



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

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MEDIA RELEASE

**Statement of the Office of the Contractor General in Response to the
Permanent Secretaries Board**

Kingston; March 27, 2012 – The Office of the Contractor General (OCG) is deeply troubled by the contents of a Statement, dated March 23, 2012, that was issued by the Permanent Secretaries Board (PSB).

The Statement was issued after the OCG had published a Memo, that was stamped ‘Confidential’, that was written by the Permanent Secretary (PS) in the Ministry of Transport, Works and Housing (MTWH), to the MTWH Minister, and in which the PS had registered her concerns about her ignorance of matters that were related to the Jamaica Emergency Employment Programme (JEEP).

The PSB, in its Statement, has, among other things, questioned the lawful authority of the OCG to publish the Memo. Indeed, the PSB has gone as far as to direct the OCG by warning it that *“It is the expectation of the Board that there will not be a recurrence of this type of action and that there will be strict adherence to the spirit and intent of the Contractor General Act by all concerned”*.

While the OCG has every respect for the members of the PSB and its Chairman, the OCG nevertheless considers the PSB’s Statement to be an ill-advised and un-lawful incursion upon the lawful authority and jurisdiction of the OCG under the Contractor General Act. Consequently, the PSB’s Statement cannot, by reason of its grave implications, be left un-answered or un-addressed.

At best, the PSB is substantially misguided in its understanding of the role, functions and lawful powers of the OCG, and it is to be regretted that the PSB’s implicit ignorance, in this regard, has apparently been foisted upon what could be an unsuspecting media and the public.

To set the record straight, it must first be made crystal clear that the OCG is an Independent Anti-Corruption Commission of Parliament, which is vested with the statutory mandate, under Section 4 (1) (a) of the Contractor General Act, to *“ensure”*, among other things, that Government contracts are awarded impartially and on merit and in circumstances that do not involve impropriety or irregularity.

This is the very mandate that was invoked by the PS, herself, when, while drafting the subject Memo, she complained to the OCG that her public accountability and procurement oversight responsibilities, in relation to the JEEP, were being undermined, presumably by the Political Executive.



Once the OCG's mandate has been invoked, it is important for the PSB to understand that Section 5 (1) of the Contractor General Act makes it abundantly clear that, "*a Contractor General shall not be subject to the direction or control of any other person or authority*". Consequently, no one, inclusive of the PSB, can lawfully instruct the OCG as to what it should or should not do in the lawful discharge of its functions under the Contractor General Act.

One of the fundamental objectives that the OCG was designed to achieve, was to shine the light of transparency on the activities of Public Officials and Officers, inclusive of Permanent Secretaries, who are involved in the process of the award and implementation of Government contracts. Another objective was to ensure compliance and accountability, on the part of the said Officers, with the provisions of the laws, regulations, policies and procedures that govern public contracting in Jamaica.

Perhaps the PSB is not aware of the foregoing, nor of the fact that the Contractor General Act oversight regime was developed and drafted, in 1981, by a 14 person Committee, six (6) of whom were distinguished Senior Permanent Secretaries of the day.

To underscore these basic principles of transparency, compliance and accountability, upon which the OCG is founded, Sections 4, 15 (1), 16, 17, 18, 19 (2), 24 (1) (b) and 28 (4) of the Contractor General Act, vest in a Contractor General extensive quasi-judicial powers of enquiry, search, subpoena and seizure, to enable him to secure, and to publish, at his sole discretion, almost all classifications of information and documentation. The sole exceptions to these powers are outlined in Sections 15 (2), 19 (1) and 18 (5) of the Act, none of which is applicable in the instant case of the PS' Memo.

Indeed, it is instructive for the PSB to note that so extensive are the powers of a Contractor General to secure, and to publish information, in the public interest, that Section 18 (4) of the Contractor General Act makes it explicitly clear that not even the Official Secrets Act can be held up as a lawful bar, by a Public Officer, to refuse to provide a Contractor General with information which he demands, whilst Section 24 (1) (b) of the Act empowers a Contractor General to publish information or documentation which "*he (and not the PSB) thinks necessary to make in the discharge of his functions*".

Consequently, whether a Public Officer chooses to stamp the word "Confidential" on a document, or not, is wholly immaterial. It is particularly in this regard, and as it relates specifically to the PS' Memo, that the OCG must, therefore, point to the misinformation which the PSB has fed to the media, and by extension, to the public, that by merely classifying a document as "Confidential", the OCG's powers of seizure or publication are thereby fettered, or that the OCG has acted unethically or illegally.

The OCG also feels obliged to express its public dismay and alarm at the PSB's statement that the "*action*" of the OCG "*has the potential to undermine the existing system of governance in Jamaica*". Perhaps the OCG and the PSB do not share the same understanding of what '*governance*' means, but it is the considered and respectful view of the OCG that it is the actions of the PSB, and not the OCG, which, if countenanced, would lead to a rapid decline in the systems of good governance which the OCG has been working so assiduously to establish in public contracting and licensing in Jamaica.



To be clear, among the things that the OCG is seeking to secure is public transparency and exposure of irregular and improper Government procurement actions. The PSB, on the other hand, and based entirely upon its Statement, seems, however, to be rooting for a regime which will muzzle the OCG and keep such matters concealed from the scrutiny of the country's taxpayers.

In the final analysis, the public must, however, not allow itself to be distracted or to lose sight of the bigger picture in this JEEP matter.

The big picture is that the PS had, in essence, unequivocally documented, in her Memo, her concerns that her lawful authority, as the Accounting Officer of the MTWH, was being undermined in a matter which is expected to involve the expenditure of more than \$5 billion of taxpayers' money in the award of Government of Jamaica contracts.

In the circumstances, the OCG wishes to assure the public that in the days to come, it will ensure that its findings, as regards the JEEP, inclusive of the written disclosures of the PS, that were given under her hand, by way of letter that was dated March 23, 2012, will be brought to full public light.

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