

# **OFFICE OF THE CONTRACTOR-GENERAL**

## **Report of Investigation**

### **Into the Alleged Conflict of Interest on the Part of Dr. Henry Lowe, Former Chairman of the Bureau of Standards Jamaica (BSJ), in the Procurement of Health Insurance Services for BSJ, whilst he was the Chairman of Blue Cross of Jamaica Ltd.**

#### **Former Ministry of Industry, Technology, Energy and Commerce** **Ministry of Industry, Investment and Commerce**

## **INTRODUCTION**

The Investigation into the Bureau of Standards Jamaica (BSJ) was launched following upon, *inter alia*, allegations of a conflict of interest in the procurement of Health Insurance Services by the BSJ. In the first instance, an anonymous email was received via the Office of the Contractor General (OCG) website alleging procurement breaches and irregularities at the BSJ<sup>1</sup>.

As such, on 2006 October 23, the OCG, following upon the receipt of the email which alleged certain irregularities at the BSJ, wrote to Dr. Jean Dixon, the former Permanent Secretary in the then Ministry of Industry, Technology, Energy and Commerce (MITEC), informing her of the OCG's intention to investigate certain of the allegations which were contained in the referenced email.

It must also be noted that Dr. Jean Dixon, via a telephone conversation with a senior representative of the OCG, on 2006 December 22, lodged a complaint with the OCG, in regard to an apparent conflict of interest involving Dr. Henry Lowe, the then Chairman of the BSJ and also the then Chairman of Blue Cross of Jamaica (now Sagicor Life Jamaica Ltd.).

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<sup>1</sup> Attachment No. 67 available on File No. 16-4-5. Anonymous email was appended to letter sent by the OCG to Dr. Jean Dixon dated 2006 October 23.

Subsequently, by way of a letter, which was dated 2006 December 22, Dr. Jean Dixon wrote to the Contractor General regarding certain issues at the BSJ. In her letter to the Contractor General, Dr. Jean Dixon indicated as follows:

*“Please find attached correspondence submitted by the Procurement Committee of the Bureau of Standards (BSJ) which is self explanatory. I am requesting a review of the procedures that the Committee is following to ensure adherence to Government’s procurement guidelines.”<sup>2</sup>*

The letter of 2006 December 22 enclosed several attachments, inclusive of a letter from the BSJ’s Procurement Committee, and several memoranda which had been sent to the referenced Procurement Committee, regarding the procurement of a Group Health Insurance Provider at the BSJ.

The referenced correspondence indicated, *inter alia*, that:

1. In 2006, the Procurement Committee of the BSJ recommended the award of the Health Insurance Services contract;
2. The recommendation of the Procurement Committee was challenged by the Board of Directors (Standards Council) and instructions were subsequently given to the Procurement Committee to conduct interviews with the respective bidders; and
3. The Procurement Committee refused to carry out the instructions of the Board of Directors (Standards Council) given the fact that the introduction of an interview session, would have amounted to the introduction of a new evaluation criterion, which would have been a violation of the rules which were contained in the 2001 Government Procurement Procedures Handbook (GPPH).

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<sup>2</sup> Letter from Dr. Jean Dixon to the Contractor General dated 2006 December 22

The series of events, as outlined above, amongst other things, was enough to cause great concern for the OCG as it relates to the BSJ's adherence to the requirements of the 2001 GPPH.

Subsequently, on 2007 January 2, senior representatives of the OCG met with senior representatives of the BSJ, inclusive of the then Executive Director, Dr. Camella Rhone and the Legal Officer/then Chair of the Procurement Committee, Ms. Annette Henry.

The representations which were made in the meeting that was held on 2007 January 2, regarding the BSJ's tender for Health Insurance Services, revealed, *inter alia*, that:

1. The BSJ was seeking to retender its Health Insurance Services to facilitate staff involvement and the introduction of new evaluation criteria into the tender process; and
2. The BSJ had extended the contract with the existing service provider (Blue Cross of Jamaica) but it was not certain if the requisite approvals had been obtained in order to do so.

Subsequent to the meeting which was held on 2007 January 2, the OCG, by way of letter which was dated 2007 January 3, advised the BSJ that “... *it has initiated an investigation into the tender process for the Bureau's Health Scheme which was reportedly tendered and evaluated over the period 2006 August to October.*”<sup>3</sup>

The OCG's Investigation into the referenced matter was undertaken pursuant to Sections 15(1) and 16 of the Contractor General Act (1983) and was focused primarily upon the determination of whether or not the BSJ had complied with the requirements of the GPPH (2001) and the Contractor General Act (1983).

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<sup>3</sup> Letter from the OCG, dated 2007 January 3 to Dr. Camella Rhone, former Executive Director of the BSJ

Section 15 (1) of the Contractor General Act provides that “...a Contractor General may, if he considers it necessary or desirable, conduct an investigation into any or all of the following matters-

- (a) the registration of contractors;
- (b) tender procedures relating to contracts awarded by public bodies;
- (c) the award of any government contract;
- (d) the implementation of the terms of any government contract;
- (e) the circumstances of the grant, issue, use, suspension or revocation of any prescribed licence;
- (f) the practice and procedures relating to the grant, issue, suspension or revocation of prescribed licences”.

Section 16 of the Contractor General Act expressly provides that “An investigation pursuant to section 15 maybe undertaken by a Contractor General on his own initiative or as a result of representations made to him, if in his opinion such investigation is warranted”.

## **TERMS OF REFERENCE**

### ***Primary Objectives***

The primary aim of the OCG's Investigation was to determine, *inter alia*, the following:

1. Whether there was compliance with the provisions of the GPPH (2001), the Contractor General Act (1983) and the Public Bodies Management and Accountability Act, by the BSJ, in the tender processes for the award of a contract for the provision of Health Insurance Services.

### ***Specific Objectives***

The Investigation also had the following specific objectives:

1. To determine whether the procurement of, and the award a contract for Health Insurance Services, by the BSJ, was in accordance with the guidelines of the GPPH (2001).
2. To determine whether a conflict of interest existed as it pertained to Dr. Henry Lowe, in his capacity as the then Chairman of the Board of Directors (Standards Council) of the BSJ and as the then Chairman of the then Blue Cross of Jamaica.

## METHODOLOGY

The OCG, in the conduct of its Investigations, has developed standard procedures for evidence gathering. These procedures have been developed and adopted pursuant to the powers which are conferred upon a Contractor General by the 1983 Contractor General Act.

It is instructive to note that Section 17 (1) of the Contractor General Act empowers a Contractor General to “...adopt whatever procedure he considers appropriate to the circumstances of a particular case and, subject to the provisions of (the) Act, to obtain information from such person and in such manner and make such enquiries as he thinks fit.” (OCG Emphasis)

The Terms of Reference of the OCG’s Investigation into the procurement practices of the BSJ were primarily developed in accordance with the mandates of the Contractor General as are stipulated in Section 4 (1) and Section 15 (1) (a) to (d) of the Contractor General Act (1983).

The Terms of Reference of the Investigation were guided by the OCG’s recognition of the far-reaching responsibilities and requirements that are imposed, *inter alia*, upon Public Officials and Public Officers by the GPPH (2001), the Contractor General Act, the Public Bodies Management and Accountability Act and the Corruption Prevention Act.

In addition, the OCG was guided by Section 21 of the Contractor General Act which provides that “**If a Contractor-General finds, during the course of his Investigations or on the conclusion thereof that there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body, he shall refer the matter to the person or persons competent to take such disciplinary or other proceeding as may be appropriate against that officer or member and in all such cases shall lay a**

**special report before Parliament.**”(OCG Emphasis)

The following methodology was used to inform the Findings and Conclusions of the Investigation:

1. The requisition and examination of documents relating to the BSJ's Tender for Health Insurance Services which was initiated in 2006 August.
2. Conduct of interviews with officials and officers of the BSJ who were considered material to the award of the Health Insurance Services contract. Interviewees included:
  - a. Dr. Omer Thomas- former Executive Director, BSJ;
  - b. Dr. Jean Dixon- former Permanent Secretary, the former MITEC;
  - c. Dr. Henry Lowe- former Chairman of the Board, BSJ;
  - d. Ms. Annette Henry- Legal Officer/Corporate Secretary and the then Chairman of the Procurement Committee, BSJ;
  - e. Ms. Yanike Harrison- former Manager, Human Resource Development, BSJ;
  - f. Mr. Gladstone Rose- former Acting Executive Director, BSJ; and
  - g. Mr. Rohan Anderson, Chief Accountant and then Procurement Committee Member, BSJ.
3. A review of the Minutes of the Meetings of the Board of Directors (Standards Council) of the BSJ for the period of 2006 May to 2007 January.
4. A review of the Minutes of the Meetings of the BSJ's Procurement Committee for the period of 2006 June to 2007 January.
5. A review of the audio recording of the Meeting of the Executive Committee of the Board of Directors (Standards Council) of the BSJ which was convened on 2006 December 11.

6. A review of the audio recording of the Meeting of the Board of Directors of the BSJ which was convened on 2006 December 20.

The evidence that was gleaned by the OCG from the foregoing documentation and, in particular, the written and incontrovertible evidence that was documented, *inter alia*, in the official Minutes of the Meetings of the Standards Council and the Minutes of the Meetings of the Executive of the Standards Council of the BSJ, was deemed sufficient and adequate to enable the OCG to arrive at those of its Findings and Conclusions that have been documented herein.

It is instructive to note the following provisions of the Contractor General Act which, among others, govern the conduct of the formal Investigations of a Contractor General:

#### **Section 17 (1) of the Contractor General Act**

Section 17 (1) of the Act prescribes the power of a Contractor General to *“adopt whatever procedure he considers appropriate to the circumstances of a particular case and, subject to the provisions of (the) Act, (to) obtain information from such person and in such manner and make such enquires as he thinks fit”*.

#### **Section 17 (2) of the Contractor General Act**

Section 17 (2) of the Act provides that *“Nothing in this Act shall be construed as requiring a Contractor General to hold any hearing and no person shall be entitled as of right to comment on any allegations or to be heard by a Contractor General”*.

#### **Section 18 (1) of the Contractor General Act**

Section 18 (1) of the Act prescribes, *inter alia*, the power of a Contractor General, *“at any time, (to) require any officer or member of a public body or any other person who, in his opinion, is able to give any assistance in relation to the investigation of any matter pursuant to*



*this Act, to furnish such information and produce any document or thing in connection with such matter as may be the possession or under the control of that officer, member or other person”.*

## **FINDINGS**

The tender for Health Insurance Services at the BSJ was advertised in *The Daily Gleaner* on Friday, 2006 August 18. According to the tender advertisement, tender documents became available to the public from 2006 August 16 with a scheduled return date of 2006 August 30 by 2:00 pm.

According to the tender document, the Health Insurance Service Provider was required to provide health insurance coverage for the period of 2006 October 30 through to 2008 October 29.

The Tender Receival Form indicated that three (3) companies had responded to the bid at the following costs, namely:

- |                               |                  |
|-------------------------------|------------------|
| 1. Guardian Life Ltd.         | J\$ 6,959,232.00 |
| 2. Life of Jamaica Ltd.       | J\$ 6,514,080.00 |
| 3. Blue Cross of Jamaica Ltd. | J\$ 7,324,800.00 |

The instructions to bidders, as contained in the tender document, indicated that the ***“...recommendation for AWARD will not necessarily be made to the lowest Tenderer but to the best overall proposal.”***

It must be noted that prior to the tender process, which was undertaken in 2006 August, Blue Cross of Jamaica was the then incumbent Health Insurance Service Provider at the BSJ. It is also instructive to note that Dr. Henry Lowe was the then Chairman of the Board of Directors (Standards Council) at the BSJ and also the then Chairman of Blue Cross of Jamaica.

## Meetings of the Standards Council and Executive Committee of the Standards Council

The Minutes of the Meeting of the Executive of the Standards Council, which was held on 2006 May 4, revealed that the tender for Health Insurance Services was scheduled for discussion on the meeting agenda. The referenced Minutes indicated, *inter alia*, that:

*“A copy of the Instructions to tender relating to the renewal of Health Insurance for the Bureau’s staff was tabled...After much discussion, it was agreed that the proposal would be accepted subject to the adjustments which have been recommended.”<sup>4</sup>*

According to the signed Minutes of the Meeting of the Executive of the Standards Council, which was held on Tuesday, 2006 June 13, the meeting was advised that “...BSJ has asked the current provider (Blue Cross of Jamaica) to extend the interim insurance arrangement for an additional four months... the extension was to accommodate the tendering process.”<sup>5</sup>

The request for a four (4) month extension would have allowed Blue Cross of Jamaica to retain the service contract until 2006 October. Thereafter, the recommended provider, as per the 2006 August tender, would be responsible for the provision of health insurance services to the BSJ.

Further, the Minutes of the Meeting of the Executive of the Standards Council, which was held on Tuesday, 2006 June 13, also advised, in regard to the Tender for Health Insurance Services, that “An advertisement would now be placed inviting bids.”<sup>6</sup>

In addition, the signed Minutes of the Meeting of the Standards Council, which was held on 2006 June 20, indicated that “...an advertisement should now be placed in the national newspaper inviting tenders to submit proposals to provide Health Insurance coverage.”<sup>7</sup>

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<sup>4</sup> Minutes of the Meeting of the Standards Council which was held on 2006 May 4; Page 7-8

<sup>5</sup> Signed Minutes of Meeting of the Executive of the Standards Council held on Tuesday 13 June 2006, in the Boardroom of the BSJ. Page 8 Enclosure # 79

<sup>6</sup> Signed Minutes of Meeting of the Executive of the Standards Council held on Tuesday 13 June 2006, in the Boardroom of the BSJ. Page 8 Enclosure # 79

<sup>7</sup> Minutes of the Meeting of the Standards Council, which was held on 2006 June 20: page 8

The Minutes of the Meeting of the Standards Council, which was held on 2006 June 20, also indicated that “... *the Management team examined the proposed specifications/request for proposal on Monday, 19 June and the Human Resources Department had assured the meeting that the base document came from the entire staff.*”<sup>8</sup>

In a meeting of the Executive of the Standards Council, which was held on 2006 July 12, and which was chaired by Dr. Henry Lowe, it was revealed that “... *a Terms of Reference, along with an advertisement inviting tenders for health insurance, had been finalized. Copies of the document would be sent to members of the Executive prior to being published. Upon receipt, all Executive members were asked to provide timely feedback ... in order that the matter could be finalized.*”<sup>9</sup>

The referenced Minutes of the 2006 July 12 meeting further indicated that “*Based on his knowledge of the industry, the Chairman advised against an upward adjustment of fees for doctor’s visit as this usually prompts doctors to increase their fees. He further stated that an increase in hospitalization was preferable. The following recommendations were accepted:*

<i>Doctor’s visit:</i>	<i>From \$1,000 to \$1,100</i>
<i>Caesarean Section</i>	<i>From \$45,000 to \$50,000</i>
<i>Miscarriage</i>	<i>From \$20,000 to \$25,000”<sup>10</sup></i>

It is, therefore, apparent that Dr. Henry Lowe, via his involvement in the Board Meeting of 2006 July 12, was in fact involved in the procurement process for Health Insurance Services at the BSJ insofar as his giving input regarding the scope of the Tender specifications is concerned.

It is instructive to note that the Minutes of the 345<sup>th</sup> Meeting of the Standards Council, which was held on 2006 July 25, revealed that “*A copy of the updated base document which would*

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<sup>8</sup> Minutes of the Meeting of the Standards Council, which was held on 2006 June 20 Page 8

<sup>9</sup> Minutes of the Meeting of the Executive of the Standards Council held on Wednesday 12 July 2006 in the Boardroom of the BSJ. Page # 6. Enclosure # 78

<sup>10</sup> Minutes of the Meeting of the Executive of the Standards Council held on Wednesday 12 July 2006 in the Boardroom of the BSJ. Page # 6. Enclosure # 78

*be used for the tender process (Request for Proposal) was tabled... The document was approved by Council.”<sup>11</sup>*

It is instructive to note that in a meeting of the Executive of the Standards Council, which was held on 2006 August 11, the Minutes reflect, *inter alia*, that “...*all comments from the Council Members had been incorporated into the document and should be ready for advertisement in the Daily Gleaner on the 16 August 2006 and the Sunday Gleaner of 20 August 2006.*”<sup>12</sup>

The OCG has found that the BSJ, did in fact, as at 2006 August 18, publish in the *Daily Gleaner* a tender advertisement for the Group Health Insurance services. Subsequently, the tender for Group Health Insurance was publicly opened on 2006 August 30 in the presence of representatives of the BSJ, the then Life of Jamaica Ltd. and Guardian Life Ltd.

The Minutes of the Meeting of the Executive of the Standards Council, which was held on Tuesday, 2006 September 8, revealed that the meeting was informed that the “...*Human Resource Manager had sought and selected the services of an actuary who had already examined the proposals prior to advising the Procurement Committee*”.<sup>13</sup>

The OCG has also found that instructions were also given at the referenced Meeting of the Executive of the Standards Council. In this regard, it was stated that a determination was to be made as to “...*what process had been observed regarding the selection and procurement of the actuary and whether this conformed with procurement requirements.*”<sup>14</sup>

The Minutes of the Meeting of the Executive of the Standards Council, which was held on 2006 September 8, further revealed that Ms. Henry, Legal Officer and the then Chairman of the Procurement Committee of the BSJ was of the opinion that “...*due to this proactivity on*

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<sup>11</sup> Minutes of the 345<sup>th</sup> Meeting of the Standard Council which was held on 2006 July 25. Page # 8. Enclosure # 72

<sup>12</sup> Minutes of the Meeting of the Executive of the Standards Council held on 2006 August 11.

<sup>13</sup> Minutes of the Meeting of the Executive of the Standards Council held on 8 September 2006 in the Boardroom of the BSJ. Page 7. Enclosure # 76

<sup>14</sup> Minutes of the Meeting of the Executive of the Standards Council held on 8 September 2006 in the Boardroom of the BSJ. Page 7. Enclosure # 76

*the part of the Human Resource Manager, the procurement of the Health Insurance Provider was now delayed.*”<sup>15</sup>

As at 2006 September 19, the Standards Council of the BSJ was advised that the tender documents had been received by the Procurement Committee and that the evaluation would have been conducted shortly.

Despite the apparent concerns about a delay, as was captured in the Minutes of the Meeting of the Executive of the Standards Council, which was held on 2006 September 8, the Minutes of the Meeting of the Executive of the Standards Council, which was held on Thursday, 2006 October 12, indicated that *“The Procurement Committee had evaluated the proposal received and now had a recommendation that should be examined by the Executive Committee and the Standards Council.”*<sup>16</sup>

It is instructive to note that at the Meeting of the Executive of the Standards Council, which was held on 2006 October 12, the Council was reminded that the recommendation of the BSJ’s Procurement Committee was still awaiting examination and a decision was taken that *“... the examination of the Procurement Committee’s recommendation should be first reviewed by a special meeting of the Human Resource Committee before being taken to the Council for approval.”*<sup>17</sup>

In a Report that was entitled, *“Report and Recommendation of the Procurement Committee”*, which was dated 2006 October 10, the BSJ’s Procurement Committee posited the following recommendation:

*“The Procurement Committee concluded that the overall package being offered by Life of Jamaica Limited “Schedule of Benefits” is the best of the proposals received,*

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<sup>15</sup> Minutes of the Meeting of the Executive of the Standards Council held on 8 September 2006 in the Boardroom of the BSJ. Page 7. Enclosure # 76.

<sup>16</sup> Minutes of the Meeting of the Executive of the Standards Council held on Thursday, 12 October 2006, in the Boardroom of the Bureau. Page 6. Enclosure # 75.

<sup>17</sup> Minutes of the Meeting of the Executive of the Standards Council held on Thursday, 12 October 2006, in the Boardroom of the Bureau. Page 10. Enclosure # 75.

*that is, the benefits being offered meet our requirements and are at a reasonable price which is within the Bureau's budget. Financially, Life of Jamaica is sound and its ratings both locally and internationally indicate its ability to adequately meet its obligation to its policyholders.*

*Based on the foregoing analysis, the Procurement Committee recommends that the Group Health Insurance Contract for the two year period at an initial premium (for the first year) of Six Million, Five Hundred and Fourteen Thousand and Eighty Dollars be awarded to Life of Jamaica Limited.”<sup>18</sup>*

### Introduction of New Evaluation Criteria

Despite the recommendations of the Procurement Committee, the Minutes of a Special Meeting of the Standards Council Human Resources Committee, which was held on 2006 October 18, revealed that a recommendation had been made for Ms. Yanike Harrison, the then Manager, Human Resources, to conduct interviews with the bidders who had submitted proposals for the BSJ's tender for Health Insurance Services.

The proposed interview process was deemed to be beneficial to the overall tender process.

However, the Minutes of the Special Meeting of the Standards Council Human Resources Committee, which was held on 2006 October 18 clearly indicated that *“The meeting noted that the interviews were not arranged as recommended.”<sup>19</sup>*

The OCG found that the Minutes of the 2006 October 18 meeting revealed that the bidders were reportedly not privy to all of the criteria for the award of the contract. In fact, there was an internal set of evaluation criteria which was not included in the tender document that was made available to bidders.

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<sup>18</sup> Report and Recommendation of the Procurement Committee.

<sup>19</sup> Minutes of Special Meeting of the Standards Council Human Resources Committee held Wednesday 18 October 2006. Page 7

Given the requirement to adhere to the GPPH, members of the Procurement Committee advised persons in attendance at the Standards Council Meeting that the introduction of new criteria would require the current tender process to be aborted in order to avoid a breach of the GPPH.

In point of fact, the Minutes of the Special Meeting of the Standards Council Human Resources Committee, which was held on 2006 October 18, revealed that Ms. Henry, the BSJ's Legal Officer and the then Chair of the Procurement Committee, reiterated that *"...if the Bureau interjected new criteria and evaluated on same in the manner proposed, this would be considered a breach of the rules. However, if the Bureau wished to introduce the new criteria, it had to abort the current process and re-tender and at that stage include all the relevant information, including new criteria."*<sup>20</sup>

Despite all the deliberations of the referenced meeting, the OCG found that *"... the Committee unanimously agreed to the approval of the proposed provider, LOJ, subject to verification of the assumption that if the tender document did not state a limit, the request was "unlimited"."*<sup>21</sup>

It must be noted that the Minutes of the Special Meeting of the Standards Council, which was held on 2006 October 27, indicated that *"...the agreement with Blue Cross had been extended to the end of October 2006..."*<sup>22</sup>

Further, the referenced Minutes of the Special Meeting of the Standards Council, which was held on 2006 October 27, indicated that after some deliberation on procedural matters regarding the manner in which submissions were to be made to the NCC, it was indicated that *"The Chairman suggested that a further extension be sought from Blue Cross and that the matter be taken as an agenda item at the November sitting of the full Council."*<sup>23</sup>

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<sup>20</sup> Minutes of Special Meeting of the Standards Council Human Resources Committee held Wednesday 18 October 2006. Page 4

<sup>21</sup> Minutes of Special Meeting of the Standards Council Human Resources Committee held Wednesday 18 October 2006. Page 7

<sup>22</sup> Minutes of the Special Meeting of the Standards Council held 2006 October 27. Page 12

<sup>23</sup> Minutes of the Special Meeting of the Standards Council held 2006 October 27. Page 12



It is also instructive to note that the Minutes of the Meeting of the Standards Council, which was held on 2006 November 22, clearly indicated that “...*the current Health Plan with Blue Cross had been extended to 31 December 2006.*”<sup>24</sup>

The OCG has, therefore, found that the contract with Blue Cross of Jamaica was extended by the BSJ on two (2) occasions in order to facilitate the tender process for Health Insurance Services.

It must be noted that the attachments to the letter which was dated 2006 December 22, from Dr. Jean Dixon, revealed that the Procurement Committee had been instructed, in writing, to conduct an interview session with bidders for the Health Insurance Services.

According to a letter from the BSJ’s Procurement Committee, which was dated 2006 December 8, and which was addressed to the Standards Council, BSJ, it was stated, *inter alia*, that “*On Wednesday, 06 December 2006 (4:30 pm), the Procurement Committee received a memorandum from Human Resource Manager mandating that four (4) members of this Committee participate in an interviewing process, scheduled for Friday, 08 December 2006 (see attached memo A). The memo informed that this is a directive from the Council through the Executive Director (acting).*”<sup>25</sup>

Further, the letter from the Procurement Committee, which was addressed to the Standards Council of the BSJ, also indicated that:

*“We must emphasize the importance of a structured contract award process to which the Procurement Committee has complied. We note your decision to have a representative of the Bustamante Industrial Trade Union (BITU) sit on the Procurement Committee during the exercise. Please be advised that the date (06 December 2006 at 4:32pm) when your decision was communicated to the Committee*

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<sup>24</sup> Minutes of the 347<sup>th</sup> Meeting of the Standards Council held on November 22, 2006.

<sup>25</sup> Letter from the Procurement Committee addressed to the Standards Council, BSJ. Letter is appended to Dr. Jean Dixon’s letter of 2006 December 22.

*the evaluation was already completed. However, we are willing to share all documentation relating to this exercise.*

*Based on the foregoing and to avoid any embarrassment to the institution and the members of the Procurement Committee... it would be desirable that no member of the Committee be asked to participate in this "interviewing process." Accordingly, it is the hope that you will understand the position stated and find it possible to not include any member of the Procurement Committee."<sup>26</sup>*

With regard to the aforementioned, the Minutes of the Meeting of the Standards Council Executive Committee, which was held on Monday, 2006 December 11, reveals that there was some contention between the members of the Procurement Committee and the Standards Council in regard to the conduct of the interview process which, in the Procurement Committee's opinion, would have amounted to a breach of the procurement guidelines.

In point of fact, the Minutes of the Meeting of the Standards Council, which was held on 2006 December 11, indicated that *"...three (3) companies were being considered for the new contract and based on a decision taken by the Standards Council at an executive session held on 22 November 2006, each provider would be invited to an interview, after which an informed decision could be made with respect to the most appropriate Provider."<sup>27</sup>*

The Minutes of the referenced meeting, which was held on 2006 December 11, further revealed that *"...the instructions of the Council were not carried out as upon inviting Members of the Procurement Committee, a response was received informing that the Procurement Committee would not be able to participate in the interview process as same would be operating outside the Government's Handbook of Public Sector Procurement Procedures (Handbook)."<sup>28</sup>*

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<sup>26</sup> Letter from the BSJ's Procurement Committee to the Standard Council of the BSJ, dated 2006 December 8

<sup>27</sup> Minutes of Meeting of the Standards Council Executive Committee held on 2006 December 11: Page 6

<sup>28</sup> Minutes of Meeting of the Standards Council Executive Committee held on 2006 December 11: Page 6

According to the Minutes of the Meeting of the Standards Council, which was held on 2006 December 11, *“The Chairman then stated that he declared interest in this matter due to his relationship with Blue Cross. He went on to state that he was looking at the principle involved. The Council took a decision whether that decision was right or wrong, noting that same decision was communicated to the Procurement Committee by the Human Resource Division but was not implemented by the Procurement Committee.”*<sup>29</sup> (OCG Emphasis)

Further, according to the Minutes of the Meeting of the Standards Council Executive Committee, which was held on 2006 December 11, the Chairman, in addressing the meeting indicated that *“... a meeting was set and same was summarily dismissed as the Procurement Committee decided not to take the instructions of the Council... If Procurement had an issue, the matter should have returned to the Council. If there was a breach, the matter could have been re-advertised. He further thought the decision by the Procurement Committee was inappropriate.”*<sup>30</sup>

The Minutes of the referenced meeting also noted that Ms. Annette Henry, the then Chairman of the Procurement Committee, was asked to inform the Meeting of the Standards Council Executive Committee *“...why the decision of the Council was not adhered to by the Procurement Committee.”*<sup>31</sup>

In her response to the query, and according to the Minutes of the meeting, which was held on 2006 December 11, Ms. Henry indicated that *“...the Procurement Committee was asked to participate in a process that was not provided for in the Handbook and or the BSJ’s Procurement Policies and Procedures and advised the acting Executive Director and the Manager, Human Resource that the execution of the impending interviews and the introduction of new criteria would amount to breaches of the procurement process.”*<sup>32</sup>

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<sup>29</sup> Minutes of Meeting of the Standards Council Executive Committee held on 2006 December 11: Page 7

<sup>30</sup> Minutes of Meeting of the Standards Council Executive Committee held on 2006 December 11: Page 7

<sup>31</sup> Minutes of Meeting of the Standards Council Executive Committee held on 2006 December 11: Page 7

<sup>32</sup> Minutes of Meeting of the Standards Council Executive Committee held on 2006 December 11: Page 7

Further to the aforementioned, it must be noted that at a Meeting of the Standards Council, which was held on 2006 December 20, it was reported that the “...*the scheduled interviews with the three (3) Health Insurance Providers, as mandated recently by the Council, were not held owing to a decision taken by the Procurement Committee.*”<sup>33</sup>

It is also instructive to note that the referenced Minutes of the Meeting of the Standards Council, which was held on 2006 December 20, indicates that “*Council Members expressed their anger and annoyance that the edict of the Council was not executed; hence, the following declaration was made by the Chairman:*

- (i) The Procurement Committee is to be reviewed.*
- (ii) The Chairman warned and advised that all decisions taken by the Council are to be implemented as per instructions. Any deviations/objections must be communicated to the Standards Council for approval.*”<sup>34</sup>

Following upon this declaration by the then Chairman, Dr. Henry Lowe, the Minutes of the meeting, which was held on 2006 December 20, revealed that Ms. Henry, the then Chair of the BSJ’s Procurement Committee was asked to inform the meeting why the “...*directives of the Council were not followed.*”<sup>35</sup>

The Minutes of the 2006 December 20 Meeting records that Ms. Henry “...*drew Council’s attention to the letter from the Procurement Committee, dated 08 December 2006, which detailed the concerns of the Committee. She pointed out that the Committee was asked to, among other things, participate in an interviewing process, which was not included in the original documentation and therefore was not apart of the tendering and or evaluation process.*”<sup>36</sup>

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<sup>33</sup> Minutes of the 348<sup>th</sup> Meeting of the Standards Council held on 20 December 2006 at Eden Gardens. Page 7. Enclosure # 68

<sup>34</sup> Minutes of the 348<sup>th</sup> Meeting of the Standards Council held on 20 December 2006 at Eden Gardens. Page 7. Enclosure # 68

<sup>35</sup> Minutes of the 348<sup>th</sup> Meeting of the Standards Council held on 20 December 2006 at Eden Gardens. Page 8. Enclosure # 68

<sup>36</sup> Minutes of the 348<sup>th</sup> Meeting of the Standards Council held on 20 December 2006 at Eden Gardens. Page 7. Enclosure # 68

Ms. Henry in her response to the query, and as captured by the Minutes of the Meeting which was held on 2006 December 20, is reported as also asserting that “... *the Committee was asked to (during the interview process) to use and or introduce new criteria that were not communicated to the bidders. Further, the Committee when it received the directives through the Human Resource Manager wrote to same... highlighting its concerns, notwithstanding the foregoing, it was advised right or wrong the directives must be followed, at this time the Committee considered it important to write and wrote to the Standards Council, detailing the concerns and kindly requested that its Members not be asked to participate in the process.*”<sup>37</sup>

The Minutes of 2006 December 20, also revealed that staff members were reportedly not aware of the details of the base document and the options for the Health Insurance Provider. Of particular import is the ‘Executive Session’ meeting which was held immediately after the referenced discussion.

According to information which was garnered from interviews that were conducted by the OCG with senior personnel from the BSJ, ‘Executive Sessions’ are held to discuss sensitive issues amongst members of the BSJ’s Standards Council.

The ‘Executive Session’, for which there are apparently no recorded Minutes, included discussions on the matter of Health Insurance. **In point of fact, and according to the 2006 December 20 Minutes of the Meeting of the Standards Council, discussions were held in the Executive Session, “...after which, it was stated that the entire procurement process for Group Health, Group Life, as well as Accidental Death and Dismemberment (AD & D) would be combined; thus aborting the current tendering process. Coverage would be extended under the current plan for an additional period of three (3) months.”**<sup>38</sup> (OCG Emphasis)

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<sup>37</sup> Minutes of the 348<sup>th</sup> Meeting of the Standards Council held on 20 December 2006 at Eden Gardens. Page 8

<sup>38</sup> Ibid: page 8

The Minutes of the 2006 December 20 meeting revealed that in the normal proceedings of the meeting of the same date, the “...*Chairman of the Standards Council disclosed his interest and refrained from participating in the deliberation on the matter.*”<sup>39</sup> (OCG Emphasis)

The OCG has not seen evidence which would indicate whether or not the then Chairman, Dr. Henry Lowe, chaired the distinct ‘Executive Session’ and/or whether or not he actively participated in the actual deliberations of the ‘Executive Session’ which was held on 2006 December 20.

Whilst Dr. Lowe is noted as refraining from participating in the deliberations which were held in the normal course of the Meeting of the Standards Council, which was held on 2006 December 20, the OCG has seen no evidence to suggest that he left the room, thereby eliminating the probability of garnering any further knowledge which would have given Blue Cross of Jamaica an unfair advantage in the tender process or that his actions were in compliance with the provisions of Section 17 (2) of the Public Bodies Management and Accountability Act.

Section 17 (2) of the referenced Act provides that “A *director who is directly or indirectly interested in any matter which is being dealt with by the board-* (a) *shall disclose the nature of his interest at a board meeting;* (b) **shall not take part in any deliberation of the board with respect to that matter.**” (OCG Emphasis).

The concerns which were raised at the various Standards Council Meetings, inclusive of the attempt to introduce new criteria into the tender evaluation process, the lack of involvement of the staff and the move to combine the various aspects of the Health Insurance Coverage appear to be the bases upon which the BSJ sought to retender the procurement of Health Insurance Services.

The aforementioned Finding, however, does not negate and/or dilute the improper conduct of Dr. Henry Lowe and/or members of the BSJ’s Standards Council as it regards his involvement

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<sup>39</sup> Ibid: page 8

in discussions and decisions which were related to the procurement of Health Insurance Services of the BSJ.

## Status of the 2007 April Tender Exercise

Subsequent to the events of 2006, which led to the extension of Blue Cross of Jamaica's contract with the BSJ and the BSJ's decision to retender for the Health Insurance Services, it must be noted that the BSJ, by way of a public advertisement in the Daily Gleaner, on 2007 April 4, tendered for the provision of Health Insurance Coverage for the period of 2007 May 1 to 2009 April 30. The tender exercise had a scheduled Tender Opening date of 2007 April 18.

Further to the retender exercise of 2007 April, the OCG, by way of a letter, which was dated 2007 December 11, wrote to Dr. Camella Rhone, then Executive Director of the BSJ, requesting an update of the status of the procurement of Health Insurance Services, which was retendered and advertised in 2007 April.

In response to the OCG's written request, Dr. Camella Rhone, by way of a letter which was dated 2007 December 17, provided the OCG with information as follows:

1. *Three tenders were received by the tender opening date of 18 April 2007; namely Life of Jamaica, Blue Cross of Jamaica and Guardian Insurance*
2. *The documents were reviewed by an evaluation committee and the results tabulated and a selected supplier recommended to the Procurement Committee.*
3. *The documents were reviewed by the Procurement Committee and a recommendation was made to the Executive and Finance Sub-committee (EFS) of the Standards Council*
4. *The EFS reviewed the documents and indicated that the evaluation should have been conducted by a **Ministry of Finance approved actuary**, in accordance with the directive contained in a correspondence from the Bureau's governing Ministry, the Ministry of Industry, Investment and Commerce (MIIC). They instructed that the services of an approved actuary be contracted to conduct the evaluation.*
5. *Requests for quotes were sent to the two approved actuaries and only one responded positively.*



6. *The documents for actuarial services were submitted to the Procurement Committee and a recommendation sent to the Ministry Procurement Committee through the Permanent Secretary.*
7. *In a correspondence from the Ministry dated 28 November 2007, the request for contracting the services of Coke and Associates/Eckler Partners was approved*
8. *Subsequently, the actuarial services were contracted and on 30 November 2007 and a recommendation for Health Insurance provider was received today, Monday 17 December 2007.*

The aforementioned information indicates that in the initial phases the 2007 tender went through the proper channels even though it had been faced with challenges, specifically as it regards the evaluation of the tenders.

It was also indicated by Dr. Rhone that the referenced tender would return to the BSJ's Procurement Committee for consideration in January 2008 followed by submission to the relevant NCC Sector Committee and then to the NCC for endorsement.

It must be noted that by way of a letter, which was dated 2008 January 9, Dr. Camella Rhone, the then Executive Director of the BSJ, wrote to the then Permanent Secretary, Dr. Jean Dixon, indicating that *"The Bureau's Procurement Committee and the Standards Council have approved the selection of Life of Jamaica based on the recommendation made by Ministry of Finance approved actuary."*<sup>40</sup>

The NCC records reveal that by way of a letter, which was dated 2008 March 5, a submission was made to the National Works Agency (N.W.A) Sector Committee, and indicated that *"Tenders were received by BSJ and evaluated by their Consultant Actuary, Coke & Associates/Eckler Partners. The BSJ having accepted the recommendation of their actuary has now submitted that the contract to provide Group Health Insurance coverage for the staff at the BSJ be awarded to **Life of Jamaica** for the contract period 2008/2009."*<sup>41</sup>

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<sup>40</sup> Letter dated 2008 January 9 from Dr. Camella Rhone addressed to Dr. Jean Dixon

<sup>41</sup> Letter form MIIC addressed to Mr. John Wright, Chairman, NWA Sector Committee

The submission which was made to the NCC reveals the following cost and score components for the three tenders which were received by the BSJ:

Company	Tender Amount J\$	Points Score
Life of Jamaica Ltd.	8,392,512	88
Guardian Life Insurance	8,839,259	82
Blue Cross of Jamaica	12,244,224	77

It must be noted that the BSJ had a comparable estimate of J\$8.9 Million for the provision of Health Insurance Services.

The referenced procurement of Health Insurance Services was subsequently endorsed by the NCC on 2008 April 9.

By way of a letter which was dated 2008 April 10, the NCC wrote to Dr. Jean Dixon, the then Permanent Secretary in the then Ministry of Industry, Investment and Commerce, advising that *“The National Contracts Commission having considered the matter at its meeting on 2008 April 09 has endorsed the recommendation of the Sector Committee to award the contract to Life of Jamaica in the sum of Eight Million, Three Hundred and Ninety-two Thousand, Five Hundred and Twelve Dollars (\$8,392,512.00).<sup>42</sup>*

It must also be noted that Dr. Henry Lowe, ceased to be Chairman of the BSJ in 2007 August and, as such, the conflict of interest scenario would have therefore been stymied prior to the evaluation and endorsement of the recommendation for the award of the contract in 2008 April.

Documentation which was provided to the OCG, by the current Executive Director of the BSJ, Mr. Noel Osborne, revealed that the recommendation for contract award which was endorsed by the NCC was in actuality consummated between the BSJ and Sagicor Life

<sup>42</sup> Letter from the NCC to Dr. Jean Dixon, dated 2008 April 10 Re: Award of Contract – Bureau of Standards, Jamaica – Procurement of Health Insurance Provider.

Jamaica Ltd (formerly life of Jamaica). The referenced contract had a policy effective date of 2008 May 1.

### **Records of Interview with Dr. Henry Lowe**

In an interview with Dr. Henry Lowe, which was conducted at the OCG, on 2007 June 19, the OCG enquired, *inter alia*, about Dr. Lowe's involvement in the procurement of Health Insurance at the BSJ.

Dr. Henry Lowe, in his interview with the OCG, indicated that he held the position of the Chairman of the Board of the BSJ since 2003.

When asked about the circumstances surrounding the aborted 2006 tender process for the provision of Health Insurance Services, Dr. Lowe, in his interview with the OCG, indicated that he did not try to get too involved in the matter because *"he was the Chairman of the board as well as Blue Cross of Jamaica."*<sup>43</sup>

Further, and according to Dr. Lowe, *"Everytime the issue arose he would declare his interest and there have been instances when he was reminded by members of the Board that the Board was not making decisions but seeking clarification on the matter, Hence, he did not recuse himself from the meetings."*<sup>44</sup>

Further in his interview with the OCG, Dr. Lowe was asked if he had ever made a written declaration of his interest in Blue Cross of Jamaica. The records of the interview reveal that *"Dr. Lowe stated that this was not required and therefore there was no written declaration, but he has often voiced his interest and everyone is aware of his declared interest and position; which can be attested to by the Minutes of the Board meetings."*<sup>45</sup>

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<sup>43</sup> Records of Interview held with Dr. Lowe, former Chairman of the BSJ, on 2007 June 19.

<sup>44</sup> Records of Interview held with Dr. Lowe, former Chairman of the BSJ, on 2007 June 19.

<sup>45</sup> Records of Interview held with Dr. Lowe, former Chairman of the BSJ which was held on 2007 June 19.

## Timeline of Material Occurrences and Activities

<u>Date</u>	<u>Activity/Occurrences</u>
2006 May 4	Minutes of the BSJ's Board Meeting indicates that the Board discussed matters which were related to the Tender for Health Insurance Services.
2006 July 12	Minutes of the BSJ's Board Meeting reveals that Dr. Henry Lowe, the then Chairman of the BSJ Board and the then Chairman of the then Blue Cross of Jamaica, participated in the deliberations of the BSJ Board and advised the referenced Board regarding components of the fee structure for proposed Health Insurance Service Providers.
2006 August 18	The Tender for Health Insurance Services was advertised in the Daily Gleaner
2006 August 20	A public Tender Opening for the procurement of Health Insurance Services, by the BSJ, occurs.
2006 October 10	The BSJ's Procurement Committee recommends the award of the contract for Health Insurance Services in favour of Life of Jamaica.
2006 October 18	The Minutes of a Special Meeting of the Standards Council Human Resource Committee reveals that instructions were issued to the Procurement Committee for the conduct of interviews with the bidders who had submitted proposals. The referenced interviews were not arranged as recommended.
2006 December 11	The Minutes of the Meeting of the BSJ's Board of Directors reveals that Dr. Henry Lowe declared his interest in the matter. However, despite this declaration, the then Chairman, Dr. Henry Lowe, is noted as participating in the referenced meeting and, in point of fact, questioned the propriety of the Procurement Committee's choice not to fulfill the Board's directives.
2006 December 20	The Minutes of the Meeting of the BSJ's Board of Directors reveals that the then Procurement Committee was chastised, <i>inter alia</i> , by Dr. Henry Lowe, for not conducting interviews with the bidders. Dr. Henry Lowe is also recorded as having disclosed his interest and refraining from participation in the referenced meeting, but only after certain discussions ensued and a 'Executive Session' was convened to discuss the Health Insurance tender. A decision was taken by the BSJ Board to abort the tender process.
2007 April	The BSJ retenders for a Health Insurance Service Provider by way of an advertisement in the Daily Gleaner on 2007 April 4.
2007 August	Dr. Henry Lowe demits office as Chairman of the Board, BSJ.
2008 January 9	Dr. Camella Rhone, the then Executive Director of the BSJ, writes to Dr. Jean Dixon, the then Permanent Secretary, advising her that the BSJ's Procurement Committee and Board had approved the selection of Life of Jamaica as the preferred Health Insurance Service Provider.
2008 March 5	A BSJ submission is made to the N.W.A Sector Committee recommending the award of the contract for Health Insurance Services to Life of Jamaica.
2008 April 9	The NCC endorses the award of a contract to Life of Jamaica in the sum of J\$8,392,512.00.
2008 May 1	The stated policy "Effective Date" for the BSJ Health Insurance Service Provider Contract

## CONCLUSIONS

Based upon the evidentiary documents which have been reviewed, and the assertions of the representatives of the BSJ, the OCG has arrived at the following considered Conclusions:

1. The Procurement Committee of the BSJ, by choosing to abide by the requirements of the GPPH, acted in accordance with Section 1.5.2.3 “Procurement Committee” of the 2001 GPPH.

Section 1.5.2.3 of the 2001 GPPH provides, *inter alia*, that:

*“The Procurement Committee is mandated to:*

- *ensure compliance with relevant policies, guidelines and procedures;*
- *effect objective evaluation processes with respect to quotations, tenders and requests for proposals;*
- *facilitate response to contractor inquiries;*
- *maintain proper record of Committee meetings, including records of the procurement; and*
- *ensure compliance with reporting obligations.”<sup>46</sup>*

2. It is also concluded herein that had the BSJ Procurement Committee complied with the request of the Standards Council, it would have breached the requirements of the 2001 GPPH and would have contravened Section 4(1) of the Contractor General Act via the introduction of new criteria into the tender evaluation and award process.
3. It is also concluded that the decision of the BSJ to abort the tender process which was undertaken in 2006, and to subsequently retender for the award of the Health Insurance Service Provider and to pass same through the Procurement Committee, was a right which the BSJ could have executed in order to ensure the integrity of the tender process.

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<sup>46</sup> Section 1.5.2.3 – Procurement Committee of the 2001 GPPH

4. It is also concluded that Dr. Henry Lowe, while he was the Chairman of Blue Cross of Jamaica and the BSJ, and via his participation in the BSJ Board Meetings of 2006 July 12, 2006 December 11 and 2006 December 20, and, further, by the issuance of directives to the BSJ's Procurement Committee regarding the referenced tender in respect of which Blue Cross of Jamaica was an interested party, had, by his conduct, contravened section 17 (2) of the Public Bodies Management and Accountability Act.

It is important to note that, in all three (3) instances, the Minutes of the Meetings of the BSJ Board have revealed that Dr. Henry Lowe participated in the deliberations of the BSJ Board.

In fact, and according to the Minutes of the BSJ Board, Dr. Henry Lowe is noted as (a) in the 2006 July 12 BSJ Board Meeting, having offered advice based upon his knowledge of the industry, (b) having questioned the then Procurement Committee for not adhering to the instructions of the Board, regarding the procurement of a Health Insurance Provider, in the Board Meeting Minutes of 2006 December 11, and (c) chastising the then Procurement Committee, in the Board Meeting of 2006 December 20, for not conducting interviews with the bidders, as per the instructions of the Board.

5. The BSJ aborted the tender process which began in 2006 and subsequently retendered in April 2007. This particular contract has been awarded to Sagicor Life Jamaica, via a competitive tendering process.

The referenced contract has been subject to the scrutiny of both the N.W.A Sector Committee and the NCC, for adherence to the applicable procurement guidelines.

6. Dr. Henry Lowe was not the Chairman of the Board at the BSJ at the time of the award of the contract which was advertised in April 2007, and which has subsequently been awarded to Sagicor Life Jamaica.

However, it is the OCG's considered opinion that the involvement of Dr. Henry Lowe in the various stages of the referenced BSJ Health Insurance tender process, whilst he held the conflicted positions of Chairman of Blue Cross of Jamaica and Chairman of BSJ, amounted to a breach of statutory duty on his part.

## **REFERRALS**

The OCG, in the conduct of its Investigation, is required to be guided by Section 21 of the Contractor General Act. This provision mandates a Contractor General to consider whether he has found, in the course of his Investigation, or on the conclusion thereof, any evidence of a breach of duty, misconduct or criminal offence on the part of an Officer or member of a Public Body, and to formally refer the matter to the appropriate person or authority that is competent to initiate such proceedings in the matter as may be deemed appropriate.

Additionally, the Contractor General is also required, in all such instances, to lay a special report thereon before Parliament.

Dr. Henry Lowe's involvement in the meetings of the Standards Council of the BSJ, which were held on 2006 July 12, 2006 December 11 and 2006 December 20, and in particular those meetings in which the matter of the procurement of a Health Insurance Service provider was discussed, was done in **direct** contravention of the provisions of **Section 17 (2) of the Public Bodies Management and Accountability Act**.

Section 17 (2) of the referenced Act provides that, "A *director who is directly or indirectly interested in any matter which is being dealt with by the board-* (a) *shall disclose the nature of his interest at a board meeting;* (b) **shall not take part in any deliberation of the board with respect to that matter.**" (OCG Emphasis).

It is instructive to note the following peculiar occurrences which directly contravene the referenced provision of the Public Bodies Management and Accountability Act:

1. On 2006 July 12, Dr. Henry Lowe, the then Chairman of the BSJ Board and the then Chairman of the then Blue Cross of Jamaica, is noted in the Minutes of the BSJ Board Meeting as having offered advice on the fee structure for the proposed Health Insurance Providers based upon his "*knowledge of the industry*";



2. On 2006 December 11, Dr. Henry Lowe is noted as participating in the deliberations of the BSJ Board regarding the procurement of a Health Insurance provider. Though the Minutes record that Dr. Lowe declared his interest in the matter this does not, in any way, counter or negate his active involvement in the deliberations of the BSJ Board; and
3. The Minutes of the Meeting of the BSJ's Board of Directors, which was held on 2006 December 20, revealed that the then Procurement Committee was chastised for not conducting interviews with the bidders. Dr. Henry Lowe is recorded as having disclosed his interest and refraining from participation in the referenced meeting, but only after certain discussions ensued and an 'Executive Session' was convened to discuss the Health Insurance tender.

In fact, the Minutes of the Meeting of the BSJ's Board of Directors revealed that the Chairman, Dr. Henry Lowe, issued certain declarations and warnings to the then Procurement Committee arising out of its handling of certain instructions of the Board, regarding the Procurement of Health Insurance Services.

Further, it is instructive to record that Sections 6 and 17 (1) of the Public Bodies Management and Accountability Act impose certain specific responsibilities upon the Board of Directors of Public Bodies as well as Board Members themselves.

Had these and other responsibilities been fully discharged in the instant matter, Dr. Henry Lowe, the then sitting BSJ Board Chairman, would not have been permitted to Chair meetings of the Standards Council at which time discussions were held in regard to the tender for Health Insurance Services.

**Section 6 of the Public Bodies Management and Accountability Act** provides as follows:

*"6. Every board shall-*

*(a) take such steps as are necessary-*

- (i) for the efficient and effective management of the public body;*
- (ii) to ensure the accountability of all persons who manage the resources of the public body;*
- (b) develop adequate information, control, evaluation and reporting systems within the body;*
- (c) develop specific and measurable objectives and performance targets for that body”.*

**Section 17 of the Public Bodies Management and Accountability Act** provides as follows:

*17- (1) “Every director and officer of a public body shall, in the exercise of his powers and the performance of his duties-*

- (a) act honestly and in good faith in the best interests of the public body; and*
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances including, but not limited to the general knowledge, skill and experience of the director or officer.”*

**Section 25 of the Public Bodies Management and Accountability Act** provides as follows:

*25. (1) If the Court is satisfied on an application by the Attorney-General that any person has contravened any of the provisions of-*

- (a) section 4 (acquisition of shares and payment of dividends);*
  - (b) section 5 (exercise of borrowing powers);*
  - (c) section 6 (corporate governance);*
  - (d) section 14 (general duties of auditors);*
  - (e) section 15 (failure to furnish information to auditor);*
  - (f) section 20 (levels of emoluments);*
  - (g) section 21 (restriction on formation of new companies),*
- the Court may exercise any of the powers referred to in subsection (2).*

*(2) The Court may-*

- (a) order the person concerned to pay to the Crown such pecuniary penalty not exceeding one million dollars; or*

(b) grant an injunction restraining that person from engaging in conduct described in subsection (1).

(3) In exercising its powers under this section the Court shall have regard to-

(a) the nature and extent of the default;

(b) the nature and extent of any loss suffered by any person as a result of the default;

(c) the circumstances of the default;

(d) any previous determination against the person concerned.

(4) If in the opinion of the Attorney General there is a contravention of section 7, 8 or 9, he may make an application to the Court and the provisions of subsections (1), (2) and (3) shall apply in relation thereto.”

In the premises, and pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor General Act, the OCG is hereby formally referring a copy of this Report to the Attorney General on the basis that there is *prima facie* evidence which is recorded herein which would suggest that there was, *inter alia*, a clear and unambiguous breach of duty specifically on the part of Dr. Henry Lowe, the former Chairman of the Standard Council of the BSJ, in contravention, *inter alia*, of Sections 6 and 17 of the provisions of the Public Bodies Management and Accountability Act.

The matter is being referred to the Attorney General particularly, *inter alia*, in light of the provisions that are contained in Sections 6, 17 and 25 of the Public Bodies Management and Accountability Act.

Additionally, the matter is being referred to the Attorney General for a determination as to whether the actions and/or inactions of the then members of the former Board of the BSJ, are in any way complicit, as it regards all of the circumstances of the case, and in particular, the actions of Dr. Henry Lowe at the Board Meetings of 2006 July 12, 2006 December 11 and 2006 December 20.

## **RECOMMENDATIONS**

Section 20 (1) of the Contractor-General Act mandates that “*after conducting an Investigation under this Act, a Contractor-General shall, in writing, inform the principal officer of the public body concerned and the Minister having responsibility therefor of the result of that Investigation **and make such Recommendations as he considers necessary in respect of the matter which was investigated.**” (OCG’s Emphasis).*

In light of the foregoing, and having regard to the Findings and Conclusions that are detailed herein, the OCG now makes the following Recommendations:

1. The OCG recommends that the Procurement Committees of Public Bodies should be insulated from the direction and influence of management and/or the Boards of Public Bodies, as it regards the objective and impartial discharge of their duties which are prescribed by the Government of Jamaica Procurement Guidelines.

Further, the OCG must recommend that the Ministry of Finance, in the drafting of the Government of Jamaica’s Procurement Guidelines, and attendant Circulars, should consider and implement punitive and administrative sanctions against any Public Officer and/or Official who interferes with and/or attempts to instruct a Procurement Committee to act in a manner which would violate or bring the procurement process into disrepute.

2. In instances where a Member of the Board or any other Public Official finds himself/herself in a probable Conflict of Interest scenario, it is recommended that the individual not only makes the necessary and principled disclosures with an intent to remove himself/herself from the conflict of interest situation but also withdraws himself/herself entirely from the process.
3. Heads of Ministries, Departments and Agencies who are aware that a public officer is in a conflict of interest situation are strongly recommended to take the necessary

action, in accordance with applicable administrative procedures, to remove such an officer from the situation. Such action will ensure legitimacy and good governance in the administration of GOJ procurement and management.

4. The OCG also respectfully recommends that all Appointees to the Board of Directors of any Public Body are duly and fully made aware of their responsibilities and obligations under the provisions that are contained, *inter alia*, in the Public Bodies Management and Accountability Act.
5. The OCG feels compelled to strongly recommend, again, as it has in previous Investigation Reports, that the Cabinet should move with expedition to develop and to implement a comprehensive and over-riding policy to be applicable to all Public Body Boards, to govern, restrict or prohibit, as the case may be, the award of Government contracts (or the divestment of publicly owned assets) by a Public Body, to members of its Board of Directors, or to any entity in which a Board member or a close family relative may have a pecuniary interest.

If this recommendation is not wholeheartedly accepted and implemented, at the very least, the OCG recommends that the Public Bodies Management and Accountability Act be reviewed in respect of the Board of Directors' disclosure of interests.

In this respect, the OCG recommends that members of Boards of Directors be mandated to disclose their interests to the Portfolio Minister, and the relevant Accounting Officer and Accountable Officers, when being appointed, so as to ensure full disclosure and transparency in the affairs of the public sector.

6. The OCG further respectfully recommends that Parliament should implement legislation to ensure that Directors of Public Body Boards who flagrantly abuse their office and/or authority and/or who fail substantially in the discharge of their fiduciary and statutory responsibilities to their Boards and, by extension, to the Taxpayers of Jamaica, are effectively barred from serving in any like capacity in the future.

7. Finally, the OCG believes that it is timely to remind all Public Officers, inclusive of Board Members of Public Bodies, who abuse their office and authority for personal gain and/or for the benefit of others, that there are circumstances in which such conduct is likely to rise to the level of a criminal act of corruption. The provisions that are contained in Section 14 (1) (b) of the Corruption Prevention Act are instructive in this regard. They provide simply that “*A public servant commits an act of corruption if he, in the performance of his public functions, does any act or omits to do any act for the purpose of obtaining any illicit benefit for himself or any other person*”.

An act of corruption is punishable upon summary conviction in a Resident Magistrate's Court, in the case of a first offence, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment; and in the case of a second or subsequent offence, to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment;

Upon conviction in a Circuit Court, an act of corruption is punishable, in the case of a first offence, to a fine not exceeding five million dollars or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment; and in the case of a second or subsequent offence, to a fine not exceeding ten million dollars, or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.