a significant amount of the finishes to the sides and inverts of the reinforced concrete "U" drains appeared rather coarse... the OCG requested that the NWA "(a) indicate the Contract specifications as it regards finishes to the sides and inverts of the reinforced concrete "U" drains, (b) indicate the type of finish to the sides and inverts of the reinforced concrete "U" drains, for which the Contractor was paid, (c) if finish b is not as per Contract, state whether said Contract specifications were changed... Additionally, the OCG noted that in general, the majority of the concrete works to the reinforced concrete "U" drains, were aesthetically unappealing, and... respectfully requests that the NWA impress on its representatives the need to ensure that good quality works, inclusive of finishes, is attained in the execution of any project under its purview."

The expected response date was January 10, 2014.

As at December 31, 2013, the NWA reported that the project was substantially completed on November 7, 2013 and the 'Taking Over Certificate' had been issued for both Stage II and Stage III of the Project. Both stages were in the Defects Liability Period which is scheduled to end on November 6, 2014.

The NWA reported that the main issues that negatively impacted the progress of the project were: (a) delays experienced between January and May 2012 and again between January and March 2013, (b) the general slow progress of the Works by the Sub-Contractor due to cash flow challenges, (c) rock excavation and (d) the relocation of the NWA pipes along the alignment of the 2.5m x 1.5m U-Drain from May to October 2013. There were no Material or Labour Fluctuation Costs reported.

Documents obtained by the OCG, indicate that nineteen (19) Variation Orders were approved up to December 31, 2013 and that the Contractor had not submitted any formal request for an Extension of Time. The NWA had however received revised Work Programmes. Of significant note, is that the Contractor did not submit any official correspondence explaining the suspension of the Works during 2012. Further, no Labour or Material Fluctuation Costs were reported.

5. Ministry of National Security – The Development of Secure Internet Portal and Website for the Ministry of National Security

The details of this procurement undertaking are outlined in PPCM - 5782 in this, the Annual Report of 2013.

This project was previously reported on in the Annual Report of 2011 as PPCM-5782 and may be found on page 583.

The Contract for Phases I and II was awarded in 2006 to Illuminat (Jamaica) Limited. Phase I was for the Provision of a Turnkey Solution to the Jamaica Constabulary Force (JCF) and the Department of Correctional Services (DCS) and Phase II was for the Provision of Data Entry Services. Phase III - Development of Secure Internet Portal and Website for the Ministry of National Security was awarded to IBM World Trade Corporation in June 2008, with a scheduled completion date of July 18, 2009.

Significant delays have been experienced on this project for varying reasons. A Status Report on the project indicated that as at December 31, 2013, the Ministry reported that “...*phase I of the Portal Project has been completed. However, there is no schedule for the completion of phase II at this time. There continues to be a myriad of issues surrounding the implementation of phase II despite the contracts with Illuminat (Jamaica) Limited now being closed out.*” Documents obtained by the OCG indicate that IBM World Trade Corporation has been contracted to complete Phase II of the project. The MNS further reported that “...*all activities are now on hold pending policy directive and discussions with Fiscal Services Limited.*”

Though not highlighted here in detail, I wish to also call attention to the following procurement undertakings, the processes for which are equally concerning and which are detailed in this Annual Report as:

- The Design and Construction of the Air Traffic Control Tower at the Norman Manley International Airport in Kingston (OCG Reference No PPCM-7092)
- The Design and Construction of the Air Traffic Control Tower at the Sangster International Airport, Montego Bay, St. James (OCG Reference No PPCM-11192)

These projects and the related issues were highlighted in detail in the Annual Report of 2012 and are also mentioned under the section of this Annual Report entitled ‘*Monitoring of Construction Contracts*’.

The issues associated with the cases highlighted above are of concern. I am of the considered view that had certain action been taken by the public bodies concerned, much of the noted issues could have been avoided. It cannot be overemphasised that close monitoring of Contractors to ensure that agreed terms and conditions are being met is to be a matter of priority in procurement undertakings. Also, all possible variables in the drafting of Contracts are to be carefully considered, along with the preparation of Tender Documents.

On another note, the OCG wishes to express its concern with regard to the due diligence (or lack thereof) conducted by public bodies prior to commencing the subject procurement processes. This, given the extent of the human and financial resources expended on the respective projects on the part of both the potential Contractors and the Procuring Entities alike, which, in my view, could have been avoided, had all variables been considered and diligently reviewed prior to embarking on such undertakings.

The procurement processes did not only affect the Public Bodies but also the Bidders who would have invested a considerable amount of money, time and effort into submitting the best possible Tender, in an effort to be considered for the award of contract. They, in some instances would have won a contract but would be later faced with challenges over which they had no control and would have in other instances, had resources which could have been otherwise utilised for the continued growth and development of their respective businesses.

The OCG recognises that there are instances where the contracted party ends up benefitting from contracts, at the expense of the Government, owing to the untidy way in which the process was undertaken and also the conditions attached to the Contract, which favours the Contractor. The public body would have, in all instances, have been at fault owing to the approach taken to the undertaking of the procurement opportunity.

In the foregoing regard, the OCG hereby implores all public bodies to ensure that proper planning is undertaken for all future procurement opportunities and where there is doubt of any kind, terminate the process at the earliest stage possible and review the approach being taken. In addition, once contracted, public bodies need to closely monitor not just the process but also the Contractor/Consultant and the agreed deliverables to ensure that all commitments are being met and at the required level and stages. In all instances, the Contractor and public body alike should be made to be accountable for their actions. With such an approach, the fallout will be less debilitating in the long run and the concept of value for money will be honoured.

THE CORPORATE SERVICES DIVISION

The Corporate Services Division (CSD) is comprised of the Human Resource Management Department, the Registry, the Office Management Department and the Finance and Accounting Department.

In 2013, eight (8) new staff members joined the OCG. The staff complement at the end of December 2013 was sixty-one (61), which was two (2) less than the staff complement of sixty-three (63) approved posts.

Training of staff is a priority for the OCG and as such, staff benefitted from participation in forty (40) training opportunities in 2013, which were relevant to the mandate of the OCG and included seminars and workshops locally and internationally. The feedback from participants has been positive in all instances and in keeping with our ongoing commitment to personal and professional growth of staff, this Office will continue to seek out worthwhile training opportunities. Details on training opportunities undertaken by the OCG staff in 2013 may be found at Appendix XII which is on the compact disc attached to this Report.

Further information in relation to the operations of the CSD during 2013, may be found in the section of this report, entitled '*Corporate Services Division*'. The section also includes detailed information on budget and expenditure.

THE INFORMATION SYSTEMS DIVISION

Along with providing technical support, the ISD also maintains the websites of the OCG and the NCC. In this regard, the OCG's website was improved, thus making it more user-friendly and including information which was not previously included. Some areas of the website are interactive. The OCG Web Portal and the Procurement Notice Board are two such features on the website.

The Web Portal allows public bodies to report all contracts awarded on a quarterly basis, which are of a value in excess of J\$500,000.00. The URL to access the Web Portal is: <http://www.ocg.gov.jm/ocg/view/qca-consol> and all public bodies are required to report contracts via this medium. Public Bodies are reminded that, in keeping with *Circular No.: 33*, which was issued by the Ministry of Finance and Planning (MoFP) in December 2013, they are required to post Procurement Notices on the OCG's Procurement Notice Board. The URL for the Notice Board is <http://procurement.gov.jm>.

The OCG also launched a Twitter Account in 2013, allowing for timely dissemination of information to its stakeholders. The Twitter handle is @OCGJamaica and all are welcome to follow the Office and stay informed.

THE TECHNICAL SERVICES DIVISION

The Technical Services Division (TSD) as mentioned earlier, functions as the Secretariat of the National Contracts Commission (NCC) by providing administrative and technical support. The Team also performs monitoring duties, as they sit as observers at NCC Sector Committee meetings, to ensure fairness and transparency in the approval process. The TSD Team numbers eleven (11) in total.

The NCC is made up of eight (8) Commissioners, including a Chairman and the tenure of each Commission lasts seven (7) years, upon completion of which, a new Commission is appointed. The tenure of the previous Commission ended in May 2013 and a new Commission was appointed to serve to May 2020. The current Chair of the NCC is Mr. Raymond McIntyre, who, along with one (1) other Commissioner, was returned from the previous Commission.

A total of forty seven (47) meetings were convened by the NCC in 2013.

The Contractor Registration Process

In March 2013, the NCC, through the Office of the Cabinet engaged a Consultant to review the Contractor Registration System and to develop a Contractor Performance Management Programme. The contract was scheduled for completion in May 2013 but was extended to December 31, 2013.

Notwithstanding the pending review of the registration process, the TSD in 2013, implemented several measures to reduce the application processing period for Contractors desirous of being registered with the NCC to provide Goods, Services or Works to the GOJ.

Among the measures implemented, was the development of a supplemental document to the Application Form for Grades 1 to 4 Contractors, which provides clarification and guidance in completing the relevant Application Forms. The expectation is that the introduction of the supplemental document will allow for the submission of more accurately completed and comprehensive Applications for registration with the NCC.

The ongoing efforts of the TSD, on behalf of the NCC to improve upon the processes already in place, will ultimately result in Applicants not only experiencing a quicker but also an easier process.

Customer Service continues to be an area of priority for the OCG and in this regard, measures to enhance the customer experience in all areas are continually being explored.

Number of Contract Award Recommendations Endorsed by the NCC and Associated Aggregate Value

There was a decline in the number of applications for registration approved in 2013, when compared to 2012. A total of 931 applications for the provision of Goods and Services were received and of that number, 881 approved for registration in 2013, down from 1397 in 2012. Conversely, 202 applications were approved for registration for the provision of Works (Grades 1-5) in 2013, down from 235 in 2012. It is to be noted that no new applications were received for the registration of Grade 5 Contractors.

The reduction in the number of applications was due primarily to the increased registration validity period of 18 months, up from 12 months. The revised registration period became effective as at March 31, 2012.

There was however, an increase the number of endorsed contract award recommendations by the NCC, along with an increase in the overall value of contract award recommendations which were endorsed by the NCC. In this regard, 568 contract award recommendations were endorsed by the NCC at a combined value of J\$32,381,633,026.00; an increase over 2012 figures of 512 endorsed recommendations, at a value of 24,232,961,653.00.

NCC Sector Committees

There are eight (8) NCC Sector Committees. The role of these committees entail reviewing and approving contract award recommendations submitted by public bodies, which value in excess of J\$15,000,000.00, prior to same being forwarded to the NCC for endorsement. A combined total of 113 meetings were convened by the Sector Committees in 2013 and 341 recommendations were reviewed.

More detailed information on the activities of the TSD, the NCC and the NCC Sector Committees may be found in the section of this report entitled '*Technical Services Division*'. The section details Contractor Registration information, contract award recommendation endorsements by the NCC broken out into varying components and information relative to NCC Sector Committees.

THE SPECIAL INVESTIGATIONS DIVISION

One of the many roles of this office is the conduct of investigations into matters of concern in relation to procurement/contract award/divestment processes undertaken. In this regard, the Special Investigations Division (SID) in 2013, concluded four (4) special investigations, for which formal reports were prepared and laid before Parliament.

The four (4) Reports of Investigation which were published were for:

1. The Divestment of the Government of Jamaica's Forty-Five Percent (45%) Stake in Jamalco - *Ministry of Science, Technology, Energy & Mining (MSTEM) , Formerly Ministry of Energy & Mining (MEM)*
2. The Circumstances Surrounding Suspected Sham Contractors who were Awarded Millions of Dollars of Contracts by the National Housing Trust (NHT) - *The National Housing Trust (NHT)*
3. Right to Supply 360 Megawatts of Power to the National Grid - *The Office of Utilities Regulations (OUR)*
4. The Award of Contract(s) to Construct/Repair and to Rent Shops at the Spalding Market - *Clarendon Parish Council*

Referrals Made

Based upon the Findings from two (2) of the above Reports, a total of eight (8) formal Referrals were made to the relevant State authorities by the OCG in keeping with Section 21 of the Contractor-General Act.

Of the eight (8) Referrals made, five (5) were to the Director of Public Prosecutions (DPP), two (2) to the Auditor General and one (1) to the Commissioner of Police. Four (4) of the five (5) Referrals made to the DPP, were in relation to the Special Investigation conducted into the '*Award of Contract(s) to Construct/Repair and to Rent Shops at the Spalding Market - Clarendon Parish Council*', while the other Referral to the DPP was pertaining to the Special Investigation conducted into the '*Circumstances Surrounding Suspected Sham Contractors who were Awarded Millions of Dollars of Contracts by the National Housing Trust (NHT) - The National Housing Trust (NHT)*'.

In relation to the two (2) Referrals made to the Auditor General, one (1) was in relation to the Special Investigation conducted into the matter pertaining to the erection of the shops in the Spalding Market, while the other was in relation to the NHT matter indicated above. The Referral made to the Commissioner of Police was also in relation to the NHT matter.

A Summary of the Referrals made, including the nature of the respective Referrals, represented in Spreadsheet format, may be viewed in the section of this Report entitled '*Special Investigations Division*'. The complete Reports of Investigation may be viewed utilizing the link provided in the section of this Report entitled Special Investigations Division.

Recommendations Made

The OCG, upon conclusion of its investigations, continues to make recommendations for corrective action to be taken by the relevant authorities and the offending public bodies alike. The recommendations made, if seriously considered, accepted and put into practice, could greatly improve the procurement process in Jamaica.

Among the recommendations made in 2013 was that:

"... Executive Agencies and Procuring Entities take a more proactive and aggressive role in developing, implementing and enforcing effective risk management systems, checks and balances and other appropriate management systems, in an effort to mitigate against any possibility of collusion, fraud and corruption; as well as to ensure that government contracts are awarded to legitimate and competent Contractors and based on merit and impartiality."

In relation to the acceptance of Offers from potential investors by Public Entities, the OCG recommended that:

"... there must be strengthening of the relevant due diligence systems which are employed by Public Bodies, upon the receipt of applications/offers which are received by investors and to ensure that there is a high level of scrutiny in such processes which are being undertaken by Public Bodies."

The OCG is of the considered opinion that communication with investors is not to be undertaken outside of a formal process, as this will affect the probity, fairness and transparency which is required to ensure that value for money is obtained."

All recommendations made pertaining to each investigation concluded may be found in the body of the respective reports. The referenced Reports of Investigation may be viewed in their entirety on the OCG's website at URL: <http://www.ocg.gov.jm/ocg/view/investigation-reports>.

JAMAICA'S PLACEMENT IN INTERNATIONAL SURVEY REPORTS

World Economic Forum - Global Competitiveness Report

The World Economic Forum publishes its [Global Competitiveness Report annually](#). It *"provides a useful portrait of a nation's economic environment and its ability to achieve sustained levels of prosperity and growth. In doing so, the Report continues to be one of the most respected assessments of national competitiveness."*

The data is drawn from two main sources; namely, international organisations and national sources. Data is also drawn from the World Economic Forum's annual Executive Opinion Survey. The data provides an insight into the economic and business environment of the subject countries and is used to calculate the Global Competitiveness Index (GCI). The data gathered also informs other industry-specific reports published by the World Economic Forum, including The Global Information Technology Report, The Travel & Tourism Competitiveness Report, The Global Enabling Trade Report, The Gender Gap Report, and The Financial Development Report.

In its 2012-2013 Global Competitiveness Report, ranked Jamaica at 97 out of 144 countries on its Global Competitiveness Index, with a score of 3.8, where a score of 1 is the lowest possible score and 7, the highest. Of the sixteen (16) “*most problematic factors for doing business*” in Jamaica, Corruption is ranked at number three (3), surpassed only by “*Crime and theft*” in first place and “*Access to financing*” ranked at number 2. The other areas identified are ranked between number four (4) to sixteen (16) as follows: *Tax rates, Inefficient government bureaucracy, Poor work ethic in national labor force, Tax regulations, Inflation, Inadequately educated workforce, Policy instability, Inadequate supply of infrastructure, Government instability/coups, Insufficient capacity to innovate, Poor public health, Foreign currency regulations and Restrictive labor regulations.*

The 2011-2012 Report ranked Jamaica at 107 out of 142 countries with a score of 3.8 and the 2010-2011 Report, 95 out of 139 countries, with a score of 3.9. It should be noted that the data gathered “*are used for the elaboration of the renowned Corruption Perceptions Index and the International Bribe Payers Index published by Transparency International as well as a number of academic publications.*”

Transparency International - Corruption Perception Index (CPI)

Transparency International, each year publishes its Corruption Perception Index (CPI) Report. The CPI “*measures the perceived levels of public sector corruption in countries worldwide, scoring them from 0 (highly corrupt) to 100 (very clean).*”

In 2013, Jamaica was again poorly ranked at 83rd place, out of a total of 177 countries surveyed, having obtained a score of 38. The reality is that in spite of measures put in place to stem the level of corruption, Jamaica has not seen any significant improvement in its ranking over the years. The fact that the score obtained has remained unchanged is, in my view, nothing to be proud of. The fact that we are not at the bottom of the scale is not to be considered either. What needs to be done is for those in authority to do ‘everything’ in their powers to see Jamaica’s ranking improve significantly.

Transparency International – Global Corruption Barometer (GCB)

Transparency International publishes its Global Corruption Barometer (GCB) annually and in 2013, one hundred and seven (107) countries were surveyed. The GCB “*examines how corruption features in people’s lives around the world.*” The GCB also “*addresses people’s direct experiences with bribery and details their views on corruption in the main institutions in their countries*” and also “*provides insights into how willing and ready people are to act to stop corruption.*”

With respect to whether corruption is perceived to have ‘increased’, ‘decreased’ or remained unchanged, Jamaica fell in the category where it is deemed that ‘No Change’ had occurred. Further, in response to whether they had ever paid a bribe, 10-14% of respondents claimed to have done so.

Respondents were asked to indicate the most corrupt institutions in their respective countries and based on the results indicated in the Report, Political Parties and the Police Force were deemed the most corrupt institutions in Jamaica, followed by Parliament/Legislature.

Jamaicans though perceived as being indifferent to corruption and its implications, are not necessarily proud of the country’s reputation in relation to corruption. Many, though not in support of corruption, would prefer to be discreet with their opposition to same. This was one of the things addressed in the subject survey. Respondents were asked whether they would get involved in the fight against corruption and in what way. Interestingly, a whopping 97% of respondents indicated a willingness to get involved in the fight against corruption. They however indicated that the medium through which they would most participate in making a difference, was through the signing of a Petition. The other possible anti-corruption media for involvement were to ‘*Join a protest*’, ‘*Join an organisation*’, ‘*Pay more*’ and through ‘*Social Media*’. Jamaican respondents also fell in the 81% -100% category for believing that ‘ordinary people have the ability to make a difference’.

Bribery, as defined by Transparency International, is *“The offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal or a breach of trust.”* In relation to bribery, 12% of respondents in Jamaica reported having paid a bribe to at least one (1) of eight (8) services. The eight (8) services indicated in the survey, were: The Police, The Judiciary, Registry, Land, Medical, Education, Tax and Utilities. While this percentage is relatively low, any desire to celebrate same is to be tempered, as it is to be borne in mind that the question was specific to the ‘paying’ of bribes.

The results of these surveys are troubling to say the least and no Jamaican can honestly be proud of the reality. An ‘a-political, anti-self and pro-Jamaican approach’ has to be taken and unless that is the mindset of the powers that be, I see no light at the end of the tunnel for our upliftment or improvement in this regard.

CLOSING REMARKS

2013 has been a year of accomplishments and challenges of different kinds. In spite of the obstacles faced, this Office continues to honour its mandate. However, the reality is that in order to effectively counter the challenges faced, more resources, both human and financial, are needed.

While it is recognised that the financial constraints under which the nation operates are harsh, I am of the view that certain services require more flexibility relative to critical staffing needs and financial support. The OCG continues to be constrained by staffing deficits which ultimately affects the extent to which its mandate is fulfilled. If the Government is serious about confronting the monster of corruption consuming the nation, it would serve the interest of all concerned to provide the necessary resources to do so.

The perception of the extent of corruption in Jamaica is high. Unfortunately many Jamaicans, if asked, could speak to having knowledge of acts of corruption in one (1) form or another. Though some may prefer to not speak to it, the truth is that corruption is a very expensive habit to maintain. The longer we take to act decisively, the more it will end up costing us as a nation. It is for this reason that I implore the powers that be to invest more significantly into the fight against corruption. This plea is not just for the OCG but also all the other entities waging war against corruption in its varying forms.

As yet another year comes to an end, there are two (matters) on the horizon which will test the objectives of the relevant authorities with respect to the extent of their commitment to fighting corruption, specifically as it relates to procurement.

Firstly, there is the matter of the separation of the OCG from the NCC. This move is inevitable and necessary but how this newly-established entity will operate and the parameters within which it will function ultimately, is to be seen. It is my sincere hope that they will operate with the same autonomy as is currently the case. Further, I trust that the construct of the model will not water down the power of the OCG. We need to legislate for issues and not personalities.

The other matter in question, is the establishment of a Single Anti-Corruption Agency. While I have no objection in principle with the proposed agency, time will tell whether the mandate of the agency will incorporate the current duties of the OCG and even strengthen the reach and authority of such an agency. It remains to be seen, whether the pre-contract monitoring of procurement opportunities will be ‘limited’ in any way and also, whether the structure, policies and procedures of such an agency will be conducive to effectively countering corruption in meaningful ways. It is no secret that the pre-contract stage of any procurement process is the most vulnerable to acts of corruption. It is therefore imperative that this stage be closely monitored to guard against any such occurrence.

It is my considered view that should the duties being performed by the OCG be in any way diminished instead of strengthened, then the whole exercise in establishing a single agency would be an exercise in futility. The objective of countering corruption would thus be lost and would beg the question as to whether the agency was simply established to 'appear' to fight corruption, when in reality, the measures implemented to do so, are ultimately retrograde steps. The parameters within which those employed to this super agency will work, along with the method of leadership, will determine the effectiveness of the agency.

On another note, 2013 saw the OCG Team being privy to several training opportunities locally and overseas. Some of these exercises were facilitated by external stakeholder groups and individuals and as such, I wish to publicly express my gratitude to all who made these training and developmental sessions possible.

The office continues to be bolstered by the support it has received from members of the public over the years. In this regard, I wish to take this opportunity to thank those persons who have taken the time to express their support for and gratitude to the office through varying media. It is gratifying to know that the people whose interest we represent have found it necessary to reach out to us to make us aware of the extent to which the work we do is appreciated. There is no doubt in my mind that without such support, the work that we do would have been far more challenging in all respects. Your support for the OCG is appreciated and has been invaluable.

The public is being encouraged to continue to communicate with the OCG in relation to its role. In this regard, you are being reminded that there are several media available to communication with the Office; these include by way of telephone at any of the listed numbers, via electronic mail at general@ocg.gov.jm, via the OCG's website at www.ocg.gov.jm, where varying options to communicate with the Office may be accessed depending on the nature of the communication required. For instance, persons may report incidents of impropriety to the OCG by way of the URL, <http://www.ocg.gov.jm/ocg/webform/report-impropriety>, where an electronic form is to be completed regarding same.

There is also a Post-Contract Works Quality Complaint Form available on the website at URL: <http://www.ocg.gov.jm/ocg/webform/post-contract-works-quality-complaint-form>. This form is exclusively for persons who have observed deficiencies in the quality of completed infrastructure works which was undertaken by any Government Agency. Further, submission of queries or requests for feedback pertaining to matters relevant to the role of the OCG, may be done via <http://www.ocg.gov.jm/ocg/webform/query-general-feedback-form>. In communicating with the OCG through any of the abovementioned media, please be reminded that the party passing on information to this Office is under no obligation whatsoever to disclose their actual identity. I venture however to encourage you that in communicating with the OCG, please provide as much information as is possible to allow for timely and informed follow-up by the Office.

In addition to the foregoing, the website also has Web Applications which are specific to certain functions of the Office and are related primarily to public bodies. Currently, the OCG Web Portal allows for public Procuring Entities to report on a quarterly basis, all contracts awarded in excess of J\$500,000.00 (Quarterly Contract Awards – QCA). In order to access the Portal, public bodies have to request by email, a unique access password to log into the system by way of <https://portal.ocg.gov.jm/owp/qca>. The information submitted is published as is and as such, the onus is on the public body to ensure the accuracy of the information posted.

Like the QCA Database, the Prescribed Licence Information Database (PLID) is updated and maintained by the public body. Procuring Entities are required to report by way of the Database, all Prescribed Licences issued by them over a period of time. The accuracy of the information submitted is therefore the duty of the respective public bodies. To access the PLID, please visit URL: <http://www.ocg.gov.jm/ocg/page/prescribed-licence-information-database-public-body-access>. The public has viewing only access to the PLID system.

The Procurement Notice Board is another Web Application accessible by way of the OCG website. The Notice Board allows Public Procuring Entities to post and maintain Procurement Notices. Like the other Applications, a unique access password is required by the public body to access the system. In keeping with Circular Number 33 issued by the Ministry of Finance and Planning in December 2013, all public bodies are required to post Procuring Notices on the OCG's Procurement Notice Board, as well as in other specified areas. The Procurement Notice Board may be accessed at URL: <http://www.procurement.gov.jm/procurement/>. Viewing only access of the Notice Board is possible for the general public. Contractors may also sign up to receive email notifications of Procurement Notices which fall in categories for which they have an interest.

The OCG remains highly concerned about the high level at which corruption is perceived in our society. It is my considered view that enough is not being done to get to the root of the problem and that surface remedies are being applied. Changing the society's view of corruption has to be an aggressive and deliberate undertaking. The solution should not simply be putting measures in place to deter would-be perpetrators and where identified, have them face the Courts. The effort has to commence with educating the public on the perils of corruption. The truth is that corruption is for the most part, a matter of moral values and personal decisions taken for or against being morally and ethically-upstanding.

That said, it is therefore important to appeal to the moral compass of each member of society. In this regard, it is imperative that 'lessons' and anti-corruption sensitisation commence in the schools at the primary level and continue through to the post-primary and secondary levels, while at the same time, sensitising the adult population through other media. To this extent, I strongly support the move to re-introduce Civics into the education system. It is my view that appreciation for and love of country through education, along with consistent sensitisation relative to corruption and its ill-effects, will serve to instill some amount of pride in each Jamaican and will also challenge each person to do the morally right thing when faced with choices.

The truth is that it makes no sense for us to sit and wait on the other man to do the right thing. It ultimately starts with us doing the right thing and rejecting that which is not in keeping with our stated values. A 'corruption-challenged' person generally finds comfort in commingling with persons of like nature. If such a person is hard-pressed to find someone else who embraces corruption, they will eventually seek to do the right thing. A corrupt person rarely makes progress without the support of another of like manner. It is therefore up to each of us to stand up for Jamaica and to scorn those who are intent on being immoral.

I take this opportunity to remind all Jamaicans in this period of challenges to meditate on the words of our National Anthem, which is a prayer for our fair isle of Jamaica. Challenge yourselves to repeat it every day and internalise the meaningful words therein. Positive change will not happen overnight and in order for there to be positive change, all hands have to be on board. We all have to stand together and reject corruption and criminality in all forms, bearing in mind the generations to come and what they will be faced with in the future. If what we propose to leave to them is a country rife with corruption and criminality, along with indifference for doing the right thing in all cases and against the odds, then our very existence should be questioned. In spite of the ills faced, I think all Jamaicans wish for peace and prosperity. This cannot and will not be achieved with the current state of affairs. We each have to play our part to fix it. To get it right.

I wish to close by thanking the dedicated and hardworking staff of the OCG who have worked tirelessly to uphold the mandate of this office, even when faced with challenges. I applaud their efforts and wish us all success as we move forward, even with the uncertainties surrounding the impending changes. Again I thank the people of Jamaica for your support and on behalf of all the members of staff of the OCG, I commit to continuing the hard work of fighting this ugly monster of corruption that threatens to swallow our beautiful island.

Dirk Harrison
Contractor General