



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

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FOR IMMEDIATE RELEASE

STATEMENT REGARDING THE OFFICE OF THE CONTRACTOR GENERAL'S
UNDERSTANDING OF THE STATUS OF THE GEASO MONITORING COMMITTEE
IN THE GEASO HEALTH SCHEME CONTRACT PROCUREMENT PROCESS

Kingston, July 2, 2007 – The Office of the Contractor General (OC-G) has today issued a formal Statement regarding the OC-G's understanding of the status of the GEASO Monitoring Committee in the GEASO Health Scheme Contract Procurement Process.

Given its importance, copies of the OC-G's Statement are being made available to the Hon. Speaker of the House of Representatives, the Hon. President of the Senate, the Most Hon. Prime Minister, the Leader of the Opposition, the Hon. Minister of Finance, the Cabinet Secretary, the Financial Secretary, the Solicitor General and the Media.

A copy of the referenced statement may be found below:

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“OFFICE OF THE CONTRACTOR GENERAL

Statement, Issued July 2, 2007, Regarding the Office of the Contractor General’s Understanding of the Status of the GEASO Monitoring Committee in the GEASO Health Scheme Contract Procurement Process.

1. The Office of the Contractor General (OC-G) understands that the Government has reportedly suspended the GEASO Health Scheme Procurement Process to facilitate, among other things, the participation of the GEASO Monitoring Committee (GEASO-MC) in the decision-making aspects of the process. This has made it necessary for the OC-G to issue this Statement.
2. This Statement, comprising five (5) pages, is being made in the discharge of the functions of the Contractor General under Section 4 (1) of the Contractor General Act and in furtherance of the exercise of the powers which are reserved to him by Section 24 (1) (b) of the Act. Copies of this Statement will be distributed to the Hon. Speaker of the House of Representatives, the Hon. President of the Senate, the Most Hon. Prime Minister, the Leader of the Opposition, the Hon. Minister of Finance, the Cabinet Secretary, the Financial Secretary, the Solicitor General and the Media.
3. First, it must be made unequivocally clear that the OC-G fully recognizes and accepts the very important and critical role that the GEASO-MC plays in negotiating health benefits for the Public Servants of Jamaica who contribute one in every five dollars to the over J\$2 Billion in costs which are required each year to sustain the GEASO Health Scheme. However, it should also be noted that the remaining costs of the Scheme, namely, four in every five dollars, are borne by the Tax-Payers of Jamaica.
4. Second, as a creature of the law, the Commission of the Contractor General, which is an Independent Commission of Parliament, is bound by the Laws of Jamaica. It must, therefore, and at all times, seek to faithfully discharge its statutory functions “*on behalf of Parliament*” and, by extension, *on behalf of all of the People of Jamaica, in accordance with the provisions of the Contractor General Act.*
5. In December 2005, the OC-G began its initiative to urge the Government to put the GEASO Health Scheme contract to public competitive tender, for the first time in ten years, in compliance with the law and the Government’s own procurement rules.
6. *From the very outset, the Ministry of Finance & Planning (MOFP), with the full knowledge of the Financial Secretary, the Minister of Finance, the Cabinet Secretary and the Solicitor General, implicitly represented to the OC-G, in writing, that, in accordance with the Government Procurement Procedures Handbook (GPPH), the National Contracts Commission (NCC) Regime and the Contractor General Act, it was the MOFP’s, the Cabinet’s and the Government of Jamaica’s position that the GEASO contract procurement could not be lawfully subjected to the prior approval of the GEASO-MC and would not be so subjected.*



7. *Since this posture has been maintained by the MOFP throughout and up until as recently as June 21, 2007, the date of the MOFP's last correspondence to the OC-G, it is now incumbent upon the OC-G, particularly in light of recent developments, to fully disclose to the public the true facts of this matter. They are set out hereunder.*
8. In response to a letter from the OC-G to the MOFP, which was dated December 15, 2005 and which had recommended that the GEASO Health Scheme contract should be put to public competitive tender, the Financial Secretary, under the signature of another Officer of the Ministry, wrote to the OC-G on January 6, 2006. In the letter, the Ministry Official opined that, based upon a November 1982 MOFP Policy Decision, *"any (procurement) decision taken (regarding the GEASO Health Scheme) will have to be agreed on by all the Members of the (GEASO) Committee and also the Unions which are represented (on the Committee)"*.
9. In responding directly to the Financial Secretary, the OC-G, by way of letter which was dated January 12, 2006, advised the MOFP that its 1982 Policy Decision, together with the positions which had been articulated in its January 6, 2006 letter, were not consistent with the GPPH and had in fact been superseded by the requirements of the 1983 Contractor General Act and the 1999 NCC regime. The OC-G's letter was copied to the Minister of Finance, the President of the Jamaica Civil Service Association and the Solicitor General. The OC-G went further and on February 1, 2006, wrote directly to the Minister of Finance, himself, with copy to the Financial Secretary, the Cabinet Secretary and the Solicitor General, and advised that the OC-G had *"found no persuasive force in any of the arguments which were presented (in the MOFP's letter of) January 6, 2006"*.
10. In response to the OC-G's letters of January 12 and February 1, 2006, the Financial Secretary, on February 3, 2006, verbally advised the Contractor General that *"the positions which were conveyed in the (Ministry's January 6, 2006) letter were not authorized by the MOFP and, indeed, were contrary to the Ministry's, the Government's and the Cabinet's stand on the matter"*. The MOFP also assured the OC-G that the GEASO contract would be put to public competitive tender.
11. The Financial Secretary's statements of February 3 were subsequently confirmed in writing in an OC-G letter to the MOFP which was dated the same day and in a MOFP letter to the OC-G which was dated February 8, 2006. Both letters were copied to the Minister of Finance, the Cabinet Secretary and the Solicitor General.

It is instructive to note that the Financial Secretary, in his letter of confirmation of February 8, 2006, went as far as to state that the Officer who had signed the January 6, 2006 letter, on his behalf, "would be forbidden to sign any (future) correspondence on behalf of the Financial Secretary".
12. *In its monitoring of the procurement of the GEASO Health Scheme contract which followed these exchanges of correspondence, and at all material times, the OC-G was therefore guided by the written representations of the Financial Secretary, as above, together with the logical inferences which flowed there-from.*



13. Accordingly, in June 2007, when media reports suggested, and the OC-G was otherwise advised, that the MOFP was in fact in dialogue with the GEASO-MC, notwithstanding (a) the foregoing, (b) that the MOFP had already recommended that the subject contract should be awarded to Life of Jamaica Limited (LOJ) and (c) that the Ministry's recommendation was formally endorsed by the National Contracts Commission (NCC) on May 30, 2007, the OC-G became understandably concerned.
14. Consequently, on June 14, 2007, the OC-G wrote directly to the Financial Secretary to seek the Ministry's clarification regarding the alleged discussions which were then taking place between the Ministry and the GEASO-MC. The OC-G's letter to the Financial Secretary was copied to the Minister of Finance and the Cabinet Secretary.
15. The Financial Secretary was specifically requested to respond, *inter alia*, to the following two media reports:

(a) *"Proposals from the health insurance industry have since been evaluated and submitted to the National Contracts Commission (NCC). The unions are now perusing the proposals and evaluations and every effort is being made to complete this process by the end of this month. NCC will then submit their assessment and recommendations to Cabinet for final approval."*

(b) *"Mr. Bullock later confirmed that the NCC has reviewed the submission and added that it is now being examined by the GEASO worker monitoring committee, which comprises representatives from the different categories of workers. At the end of this review, he said, it is expected that a submission will be made to Cabinet"*.

It is also critical to note that the Financial Secretary was expressly asked to bear in mind, prior to scripting his response to the OC-G, the positions which he had previously represented to the OC-G, in February 2006, as regards his Ministry's, the Cabinet's and the Government of Jamaica's stand on the GEASO-MC matter.

16. The Financial Secretary did respond to the OC-G's request for clarification by way of letters which were dated June 15 and June 21, 2007. Both letters were copied to the Minister of Finance and the Cabinet Secretary. ***In neither letter did the Ministry in any way seek to alter its previously stated position that the GEASO contract procurement could not be subjected to the prior approval of the GEASO-MC.*** In point of fact, the Ministry expressly assured the OC-G as follows:

(a) *"(That) the Ministry of Finance has done nothing to avoid or countermand the recommendations of the NCC ..."*

(b) *"(That the Ministry's) interface with the GEASO Monitoring Committee has not led to any reversal of the technical assessment of the staff of (the) Ministry of Finance and Planning within the frame of the Requests for Proposals and the Procurement Procedures"*.

(c) *"(That) all relevant documents, including the NCC's endorsement and Cabinet Submission, are now being presented to the Honourable Minister of Finance for submission to Cabinet"*.



17. *In consequence, as at June 24, 2007, when the OC-G wrote to the MOFP (with copy to the Media) to recommend that it should act decisively and comply with the lawful directives of the NCC and convey the NCC's endorsement of the Ministry's recommendation of the award of the GEASO contract to LOJ, to the Cabinet, the OC-G was still being guided by the positions which had been previously articulated by the Financial Secretary on behalf of the Cabinet and the Government of Jamaica.*
18. The OC-G is of the considered view that the said positions which the Financial Secretary had represented to be those of the MOFP, the Cabinet and the Government of Jamaica, are positions which are consistent with the legal requirements of the Contractor General Act, the NCC Regime and the GPPH. In this regard, the following facts should be noted:
 - (a) The only entity which is recognized by the Contractor General Act (1983) as the initiator and procurer of a Government contract award is a "Public Body". Section 2 of the Contractor General Act defines a Public Body as *"a Ministry, department or agency of Government, a statutory body or authority, or any company registered under the Companies Act, being a company in which the Government or an agency of Government, whether by the holding of shares or by other financial input, is in a position to influence the policy of the company"*.
 - (b) The only entity which is recognized by the GPPH as the initiator and procurer of a Government contract award is a "Procuring Entity". Section 1.4 of the GPPH, dated May 30, 2001, defines a Procuring Entity as *"any Government Ministry, Department, Statutory Organization, Executive Agency, Local Government Authority, Public Company or any other Agency of Government that engages in procurement"*.
 - (c) The GEASO-MC is neither a "Public Body" within the meaning of the Contractor General Act nor is it a "Procuring Entity" within the meaning of the GPPH.
 - (d) Other than a "Public Body" and a "Procuring Entity", the only decision-making authorities that are formally recognized by the Contractor General Act and the GPPH, as being lawful and substantive participants in the Government contract award process, are the NCC and the Cabinet. The GEASO-MC is not so recognized.
 - (e) *In summary, there is therefore at present no provision in the GPPH, the NCC Regime or the Contractor General Act which would qualify the GEASO-MC to lawfully play a substantive or participatory role in the decision-making process for the procurement of the GEASO Government contract award. Nor is there any provision for it to otherwise gain ascendancy over the Ministry's, the NCC's or the Cabinet's lawful authority to so act in the matter.*
 - (f) *It must be emphasized, however, that none of the foregoing in any way prohibits the GEASO-MC or any of its members from negotiating, with the Government, the health benefits which will be ultimately provided under the GEASO Health Scheme. However, the GEASO-MC cannot lawfully go beyond this point to negotiate, direct or to otherwise impose its will over the process or to nominate the entity that*



should receive the GEASO Government contract award. And the Government is fully aware of this or it would not have made the unequivocal representations which it had made to the OC-G in February 2006 and again in June 2007.

(g) It should also be made clear that the GPPH, the NCC Regime and the Contractor General Act are all structured to mandate one uniform procurement process for the award of *all Government contracts* and to grant to the Independent Parliamentary Commissions of the NCC and the OC-G, special regulatory and monitoring mandates in respect thereof. These mandates are designed to ensure that the Government's procurement and contract award processes are conducted without irregularity and in compliance with the law, the GPPH, and the principles of probity, competition, value for money, transparency, fairness, propriety and merit.

(h) *Since the current structure of the GPPH, the NCC Regime and the Contractor General Act make no provision for the GEASO-MC or any other special interest group to be involved in the decision-making aspects of the procurement process, the only way that the GEASO-MC can be lawfully accommodated in the process is if the referenced structure is appropriately modified beforehand.*

(i) *Barring any such modifications, which must be effected by due process, the current procurement regime must be allowed to take its natural course in keeping with the rule of law. If it is unlawfully tampered with, a dangerous precedent will be set and the integrity of the entire public sector contract award system, inclusive of the independent institutions which our Parliament has established to regulate and monitor same, will be summarily undermined.*

19. The OC-G's interest in this matter is one which is prescribed by law. Section 4 (1) of the Contractor General Act mandates the Contractor General, "... on behalf of Parliament, ... to monitor the award and the implementation of Government contracts with a view to ensuring that such contracts are awarded impartially and on merit (and that) the circumstances in which each contract is awarded ... do not involve impropriety or irregularity". This Statement is therefore being made irrespective of any decision which the Government may choose to make in this matter.
20. This Statement has not addressed any of the details of the tender-invitation or tender-evaluation processes of the subject GEASO contract procurement. Several serious and critical questions regarding this very important issue have been raised in the Media recently. In the circumstances, and particularly because this is a highly technical issue, the OCG feels compelled to reiterate its written recommendation of June 24, 2007, to the MOFP, that it is imperative, in the interest of public transparency, that the relevant details of the comparative cost and benefit considerations upon which the Ministry's recommendation to the NCC to award the GEASO contract to LOJ, were predicated, should be promptly disclosed to the public.
21. The OC-G remains confident that once this is done, a greater understanding will be had of all of the relevant considerations which have obtained, so far, in this matter. "



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