



Report of Investigation

Concerning Allegations of the Non-Performance of a Contract Awarded to GM Challenger Limited, by the Jamaica Defence Force (JDF), for the Supply of a '2014 Model Year Ambulance'

**Integrity Commission
October 2021**



This Publication until tabled in Parliament shall be confidential.

Sections 55 (4) and (5) of the Integrity Commission Act states:

"(4) Anything said or information supplied or any document or thing produced by any person for the purpose or in the course of any investigation by or proceedings before the Commission under this Act, shall be absolutely privileged in the same manner as if the investigation or proceedings were proceedings in a court of law.

(5) For the purposes of the Defamation Act, any report made by the Commission under this Act and any fair and accurate comment thereon shall be deemed to be privileged."

Section 56 of the Integrity Commission Act states:

"Subject to section 42(3)(b), every person having an official duty under this Act, or being employed or otherwise concerned in the administration of this Act (hereinafter called a concerned person) shall regard and deal with as secret and confidential, all information, statutory declarations, government contracts, prescribed licences and all other matters relating to any matter before the Commission, except that no disclosure made by the Commission or other concerned person in the proceedings for an offence under this Act or under the Perjury Act, by virtue of section 17(2) of that Act, shall be deemed inconsistent with any duty imposed by this subsection.

(2) The obligation as to secrecy and confidentiality imposed by this section, in relation to any documents, or information obtained under this Act continues to apply to a person despite the person having ceased to have an official duty, be employed or otherwise concerned in the administration of this Act.

(3) Every concerned person who is required under subsection (1) to deal with matters specified therein as secret and confidential who at any time communicates or attempts to communicate any such information, declaration, letter and other document or thing referred to in subsection (1) disclosed to him in the execution of any of the provisions of this Act to any person —

- (a) other than a person to whom he is authorized under this Act to communicate it; or
- (b) otherwise than for the purpose of this Act,

commits an offence and shall be liable on summary conviction in a Parish Court to a fine not exceeding one million dollars or to a term of imprisonment not exceeding one year.

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Summary of Investigation

1.1 The Office of the Contractor General (OCG), acting pursuant to Sections 4, 15 and 16 of the Contractor-General Act, commenced an Investigation on June 9, 2015, into the award of contract to Challenger Transport Company Limited (hereinafter referred to as GM Challenger) by the Jamaica Defence Force (JDF), in the amount of US\$113,807.38, for the supply and maintenance of a '2014 Chevy Crusader plus CG33705 Ambulance Type II'.

1.2 The OCG's decision to commence an investigation into the subject matter was prompted by the receipt of a letter dated May 2015, which alleged, *inter alia*, as follows:

On May 6, 2014, the Jamaica Defence Force (JDF) entered into a contract with GM Challenger Limited for the provision of a new, 2014 model year ambulance, with a scheduled delivery date of July 29, 2014. Further to the delivery date, the JDF invited Mr. Pagon to a meeting on September 12, 2014, during which *"we asked him to explain the status of his contractual obligations. His explanation did not seem legitimate nor very transparent, so we asked him if he was able to substantiate his claim that our ambulance was now actually in production as he claimed. He stated that it was with a US based company by the name of Wheeled Coach..."*

1.3 The referenced letter further detailed, *inter alia*, that, *"...After further consultation, the JDF came to decision to terminate the contract in*



accordance with the provisions of the said contract. A termination letter was prepared, and Mr PAGON was again invited to the JDF where he was handed the letter."¹

1.4 The investigation revealed that an agreement was entered into between the Ministry of National Security and GM Challenger, in 2006, for the provision of five (5) 40-seater Zonda buses.

1.5 Summary of Key Findings

Contract dated May 6, 2014 between the Jamaica Defence Force (JDF) and GM Challenger

1.5.1 The procurement Committee received and deliberated over quotations from Toyota Jamaica Limited, Fidelity Motors, GM Challenger and Stewart Industrial, for the acquisition of an ambulance.²

1.5.2 The Procurement Committee recommended the acquisition of the Chevrolet Crusader Plus CG33705 Ambulance from GM Challenger as the referenced Ambulance was more suitable than the models proposed by Stewart Industrial, Toyota Jamaica Limited and Fidelity Motors Limited.

¹ Letter of Complaint dated May 2015, which was addressed to the then Office of Contractor General.

² Minutes of the Procurement Committee Meeting held on February 12, 2014.

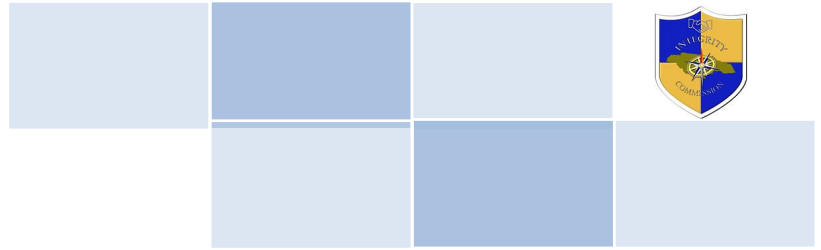


- 1.5.3 On May 6, 2014, the JDF and GM Challenger entered into an agreement for the provision of the referenced ambulance at a cost of US\$113,807.38. The scheduled date for the delivery of the Ambulance to the JDF by GM Challenger was July 29, 2014.
- 1.5.4 The amount of J\$6,097,777.28 was paid over to GM Challenger by the JDF in the form of an Advanced Payment for the supply of the referenced ambulance in breach of Clause A7.6.3 of the Government of Jamaica Handbook of Public Sector Procurement Procedures.
- 1.5.5 Consequent upon GM Challenger's failure to deliver the referenced ambulance, the JDF terminated the contract for breach pursuant to Clause 35.1 of the contract.
- 1.5.6 On September 16, 2014, the JDF gave Notice to GM Challenger of its decision to terminate the contract between them and requested a refund of the total deposit paid to GM Challenger in the amount of J\$6,097,777.28.
- 1.5.7 Major General Antony Bertram Anderson served as Chief of Defence Staff and Accounting Officer of the JDF during the period October 2010 to December 2016.



Agreement between the Ministry of National Security and GM Challenger for the Provision of Five (5) 40-Seater Buses

- 1.5.8 The Ministry of National Security (MNS) publicly invited bids for the procurement of, *inter alia*, four (4) 40-seater buses, for the JDF, on February 26, 2006 and March 5, 2006.
- 1.5.9 Subsequent to the evaluation of the bids by the JDF's Equipment Procurement Committee, on April 12, 2006, a recommendation was made for the award of contract to GM Challenger for the supply of four (4) 40-seater buses. An additional bus was ordered from GM Challenger on November 23, 2006
- 1.5.10 By way of Purchase Order the MNS entered into an agreement with GM Challenger to supply Five (5) 40-seater buses.
- 1.5.11 Pursuant to the referenced agreement a deposit was paid to GM Challenger in the amount of \$12,986,209.60.
- 1.5.12 GM Challenger failed to honour its agreement to supply the buses to the MNS/JDF, consequently, on January 31, 2008; the MNS requested the return of the deposit it paid to GM Challenger. To date GM Challenger has neither returned the deposit nor delivered the buses to the MNS/JDF.
- 1.5.13 Despite the refund requested by the MNS, GM Challenger made the following proposals: (a) that the Ministry of National Security absorb the



additional freight charges of US\$9000.00 per bus; or (b) to supply the Ministry with police cars from their inventory to offset the obligation. The MNS rejected the said proposal.

1.5.14 Mr. Gilbert Scott served as the Permanent Secretary and Accounting Officer within the Ministry of National Security at the material time.



Chapter 1 – Background

2.0 This chapter outlines the background information concerning the investigation.

Initiation of Investigation

2.1 The Office of the Contractor General (OCG), commenced an Investigation on June 9, 2015, into the allegations of non-performance of a contract awarded to GM Challenger by the JDF, for the supply and maintenance of a '2014 Chevy Crusader plus CG33705 Ambulance Type II'. The Contract was dated May 6, 2014, in the amount of US\$90,740.74. The contract also included a five (5) year maintenance package in the amount of US\$23,066.64. The total contract value was therefore US\$113,807.38.

Jurisdiction

2.1.1 The investigation commenced under Sections 4, 15 and 16 of the then applicable CGA which enabled the OCG to investigate the referenced matter.

2.1.2 Pursuant to Sections 63 and 33 of the Integrity Commission Act, the Director of Investigation (DI) continued the investigation into the said matter. The referenced sections may be found at Appendix 1 of this report.



The Investigation

2.1.3 During the course of the investigation, the following individuals provided sworn responses to the OCG's Statutory Requisitions:

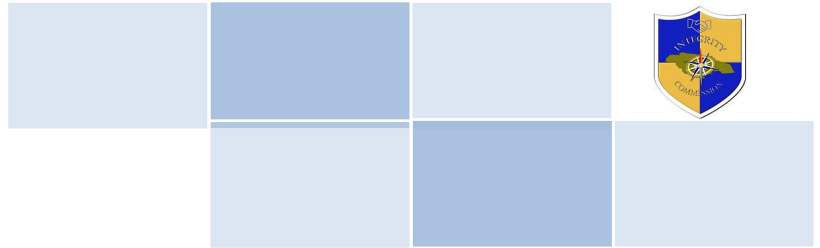
1. Major General (Ret'd) Stewart Saunders, Permanent Secretary, Ministry of National Security;
2. Brigadier David Cummings, Jamaica Defence Force (JDF)
3. Lieutenant Colonel Michael Deans, JDF; and
4. Mr. Courtney Williams, Permanent Secretary, Ministry of National Security.

2.1.4 Judicial Hearings were also convened with the following individuals:

1. Mr. Nigel Pagon, Chairman/CEO, GM Challenger; and
2. Brigadier David Cummings, JDF.

2.1.5 Upon completion of the referenced investigative actions, a review and cross referencing of the responses and supporting documentation was conducted.

2.1.6 A comprehensive review of the relevant Policies was also undertaken.



Individuals Pertinent to the Investigation

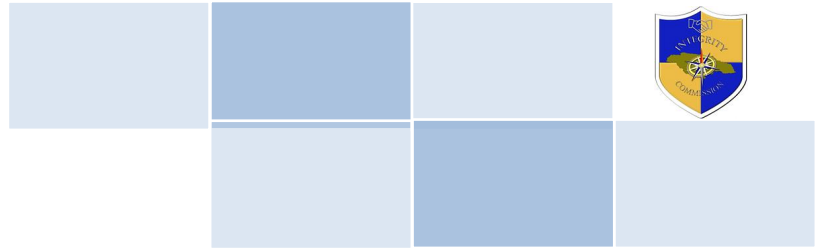
2.1.7 In furtherance of determining the veracity of the allegations detailed herein, the following individuals were deemed pertinent to the investigation:

1. Mr. Nigel Pagon, Chairman/CEO, GM Challenger;
2. Brigadier David Cummings, JDF; and
3. Major General (Ret'd) Stewart Saunders, Permanent Secretary, Ministry of National Security.



Chapter 2 – Terms of Reference

- 3.0 This chapter sets out the scope of the investigation and the issues that were explored.
- 3.1 The investigation into the award of contracts to GM Challenger sought primarily to determine, *inter alia*, the following:
- 3.1.1 The circumstance(s) surrounding the performance of contracts by GM Challenger for the supply and delivery of:
- (a) A new '2014 Chevy Crusader plus CG33705 Ambulance Type II' for the JDF; and
 - (b) Five (5) forty (40) seater Zonda buses for the JDF.
- 3.1.2 Whether GM Challenger had in fact failed to perform its contractual obligations in relation to the contracts that were awarded;
- 3.1.3 The course of action, if any, taken by the JDF and/or the Ministry of National Security with respect to GM Challenger's failure to supply and deliver:(a) new '2014 Chevy Crusader plus CG33705 Ambulance Type II' and (b) the 'four (4) 40-seater buses' as per the contract;
- 3.1.4 Whether the contract(s) for the provision of the new '2014 Chevy Crusader plus CG33705 Ambulance Type II' was/were terminated by the JDF;



3.1.5 The process(es)/procedure(s), if any, which was/were undertaken in the termination of the referenced contract;

3.1.6 Whether there was/were any impropriety(ies) and/or irregularity(ies) in relation to the Government of Jamaica Procurement Procedures Handbooks, the then Contractor General Act, the Public Sector Procurement Regulations, the Public Bodies Management and Accountability Act, and the Financial Administration and Audit Act; and

3.1.7 Whether recommendations ought to be made in respect of anti-corruption initiatives.



Chapter 3 – Law, Evidence, Findings and Discussion

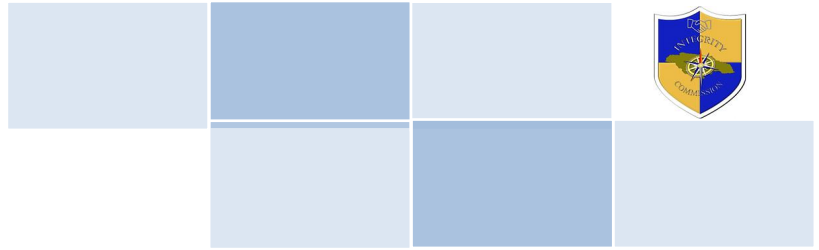
4.0 This chapter sets out the discussion of the findings and the relevant legislation in respect of the investigation.

The entity 'Challenger Transport Company Limited'

4.1 The company 'Challenger Transport Company Limited' is a Company duly incorporated under the laws of Jamaica. The company was incorporated on April 17, 1986, to undertake the sale of motor vehicles and the supply of spare parts.

4.1.1 The aforementioned company was also first registered with the National Contracts Commission (NCC) on September 3, 2003, as a supplier of goods and services. Consequent upon GM Challenger's NCC registration and subsequent re-registration, the company was eligible to participate in (GoJ) procurement activities which fell within the category with which it was registered. Of note, GM Challenger was last registered with the NCC on May 28, 2015, which expired on November 29, 2015, and no further application was made in this regard.

4.1.2 The Directors of the said Company are *Nigel Pagon, Kwame Pagon, and Dominic Pagon*.



The Jamaica Defence Force (JDF)

4.1.3 The JDF was constituted under Section 4 of the Defence Act.

4.1.4 Major General Antony Bertram Anderson served as Chief of Defence Staff and Accounting Officer of the JDF during the period October 2010 to December 2016.

Contract between the Jamaica Defence Force and GM Challenger for the Supply and Maintenance of a '2014 Chevy Crusader plus CG33705 Ambulance Type II'

4.2 A contract was entered into between the JDF and GM Challenger on May 6, 2014, for the Supply and Maintenance of a '2014 Chevy Crusader plus CG33705 Ambulance Type II' in the amount of US\$90,740.74. The contract also included a five (5) year maintenance package in the amount of US\$23,066.64 with the result that the cumulative contract value was in the amount of US\$113,807.38.³

4.2.1 Upon the review of the referenced contract, the DI finds it pertinent to note the following:

³ The Contract stipulated an exchange rate of J\$112.00 to US\$1.



Clause GCC 18.1 indicated that the practical completion date was stated under the Special Conditions of Contract (SCC). In this regard, the SCC provided that the commencement date of the contract was “06 May 2014”, for the duration of twelve (12) weeks and “the date for delivery shall be 29 July 2014”.

Clause 35.1 (a) stated, *inter alia*, as follows:

“The Procuring Entity, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate the Contract in whole or in part:

- (i) If the Supplier fails to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the Procuring Entity pursuant to GCC Clause 34;*
- (ii) If the Supplier fails to perform any other obligation under the Contract;*

...”⁴

⁴ Contract dated May 6, 2014, between the Jamaica Defence Force and GM Challenger.



Circumstances which led to the Award of Contract to the GM Challenger, by the Jamaica Defence Force, for the Supply and Maintenance of a '2014 Chevy Crusader plus CG33705 Ambulance Type II'

- 4.3 Having regard to the referenced award of contract to GM Challenger, the investigation sought to ascertain the circumstances which led to the award of same.
- 4.3.1 By way of a Statement dated November 12, 2014, Brigadier David Cummings, JDF, indicated, *inter alia*, that the procurement procedures which were utilized by the JDF were in accordance with the Jamaica Procurement Guidelines.
- 4.3.2 Having regard to the foregoing, the DI is in receipt of the Minutes of the Procurement Committee Meeting held on February 12, 2014. The Meeting Minutes indicated, *inter alia*, that quotations were received from Toyota Jamaica Limited, Fidelity Motors, GM Challenger and Stewart Industrial, for the acquisition of an ambulance.⁵
- 4.3.3 The referenced Meeting Minutes further indicated that the quotations which were submitted by Toyota Jamaica Limited and Fidelity Motors Limited were “for very basic ambulance. These vehicles would have to be

⁵ Minutes of the Procurement Committee Meeting held on February 12, 2014.
INTEGRITY COMMISSION Special Report of Investigation into the Complaint received from the Jamaica Defence Force (JDF) in relation to Non-Performance of Contract by GM Challenger in the Supply of a '2014 Model year Ambulance'



separately retrofitted at additional expense to the JDF, in order for them to meet the required standard.”⁶

4.3.4 In addition, the Meeting Minutes also detailed that the Force Medical Officer recommended the acquisition of the Chevrolet Crusader Plus CG33705 Ambulance from the GM Challenger rather than the Mercedes Benz Sprinter Panel Van from Stewart Industrial. The rationale provided in the Minutes indicated that the Chevrolet Crusader Plus CG33705 Ambulance Type II was reportedly more reliable, by other organizations that utilize both models, as well as the referenced Chevrolet Crusader Ambulance contained more storage than the model which was proposed by Stewart Industrial.

4.3.5 The referenced Meeting Minutes also indicated that the “A/Chairman *accepted the recommendation and authorized the purchase of the ambulance along with a comprehensive warranty and maintenance package from Challenger Transport Company Limited*” for the amount of US\$113,807.38.⁷

⁶ Ibid.

⁷ Minutes of the Procurement Committee Meeting held on February 12, 2014.



Payments Made by the Jamaica Defence Force to GM Challenger for the Supply and Maintenance of a New '2014 Chevy Crusader plus CG33705 Ambulance Type II'

4.4 As it relates to the caption, the 'Special Conditions of Contract' / Clause 15.1 of the referenced contract dated May 6, 2014, detailed, *inter alia*, that an advanced payment of J\$7,374,718.20, which represents sixty percent (60%) of the contract price was to be paid by the JDF upon 'Confirmation of Sale Order' by the Procuring Entity.

4.4.1 In the abovementioned regard, Mr. Nigel Pagon, Chairman/CEO, GM Challenger, advised, *inter alia*, during a Judicial Hearing convened on August 7, 2015, that he received a deposit on May 15, 2014, from the JDF, for the supply of the referenced Ambulance.⁸

4.4.2 Notwithstanding the foregoing, Mr. Pagon further indicated, *inter alia*, that the referenced deposit from the JDF, was in the sum of J\$6,097,777.28, as opposed to the J\$7,373,718.20, stipulated in the contract.

4.4.3 Having regard to the foregoing, Brigadier David Cummings, JDF, explained the circumstances which led to the revised payment made to GM Challenger. In this regard, Brigadier Cummings indicated, *inter alia*,

⁸ Transcript of a Judicial Hearing convened on August 7, 2015 involving Mr. Nigel Pagon, Chairman, GM Challenger, page 5.



“...This anomaly arose because the contract stated that \$7,373,718.20 was to be paid as the deposit, however the invoice supplied by GM Challenger had a different amount on it (\$6,097,777.28), and since wire transfers are executed on the basis of an invoice, \$6,097,777.28 was wired to GM Challenger.”⁹

4.4.4 In support of the abovementioned representation made by Brigadier David Cummings, the DI is in possession of a *RTGS transfer request form* and *Statement Entry* in respect of a JDF Account which confirmed that the amount of J\$6,097,777.28 was remitted to the account of GM Challenger.

4.4.5 The DI cites Clause A7.6.3 of the Government of Jamaica Handbook of Public Sector Procurement Procedures which indicates, *inter alia*, that, advance payments, “shall be **no more than fifty percent (50%)** of the *procurement sum*.”¹⁰ Notwithstanding the advanced payment made by the JDF to GM Challenger was in keeping with the 50% of the contract sum, the referenced contract dated May 6, 2014, indicated an advance payment of 60%.

4.4.6 Additionally, as it relates to advance payment security, the DI further highlights Clause A7.6.3 of the Government of Jamaica Handbook of

⁹ Response dated June 25, 2015, from the then David Cummings, Brigadier, JDF, to the then OCG, response #4.

¹⁰ Clause A7.6.3 of the Government of Jamaica Handbook of Public Sector Procurement Procedures.



Public Sector Procurement Procedures(GPPH) which details, *inter alia*, as follows:

“...In such cases, an Advance Payment Security shall be provided as a guarantee against the contractor’s default. Security can be in the form of a bank guarantee or irrevocable Letter of Credit for an amount equal to the Advance Payment, and is normally redeemable on demand. No Advance Payment shall be made without provision of security in the full value of the advance.”¹¹

4.4.7 During a Judicial Hearing convened on June 18, 2015, the OCG sought to ascertain whether the JDF acted in accordance with the GPPH as it relates to advance payment and advance payment security. Brigadier David Cummings, JDF indicated, *inter alia*, that, *“...I only had a chance to examine the amount that we paid versus the guidelines after the fact of signing the contract, so it was after the event. So that would have been failing on our part to have recognised or to not have recognised beforehand that the payment that was being made would have been in breach of this particular guideline.”¹²* Brigadier Cummings also indicated that this referenced position held true for the advance payment security.

¹¹ Clause A7.6.3 of the Government of Jamaica Handbook of Public Sector Procurement Procedures.

¹² Transcript of Judicial Hearing convened on June 18, 2015, involving Mr. David Cummings, Brigadier, JDF, page 81.



Circumstances which led to the Non-Performance of the Contract for the Supply and Maintenance of a New '2014 Chevy Crusader plus CG33705 Ambulance Type II'

4.5 In relation to GM Challenger's failure to supply the Ambulance to the JDF, Mr. Nigel Pagon, Chairman/CEO, GM Challenger, during a Judicial Hearing convened on August 7, 2015, indicated, *inter alia*, the following:

"...they had approached us in January 2014 to acquire an ambulance and they were provided with a pro forma invoice. Sometime in about March, probably after providing the pro forma invoice Captain Cooper from the JDF called to say that they are very interested in getting this ambulance. Now as I expressed to her and to Captain or Major Ramsay that the normal course of things is that if we go through, ordering through General Motors the turnaround time would be five months, three months to build, one month for paper work and another month for logistics. They wanted something more urgent so what we did was to approach some coach builders, approached one in Atlanta who had one already made...So we provided JDF with the specifications and they came back three months after to say they were interested. Now we gave them all the information that they required and they came back sometime in about May, I think it was May 5th that they came back to say well they would be interested in acquiring that same ambulance that we gave them the pro forma invoice from in early



January. Upon signing the contract we could not have done anything without a deposit because of the policy of the supplier. On signing the contract we got the deposit and then we made contact with the supplier now who at that point in time told us that the vehicle was sold because they, I mean are not obligated to wait on us for something that they give us an invoice from as far back as January...we did not meet the deadline of delivery for that first ambulance that we quoted on because based on the contract we should have delivered I think some time I'm not sure if it's July..."¹³

4.5.1 The DI reiterates that the Special Conditions of Contract (SCC) in the referenced contract indicated that the commencement date of the contract was "06 May 2014", with contract duration of twelve (12) weeks and "the date for delivery shall be 29 July 2014".

¹³ Transcript of Judicial Hearing convened on August 7, 2015, involving Mr. Nigel Pagon, Chairman/CEO, GM Challenger, pages 9-11.



Termination of the Contract between the Jamaica Defence Force and GM Challenger for the Supply and Maintenance of a New '2014 Chevy Crusader plus CG33705 Ambulance Type II'

4.6 With respect to the termination of the referenced contract, Brigadier David Cummings, JDF in his response dated June 2015, to the OCG, stated, *inter alia*, as follows:

*"The JDF exercised its right to terminate the contract without any prejudice to any other remedy on page 14 (Termination paragraph, 35.1). With respect to page 6 (paragraph 10.2), the JDF has not received any appeal or recommendation from the NCC with respect to this contract."*¹⁴

4.6.1 Having regard to the basis upon which the Contract was terminated by the JDF, the DI considers it prudent to reiterate hereunder Clause 35.1 of the referenced contract, which states, *inter alia*, "(a) The procuring Entity, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate the contract in whole or in part: (i) if the Supplier fails to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the Procuring Entity pursuant to GCC Clause 34; (ii) if

¹⁴ Response dated June 2015, from Brigadier David Cummings, JDF, to the then OCG, response #8.



the Supplier fails to perform any other obligation under the contract...”¹⁵

The DI also reiterates that the delivery date for the new 2014 Chevy Crusader Plus CG 33705 Ambulance Type II was scheduled for July 29, 2014, which GM Challenger failed to honour.

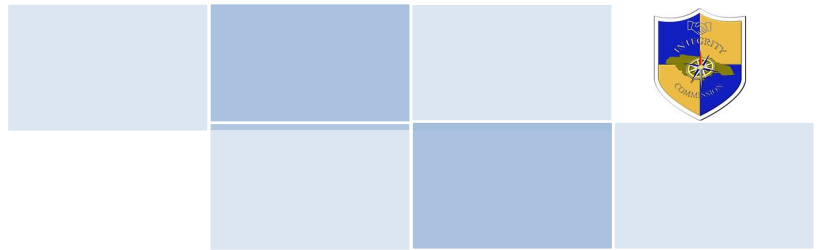
4.6.2 The decision to terminate the referenced contract was communicated to GM Challenger by way of a letter dated September 16, 2014. The letter further advised that no extension would be granted and that the total amount of J\$6,097,777.28, which was already paid by the JDF, should be refunded within seven (7) working days, that is, by Thursday, September 25, 2014.¹⁶

Request for the Cancellation of the Termination of the Contract by GM Challenger

4.7 Subsequent to the issuance of the termination advisory letter dated September 16, 2014, the Law Firm, Peter Mc and Associates, representing GM Challenger, wrote to the JDF on September 23, 2014 and requested

¹⁵ Section 35.1 of the Contract between the JDF and GM Challenger, dated May 6, 2014.

¹⁶ Letter dated September 16, 2014, from S R Innis, Captain (Naval), JDF, to Mr. Nigel Pagon, Chairman/CEO, GM Challenger, entitled “**CONTRACT AGREEMENT DATED 06 MAY 2014 BETWEEN THE JAMAICA DEFENCE FORCE (JDF) AND GM CHALLENGER FOR THE SUPPLY OF ONE NEW 2014 CHEVY CRUSADER PLUS CG 33705 AMBULANCE TYRE II (WHEELED COACH).**”



that both parties resort to an amicable settlement given that GM Challenger remains committed to supplying the unit requested.¹⁷

4.7.1 The referenced September 23, 2014 letter also acknowledged the failure on the part of GM Challenger, to deliver the unit on the date stipulated in the contract.¹⁸

4.7.2 The DI notes that Peter Mc and Associates also wrote to the JDF, on September 23, 2014, advising, *inter alia*, of a notice pursuant to the Special Condition dealing with amicable settlement of GM Challenger's claim for losses and/or damages suffered as a result of the JDF's termination of the contract. The named Law Firm made reference to damages/losses relating to: (a) Monies spent on ordering the manufacturing of the chassis for ambulance; and (b) Damages for breach of Confidentiality.¹⁹

4.7.3 In addition, the DI perused a letter dated September 2014, from the JDF, to Peter Mc and Associates, stating, *inter alia*, "...Good faith in this instance was not exercised by your client as he failed to communicate his extenuating circumstances in a timely manner, nor has he produced any evidence to support the new projected timelines." The letter further detailed that the JDF stands by the terms and conditions detailed in its

¹⁷ Letter dated September 23, 2014, from Peter Mc and Associates, which was addressed to the JDF.

¹⁸ Letter dated September 23, 2014, from Peter Mc and Associates, which was addressed to the JDF.

¹⁹ Further letter dated September 23, 2014, from Peter Mc and Associates, which was addressed to the JDF.



letter dated September 16, 2014, and further requested that the deposit, which was paid on the unit, be returned.²⁰

4.7.4 As it relates to the foregoing, the DI sought to ascertain whether the deposit was returned to the JDF by GM Challenger. In this regard, Brigadier David Cummings, JDF, in his response dated August 23, 2018, stated, *inter alia*, that no refunds were made to the JDF.²¹

4.7.5 With respect to the failure of GM Challenger to supply the ambulance to the JDF, the DI perused a copy of a letter dated December 17, 2014, from the Office of the Director of Public Prosecutions (ODPP) advising the Fraud Squad, *inter alia*, that based on the material presented, there was no evidence of criminal intention on the part of Mr. Nigel Pagon/GM Challenger. The ODPP further advised that the Jamaica Defence Force could consult with the Attorney General's Chambers to determine the way forward with the matter.²²

4.7.6 The DI sought to ascertain whether the matter was referred to the Attorney General's Chambers by the JDF. By way of letter dated June 2, 2021, Lieutenant Colonel Michael Deans, JDF, indicated, *inter alia*, that "The JDF has instructed the Attorney General's Chambers (AGC) to take steps to recover the sum paid to supply a 2014 Chevy Crusader

²⁰ Letter dated September 25, 2014, from the JDF to Peter Mc and Associates.

²¹ Response dated August 23, 2018, Brigadier DA Cummings, JDF, to the IC's Requisition, response #1.

²² Letter dated December 17, 2014, from Ms. Sharon Millwood Moore, Deputy DPP, ODPP and Ms. Claudette Thompson, Deputy DPP, ODPP, to Mr. D. Daley, Deputy Superintendent of Police, the Jamaica Constabulary Force, Fraud Squad.



Ambulance. An action was filed in the Supreme Court of Jamaica, SU2020CD00312 the Attorney General's Chambers of Jamaica vs GM Challenger..."²³

Decision Made by the JDF to not Pursue Alternate Means of Contract Settlement

4.8 During the course of the investigation, the OCG sought to ascertain whether the JDF had exercised alternate remedies with respect to GM Challenger's failure to supply and deliver the new '2014 Chevy Crusader plus CG33705 Ambulance Type II'. With respect to the foregoing, Brigadier David Cummings, JDF, in his response of June 25, 2015, to the OCG stated, *inter alia*, as follows:

*"With respect to exercising our right to Liquidated Damages as outlined on page 10 (paragraph 27.1), the JDF position is that although the Supplier failed to deliver the Goods (i.e. the Ambulance), we opted not to apply this clause, as we had no evidence to support the fact that an ambulance had ever been ordered on our behalf, and so we opted to terminate as provided for under the contract."*²⁴

²³ Letter dated June 2, 2021, from Lieutenant Colonel Michael Deans to the Integrity Commission.

²⁴ Response dated June 25, 2015, from Brigadier David Cummings, JDF, to the then OCG, response #9.



4.8.1 Clause 27.1 of the referenced contract addresses the circumstances under which Liquidated damages may be made payable. The referenced Clause states as follows:

“Except as provided under GCC Clause 32, if the Supplier fails to deliver any or all of the Goods by the Date(s) of delivery or perform the Related Services within the period specified in the Contract, the Procuring Entity may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the SCC of the delivered price of the delayed Goods or unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in those SCC. Once the maximum is reached, the Procuring Entity may terminate the Contract pursuant to GCC Clause 35.”²⁵

4.8.2 As it pertains to Liquidated Damages, Clause GCC 27.1 of the referenced contract states that, *“The cost of liquidated damages shall be: \$15,000.00 per week for any delay in the delivery of the goods.”²⁶*

²⁵ Section 27.1 of the Contract dated May 6, 2014, between the JDF and GM Challenger.

²⁶ Ibid.



Contract between the Ministry of National Security and GM Challenger for the Purchase of Five (5) 40-Seater Buses

4.9 During the course of the investigation, it was revealed that GM Challenger and the Ministry of National Security entered an agreement in 2006, for the provision of five (5) 40-seater Zonda buses, for use by the JDF.

4.9.1 The DI does not observe a formal contract for the referenced buses. Notably, by way of Statutory Requisition Response dated July 20, 2015, Major General (Ret'd) Stewart Saunders, former Permanent Secretary, Ministry of National Security indicated, *inter alia*, that “*It was the normal course of action at that time to issue Purchase Orders for the procurement of motor vehicles. Copies of the Purchase Orders issued are at **Appendix 1.***”²⁷

4.9.2 Having regard to the foregoing representation made by Major General (Ret'd) Stewart Saunders, the DI observed the referenced “Appendix 1”, which consists of five (5) ‘Purchase Orders’, each for the provision of a 40-seater Zonda buses. Of note, four (4) of the ‘Purchase Orders’ were dated July 4, 2006 and one (1) ‘Purchase Order’ dated November 23, 2006.

²⁷ Statutory Requisition Response dated July 20 2015, from Major General Stewart Saunders, (Ret'd), CD, JP, former Permanent Secretary, Ministry of National Security, to the then Office of the Contractor General.



4.9.3 By way of Statutory Requisition dated July 20, 2015, Major General (Ret'd) Stewart Saunders indicated, *inter alia*, that the value for the initial four (4) buses was J\$15,522,476.00 (J\$3,880,619.00 per unit) while the additional unit was valued at J\$4,290,000.00. Thus, the cumulative value for the five (5) 40-Seater Zonda buses was in the amount of J\$19,812,476.

Circumstances which led to the Award of Contract to the GM Challenger, by the Ministry of National Security for the Provision of Five (5) 40-Seater Zonda Buses

4.10 In relation to the provision of the five (5) 40-Seater Zonda buses, the investigation, sought to ascertain the circumstances surrounding the award of contract(s) to GM Challenger.²⁸

4.10.1 Major General (Ret'd) Stewart Saunders, in his response on July 20, 2015, stated *inter alia*, that, “The Procurement Committee at the time recommended that the contract for the 40-seater buses be awarded to GM Challenger after checks made by the Jamaica Defence Force (JDF) revealed that the buses were being used by JUTA Tours without any serious problems. Also, the prices were deemed competitive by the

²⁸ Requisition dated June 22, 2015, to Major General Stewart Saunders, (Ret'd), CD, JP, former Permanent Secretary, Ministry of National Security from the OCG. Question #2.



*Committee and GM Challenger Transport Company Limited was the only bidder who submitted a Proposal for the 40-seater buses...”*²⁹

4.10.2 Further, Major General (Ret'd) Stewart Saunders, former Permanent Secretary, Ministry of National Security, stated, *inter alia*, as follows:

“Bids were publicly invited by the Ministry of National Security on February 26, 2006 and March 5th, for the supply of motor vehicles including four (4) 40-seater buses...

The bids were evaluated on April 12, 2006 by the JDF Equipment Procurement Committee. After deliberations, the Committee recommended that the contract for the 40-seater buses be awarded to GM Challenger after checks made by the Jamaica Defence Force (JDF) revealed that the buses were being used by JUTA Tours without any serious problems. Also, the prices were deemed competitive by the Committee and GM Challenger Transport Company Limited was the only bidder who submitted a Proposal for the 40-seater buses.

A Submission was made to the Sector Committee of the National works Agency on June 13, 2006 by the Ministry of National Security recommending that contracts be awarded to...GM Challenger for the supply of four (4) 40-seater buses.

²⁹ Response dated July 20, 2015, from Major General Stewart Saunders, (Ret'd), CD, JP, former Permanent Secretary, Ministry of National Security, to the then OCG, response #2.



Approval was subsequently granted on June 28, 2006 by the National Contracts Commission for contracts to be awarded as recommended in the submission by the Ministry."³⁰

4.10.3 Major General (Ret'd) Stewart Saunders further indicated that the, "proposals were evaluated using criteria such as purchase price, technical specifications; dealership resources and delivery period."³¹

4.10.4 Having regard to the evaluation of the proposal, the DI perused a copy of the Tender Evaluation Report, wherein it was detailed that, "Only one supplier tendered on the 40-Seater Bus, being GM Challenger, who quoted the unit cost at \$3,880,619.00...The JDF [has] made some investigation in the market and found [their] units being used by JUTA in the tourist trade without any serious problems, the price also be in keeping with competitive market value. After careful consideration and deliberation, the committee recommends the 40-Seater be acquired from GM Challenger Transport Company to fulfill the JDF requirements."³²

4.10.5 The DI observed a letter dated June 13, 2006 signed on behalf of Mr. Gilbert Scott, then Permanent Secretary, Ministry of National Security, addressed to the Chairman, Sector Committee, National Works Agency which indicated, *inter alia*, "...The Ministry seeks the Committee's

³⁰ Response dated July 20, 2015, from Major General Stewart Saunders, (Ret'd), CD, JP, Permanent Secretary, Ministry of National Security to the then Office of the Contractor General, response #5.

³¹ Response dated July 20, 2015, from Major General Stewart Saunders, (Ret'd), CD, JP, former Permanent Secretary, Ministry of National Security, to the then OCG, response #3 (a).

³² Tender Evaluation Report.



endorsement in awarding the contract to GM Challenger Transport Company, being the only company to have tendered for the forty seater buses in the sum of Three Million, Eight Hundred and Eighty Thousand, Six Hundred and Nineteen Dollars (\$3,880,619.00) per unit, which is comparable to present market rates.”³³

4.10.6 Further to the abovementioned correspondence, the DI observed a letter dated June 28, 2006 from Ms. Shirley Tyndall, then Chairman, National Contracts Commission, addressed to Mr. Gilbert Scott, then Permanent Secretary, Ministry of National Security which indicated, *inter alia*, that the National Contracts Commission at its meeting on June 26, 2008 has endorsed the recommendation of the Sector Committee to award the contract to GM Challenger Transport Company for the four 40-Seater buses in the amount of \$15,522,476.00³⁴

4.10.7 At this juncture the DI highlights that Gilbert Scott was Permanent Secretary and Accounting Officer within the MNS at the time of the referenced agreement between the Ministry of National Security and GM Challenger.

³³ Statutory Requisition Response dated July 20 2015, from Major General Stewart Saunders, (Ret'd), CD, JP, Permanent Secretary, Ministry of National Security, to the then Office of the Contractor General, Appendix 9.

³⁴ Statutory Requisition Response dated July 20 2015, from Major General Stewart Saunders, (Ret'd), CD, JP, Permanent Secretary, Ministry of National Security, to the then Office of the Contractor General, Appendix 8.



Circumstances which Led to the Payments that were made to GM Challenger for the Provision of the Buses

4.11 Subsequent to the then National Contract Commission's approval, by way of Statutory Requisition response dated July 20, 2015, Major General (Ret'd) Stewart Saunders, former Permanent Secretary, Ministry of National Security, indicated, *inter alia*, that four (4) of the 40-Seater Zonda buses were ordered on July 4, 2006 and an additional bus on November 23, 2006.³⁵

4.11.1 To reiterate, Major General (Ret'd), Stewart Saunders indicated, *inter alia*, that "It was the normal course of action at that time to issue Purchase Orders for the procurement of motor vehicles. Copies of the Purchase Orders issued are at **Appendix 1**."³⁶

4.11.2 Table 1 provides details of the contents of Major General Stewart Saunders' response dated July 20, 2015.

³⁵ Statutory Requisition Response dated July 20 2015, from Major General Stewart Saunders, (Ret'd), CD, JP, Permanent Secretary, Ministry of National Security, to the then Office of the Contractor General, response #1(a).

³⁶ Statutory Requisition Response dated July 20 2015, from Major General Stewart Saunders, (Ret'd), CD, JP, Permanent Secretary, Ministry of National Security, to the then Office of the Contractor General, response #1(c).



Table #1: 'Purchase Orders' for the Provision of 40-Seater Buses, which are addressed to Challenger Transport Limited

Rec. No	Invoice No.	Amount	Details
1	Invoice No. 099099 dated November 23, 2006	J\$4,290,000.00	[One] 1 2007 Zonda 40 Seater Bus-China High Roof, Right Hand Drive, cc 6.5 Diesel Manual Transmission, AC, Power Assist Steering Last Line
2	Invoice No. 088431 dated July 4, 2006	J\$3,880,619.00	[One] 1 2006 40-Seater Bus (Zonda) Power Steering A/C AM/FM Stereo cassette Direct Injection Manual 5 speed ABS Air Brake Diesel Engine
3	Invoice No. 088432 dated July 4, 2006	J\$3,880,619.00	[One] 1 2006 40-Seater Bus (Zonda) Power Steering A/C AM/FM Stereo cassette Direct Injection Manual 5 speed ABS Air Brake Diesel Engine
4	Invoice No. 088430 dated July 4, 2006	J\$3,880,619.00	[One] 1 2006 40-Seater Bus (Zonda) Power Steering A/C AM/FM Stereo cassette Direct Injection Manual 5 speed ABS Air Brake Diesel Engine
5	Invoice No. 088428 dated July 4, 2006	J\$3,880,619.00	[One] 1 2006 40-Seater Bus (Zonda) Power Steering A/C AM/FM Stereo cassette Direct Injection Manual 5 speed ABS Air Brake Diesel Engine



4.11.3 The five (5) 'Purchase Orders' mentioned above amounted to J\$19,812,476.00, while the four (4) 40-seater Zonda buses which were dated July 4, 2006 was in the amount of J\$15,522,476.00.

Subsequent to the five (5) 'Purchase Orders' mentioned, the DI observes an '**ADDENDUM TO CONTRACT DOCUMENT FOR PROCUREMENT OF FOUR (4) 40 SEATER ZONDA BUSES**', dated January 10, 2007, from Mr. Nigel Pagon, Chairman/CEO, and addressed to the Permanent Secretary, Ministry of National Security. The Addendum stated, *inter alia*, as follows:

"It is agreed and understood that in the contract document for the procurement of four (4) 40 Seater Zonda Buses, the price quoted on such units represented model year 2006. The units that will be supplied instead will represent model year 2007; as the production cycle for 2006 models has expired.

This has resulted in a price increase from our manufacturers due to the model year change.

Additional increase in the price of 2007 models will result from exchange rate loss (US\$1.00/J\$66.00 in March 2006 to US\$1.00/J\$68.00-January 2007), as well as an increase in freight charges from Mainland China.

The delivery time for these units is one hundred & twenty (120) days.



...³⁷

4.11.4 Additionally, the DI is in receipt of an Invoice #00321 dated March 8, 2007, from Mr. Nigel Pagon, Chairman/CEO, addressed to the Permanent Secretary, Ministry of National Security, stating the cumulative value for four (4) 2007 40-Seater Zonda buses, in the amount of J\$17,912,000.00. Also, the referenced Invoice indicated that a 60% deposit of the price was required.

4.11.5 At this juncture, the DI wishes to note, that notwithstanding Clause A7.6.3 of the Government of Jamaica Handbook of Public Sector Procurement Procedures (GPPH) which governs the making of advance payments, there is no evidence to support that the MNS complied with this rule.

4.11.6 Having regard to the foregoing, the investigation sought to ascertain whether payments were made to GM Challenger, by the Ministry of National Security in relation to the abovementioned invoice. In this respect, by way of Statutory Requisition Response dated July 20, 2015, Major General (Ret'd) Stewart Saunders stated, *inter alia*, as follows:

"A deposit on the buses totaling \$12,986,209.60 was paid to GM Challenger upon the submission of two invoices requesting the deposit. The first invoice (No. 00124) in the amount \$4,478,000 for

³⁷ Addendum to contract document for procurement of four (4) 40 seater zonda buses dated January 10, 2007, from Mr. Nigel Pagon, Chairman/CEO, GM Challenger, to the Ministry of National Security.



one 40-seater bus was submitted on January 10, 2007. A 50% deposit which amounted to \$2,239,000 was requested on this invoice. Another in the amount of \$17,912,000 for four (4) 40-seater buses was submitted on March 8, 2007. A 60% deposit which amounted to \$10,747,209 was requested on this invoice. Requests for payment of deposits were sent to the Accounts Unit...A copy of the cheque for the second payment is enclosed at Appendix 10 along with other documents indicating that two cheques were received by Challenger Transport Co. Ltd on February 16, 2007 and March 26, 2007 as deposits in the amounts stated above. The first four buses were to be delivered within 120 days from the date of the deposit while the other bus was to be delivered in March 2007."³⁸

4.11.7 Major General (Ret'd) Stewart Saunders provided several documents in support of his representation above. In this regard, the DI observes a Memorandum dated March 7, 2007, from Mr. Milton Morrison, Director, Procurement and Officer Services, addressed to Ms. Jaycynth Jarrett, Principal Financial Officer, which advised of the request of 60% of the deposit by GM Challenger, for the provision of the vehicles.³⁹

³⁸ Response dated July 20, 2015, from Major General Stewart Saunders, (Ret'd), CD, JP, Permanent Secretary, Ministry of National Security, to the then OCG. Response #9

³⁹ Memorandum dated March 7, 2007, from Mr. Milton Morrison, Director, Procurement and Officer Services, addressed to Ms. Jaycynth Jarrett, Principal Financial Officer, entitled, 'Procurement of Four 2006 Forty Seater Zonda Buses for JDF'.



4.11.8 The DI further observes a copy of the Bank of Nova Scotia cheque dated March 22, 2007, bearing the 'No.002516' which was made payable to 'Challenger Transport Co. Ltd. T/AS Challenger Auto Supplies' in the amount of J\$10,747,209.60 for "FOUR FORTY SEATER ZONDA BUS".

4.11.9 Additionally, the DI observes a copy of two documents indicating the referenced payments made to GM Challenger. In this regard, table #2 provides cheques purportedly disbursed to GM Challenger by the Ministry of National Security:

Table# 2 showing details of the cheques purportedly disbursed to GM Challenger by the Ministry of National Security

Date	Details
16/2/07	BNS Cheque # 002285 in the amount of J\$2,239,000.00
26/3/07	BNS Cheque # 002516 in the amount of J\$10,747,209.60

4.11.10 A Judicial Hearing was convened with Mr. Nigel Pagon on August 7, 2015, where he confirmed that he received a cumulative deposit of J\$12,986,209.60 from the Ministry of National Security for the provision of the buses.



GM Challenger's Failure to Supply the JDF with Five Buses

- 4.11.11 A letter dated January 10, 2007, addressed to the Permanent Secretary from Mr. Nigel Pagon, Chairman/CEO, GM Challenger, detailed that the four (4) 40-Seater Zonda Buses would be delivered in 120 days.
- 4.11.12 Notwithstanding the foregoing, Major General (Ret'd) Stewart Saunders advised the OCG, *inter alia*, that "...the first four of the buses were to be delivered within 120 days from the date of the deposit while the other bus was to be delivered in March 2007..." However, Major General Saunders, in his response dated July 20, 2015, further indicated that the five (5) 40-Seater buses had not been delivered to the Ministry of National Security.⁴⁰
- 4.11.13 Having regard to GM Challenger's failure to deliver the five (5) 40-Seater Buses, the DI observed a letter dated October 24, 2007, from Mr. Nigel Pagon, Chairman/CEO, GM Challenger, addressed to Mr. Gilbert Scott, then Permanent Secretary, Ministry of National Security, which advised, *inter alia*, that the buses were completed and ready for shipping. The referenced letter further advised that the current quote received for shipping ranged from US \$16,000.00 to US \$20,000.00 per

⁴⁰ Response dated July 20, 2015, from Major General Stewart Saunders, the then Permanent Secretary, Ministry of National Security, to the then OCG.



unit, instead of the US \$9000.00 which was indicated in its proposal submitted to the Ministry of National Security.⁴¹

4.11.14 Further, the DI observed a letter dated January 31, 2008, from Mr. Gilbert Scott, to Mr. Pagon, advising, *inter alia*, "...The Ministry of National Security is very disappointed that to date none of the vehicles have been delivered. In August 2007, upon enquiry, the Ministry was advised that the buses were ready and the shipper was being sought. However, to date the buses have not been delivered. The Ministry can wait no longer for these vehicles. We therefore ask that our total deposit of **\$12,986,209.60** be returned.

..."⁴²

GM Challenger's Refusal to Refund the Deposit of J\$12,986,209.60 to the Ministry of National Security

4.11.15 As it relates to the deposit of J\$12,986,209.60, which was made to GM Challenger, by the Ministry of National Security, for the supply of five (5) 40-seater buses, Major General (Ret'd) Stewart Saunders, by way of response dated July 20, 2015, stated, *inter alia*, as follows:

⁴¹ Letter dated October 24, 2007, from Mr. Nigel Pagon, Chairman/CEO, GM Challenger, addressed to Mr. Gilbert Scott, the then Permanent Secretary, Ministry of National Security.

⁴² Letter dated January 31, 2008, from Mr. Gilbert Scott, the then Permanent Secretary, Ministry of National Security, addressed to Mr. Pagon, Chairman/CEO, GM Challenger.



“To date the deposit made to GM Challenger as mentioned above has not been returned to the Ministry of National Security.

Enquiries were made by the Ministry in August 2007 about the delivery of the buses. GM Challenger advised the Ministry in an email dated August 15, 2007 that the buses would be ready by the middle to the end of August and that a shipper was being sought...On October 24, 2007, a letter was received from GM Challenger advising that the five buses were ready but there were some challenges in shipping them as the shipping cost which they had included in their bid price moved from US \$9,000 per unit to US\$16,000-\$20,000 per unit...

The then Permanent Secretary wrote to GM Challenger on January 31, 2008 voicing disappointment over its failure to deliver the vehicles and asked that the deposit be returned....

On February 21, 2008, GM Challenger responded to the Permanent Secretary advising that the cost of shipping the buses was still prohibitive as the lowest quotation they got was for US\$18,000.00 per unit. They therefore proposed that the ministry consider one of the following solutions...:

- (a) That the ministry absorbs the additional freight charges of US \$9,000.00 per unit.*
- (b) A Barter Agreement where GM Challenger supply cars to the police from its current inventory to offset its obligation.*



On February 28, 2008 the Permanent Secretary responded to GM Challenger rejecting their proposal and reiterated the demand made in his letter dated January 31, 2008..."⁴³

4.11.16 Notwithstanding the foregoing, as at July 20, 2015, the Ministry of National Security was neither in receipt of the buses, nor a refund of its deposit, from GM Challenger, as indicated by Major General Saunders in his response dated July 20, 2015.⁴⁴ In addition, by way of statement dated August 3, 2021, Mr. Courtney Williams, Permanent Secretary, Ministry of National Security, indicated, *inter alia*, that the deposit has not been refunded.⁴⁵

4.11.17 Mr. Nigel Pagon, Chairman/CEO, GM Challenger, during a Judicial Hearing which was convened on August 7, 2015, advised the OCG of the following circumstances which led to GM Challenger's failure to deliver the five (5) 40-seater buses to the JDF:

CHAIRMAN/CEO ...have any vehicles been delivered by you to the Ministry of National Security?

Mr. Pagon No

⁴³ Letter dated July 20, 2015, from Major General Stewart Saunders, then Permanent Secretary, Ministry of National Security, to the then OCG, response #10.

⁴⁴ Letter dated July 20, 2015, from Major General Stewart Saunders, then Permanent Secretary, Ministry of National Security, to the then OCG. Response # 11

⁴⁵ Statement dated August 3, 2021, from Mr. Courtney Williams, Permanent Secretary, Ministry of National Security.



CHAIRMAN/CEO *What were you to have delivered to them exactly?*

Mr. Pagon *Five forty seater buses*

CHAIRMAN/CEO *...why was that not delivered?*

Mr. Pagon *The reason for that is, we had sent the deposit for the buses, for them, the manufacturers to start manufacturing the buses. During that period, you had, a situation where the price of oil I think moved to over a hundred dollars a barrel, now the negotiated price that we had with the Ministry of National Security consideration was given for freight charges per bus to be about nine thousand which we had gotten the quote from Lannaman & Morris. But upon when the bus was produced and ready to be shipped those shipping charges varied between sixteen of the twenty-one thousand dollars so we had written to the Ministry to ask them if they could revise the contract so that we could take care of the additional freight charges, which the Ministry could not have handled. And as a result of that, we tried our best to appeal to the Permanent Secretary at the time. ⁴⁶*

⁴⁶ Transcript of Judicial Hearing convened on August 7, 2015, involving Mr. Nigel Pagon, Chairman/CEO, GM Challenger, pages 5-8.



Chapter 4 – Conclusion

5 This chapter outlines the conclusions reached by the Director of Investigation.

5.1 Based upon a review of the documents and responses that were received, the DI has arrived at the following conclusions:

Jamaica Defence Force and GM Challenger

5.1.1 The DI concludes that the relevant Accounting Officers in the MNS and JDF and/or their designate, were grossly incompetent, at best, in their handling of the contracts outlined herein. The DI's conclusion is consequent upon the cavalier manner in which the JDF and/or MNS seemed to have conducted the affairs of those agencies touching and concerning the referenced procurement activities to the extent that they allowed the same entity (GM Challenger) to be twice paid deposits totaling approximately \$20 million for vehicles ordered but not supplied and that no refunds of those deposits have been received to date.

The DI further concludes that the foregoing is a clear breach of fiduciary on the part of the respective Accounting Officers, who, in contravention of the procurement rules, approved advance payments to GM Challenger without first obtaining the requisite advance payment security. The DI's position in this regard is further buttressed by the lack of urgency



on the part of the Accounting Officers to recover the funds paid over to GM Challenger. The DI finds it inexcusable that the Government of Jamaica, on behalf of taxpayers, remains out of pocket for over 14 years in one instance and over 7 years in the other.

- 5.1.2 The DI finds the justifications proffered by GM Challenger for failing to meet its contractual obligations and/or refund the deposits paid questionable at best if unacceptable.
- 5.1.3 The DI concludes that GM Challenger breached its contract with the JDF for the supply and maintenance of the referenced ambulance when it failed to supply the referenced Ambulance to the JDF by July 29, 2014.
- 5.1.4 The DI concludes that subsequent to GM Challenger's failure to deliver/supply and maintain the referenced ambulance, the JDF terminated the contract dated May 6, 2014, between itself and GM Challenger and communicated its demand to be refunded the deposit of J\$6,097,777.28 pursuant thereto.
- 5.1.5 The DI concludes that the JDF's decision to terminate the referenced contract on September 16, 2014, as a result of GM Challenger's failure to supply and maintain the referenced Ambulance, was justified in the circumstances.

The DI's conclusion is premised on Clause 35.1(a) of the referenced contract which detailed that the contract may be terminated in the



circumstances as outlined herein. The DI further concludes that GM Challenger was in fact acting in contravention to a substantive term of the contract to supply and maintain the referenced ambulance, and on that premise, JDF justifiably demanded a refund of the stated advanced payment.

- 5.1.6 The DI concludes that the Accounting Officer of the JDF breached Appendix, A7.6.3 of the Government of Jamaica Handbook of Public Sector Procurement Procedures (2014, GPPH). The DI's conclusion is premised upon the fact that an advance payment was made by the JDF to GM Challenger, in the amount of J\$6,097,777.28, for the supply and maintenance of the referenced ambulance, without first obtaining an advanced payment security from GM Challenger. Further, the DI concludes that the contract dated May 6, 2014, entered into between the JDF and GM Challenger, was not in accordance with the referenced procurement guidelines which also indicate that an advance payment shall be no more than 50% of the contract value; the referenced contract stipulated an advance payment of 60%.

Ministry of National Security and GM Challenger

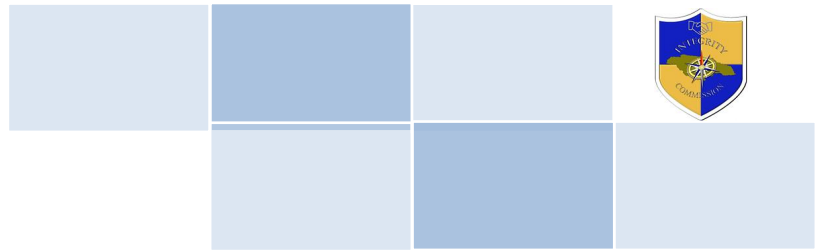
- 5.1.7 The DI concludes that GM Challenger failed to supply five (5) 40-seater Zonda Buses to the Ministry of National Security pursuant to the agreement made between the referenced Ministry and GM Challenger in July 2006. The failure on the part of GM Challenger to supply the referenced Zonda Buses constitutes a breach of the corresponding agreement.



5.1.8 The DI concludes that subsequent to GM Challenger's failure to deliver/supply the five (5) 40-Seater Buses, the then Permanent Secretary, MNS communicated to GM Challenger his demand to be refunded the deposit of J\$12,986,209.60 which remitted to GM Challenger in respect of the referenced Buses.

5.1.9 The DI concludes that the Accounting Officer in the MNS breached Appendix, A7.6.3 of the Government of Jamaica Handbook of Public Sector Procurement Procedures (2014, GPPH). The DI's conclusion is premised upon the fact that an advance payment was made by the MNS to GM Challenger without first obtaining an advanced payment security from GM Challenger.

5.1.10 The DI concludes that the process utilized by the Ministry of National Security to evaluate GM Challenger's bid was inadequate. The DI's conclusion is premised upon the lack of evidence indicating that GM Challenger's proposal was evaluated against the specifications for the 40-Seater Buses. Further, the Tender Evaluation Report did not detail whether the proposal submitted by GM Challenger met the requirements of the Ministry of National Security, on behalf of the JDF. The DI notes that the Tender Evaluation Report indicated, *inter alia*, that GM Challenger was selected as a result of being the only bidder and that through JDF's investigations, JUTA was utilizing the units without any serious problems and



that the price was in keeping with competitive market value. Though the DI acknowledges Major General Stewart Saunders' response dated July 20, 2015, indicating *inter alia* that the selection criteria for the Bidder was determined by: purchase price, technical specifications, dealership resources and delivery period, the referenced criteria was not reflected in the Tender Evaluation Report.



Chapter 5 – Recommendations

6.0 This chapter outlines the recommendations and corruption prevention initiatives identified by the Director of Investigation.

Recommendation to the Chief of Defence Staff of the Jamaica Defence Force

6.1 The DI recommends that the Chief of Defence Staff, JDF takes the necessary steps to ensure that Officers involved in the procurement process, possess the relevant expertise in, and that they comply with, the GoJ Public Sector Procurement Policies and other applicable policies and/or legislation. The DI's recommendation is premised upon the fact that an advance payment security was not obtained by the JDF, from GM Challenger, prior to providing GM Challenger with the advance payment, for the supply and maintenance of the ambulance. Additionally, the Contract between the JDF and GM Challenger indicated an advance payment of more than 50% of the contract value, which was in contravention of the Government of Jamaica Handbook of Public Sector Procurement Procedures (GPPH). The DI highlights that in relation to the advanced payment and security, the referenced guidelines were only consulted subsequent to the execution of the contract the JDF and GM Challenger, as indicated by Brigadier David Cummings.



- 6.2 The DI recommends that the Chief of Defence Staff, in so far as he is able, identifies the Accountable Officers responsible for the aforementioned breaches and/or consequential loss and pursue the necessary disciplinary actions to deter such conduct and/or minimize the occurrence of similar breaches in the future.

The DI further recommends that the Chief of Defence Staff implements a programme, if not already in existence, to allow for continual assessment(s) and refresher course(s) in the applicable procurement guidelines and legislative provisions. Where such a programme exists, it should be reviewed to ensure that it is sufficiently robust and fit for purpose.

Recommendation to the Permanent Secretary of the Ministry of National Security

- 6.3 The DI recommends that the Permanent Secretary in the Ministry of National Security ensures that its procurement procedures are in compliance with the Public Procurement Act and the Government of Jamaica Public Procurement Guidelines. The DI's recommendation is premised upon the fact that: (i) there is no evidence that the evaluation committee conducted a thorough and detailed evaluation of the Bid submitted by GM Challenger; (ii) there is no evidence to suggest that the MNS complied with the procurement rules in respect of the making of advance payments; and (iii) there is no evidence of a formal contract



between the Ministry of National Security and GM Challenger, for the provision of the five (5) 40-Seater Buses. In the latter regard, the DI further recommends that the Permanent Secretary ensures that any agreement reached for the provision of goods and services, (particularly for significant sums), be crystallized in a duly executed written contract with the necessary terms and conditions contained therein. In relation to the instant matter, the DI recommends that where Purchase Orders are utilized by the Ministry of National Security, that same be prepared in accordance with the applicable guidelines.

Recommendation to the Chief of Defence Staff, Jamaica Defence Force and the Permanent Secretary in the Ministry of National Security.

- 6.4 The DI recommends that an immediate review of the procurement processes utilized by the Ministry of National Security and the JDF be undertaken in order to ensure that:
- (a) GoJ funds which are earmarked for the procurement of goods and services are not misappropriated;
 - (b) All goods and services, which are procured and paid for are supplied; and
 - (c) To implement checks and balances for ensuring strict adherence to the provisions of contractual agreements and most importantly, the GoJ procurement policy and/or legislative provisions.



6.5 The DI recommends that before a contract is awarded to a contractor, their performance in previous contractual arrangements with the Government of Jamaica be examined and bears heavily on the decision to award a contract to the said contractor. The DI's recommendation is based upon the finding herein, that notwithstanding GM Challenger's failure to perform its contractual obligations under the 'GM Challenger/MNS 2006, contract'; GM Challenger was again awarded a contract in 2014, for the supply of similar goods and services. Furthermore, the monies advanced to GM Challenger as a deposit under the 2006 contract were not returned. This state of affairs is antithetical to the prudent management of public funds by both the MNS and the JDF.

Recommendation to the Public Procurement Commission

6.6 The DI further recommends that the Public Procurement Commission (PPC) adopts a performance based approach to its registration of contractors. This will ensure that only contractors who have a good track record of performance will be in a position to access public funds by way of government contracts. Performance based contractor registration may also bring about greater efficiency and healthy competition in public procurement.



Recommendation to the Attorney General

6.7 The DI refers a copy of this report to the Attorney General Chambers for such action as the learned Attorney General may deem to be necessary to, as far as money can do so, put the Government of Jamaica (JDF and MNS) in the position it would have been, had GM Challenger not breached its 2006 contract with the MNS and its 2014 contract with the JDF to supply 5 buses and an ambulance respectively. The DI also recommends that the learned Attorney General gives due consideration to the possibility of joining, where appropriate, the negligent officers in the JDF and the MNS in any action for breach of contract in respect of GM Challenger.

Kevon A. Stephenson, J.P.
Director of Investigation

October 6, 2021.



Appendices

Appendix 1

Section 2 of the Contractor General Act provides the following interpretations:

Government Contract – *“includes any licence, permit or other concession or authority issued by a public body or agreement entered into by a public body for the carrying out of building or other works or for the supply of any goods or services”*;

A Public Body refers to –

“ ...

- (a) *a Ministry, department or agency of government;*
- (b) *a statutory body or authority;*
- (c) *...”*

Section 4(1) of the Contractor General Act

“4.—(1) Subject to the provisions of this Act, it shall be the function of a Contractor-General, on behalf of Parliament—

- (a) to monitor the award and the implementation of government contracts with a view to ensuring that—*
 - (i) such contracts are awarded impartially and on merit;*
 - (ii) the circumstances in which each contract is awarded or, as the case may be, terminated, do not involve impropriety or irregularity;*



(iii) *without prejudice to the functions of any public body in relation to any contract, the implementation of each such contract conforms to the terms thereof; and*

(b) *to monitor the grant, issue, suspension or revocation of any prescribed licence, with a view to ensuring that the circumstances of such grant, issue, suspension or revocation do not involve impropriety or irregularity and, where appropriate, to examine whether such licence is used in accordance with the terms and conditions thereof."*

Section 15(1) of the Contractor General Act

"15.—(1) Subject to subsection (2), 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

"16. An investigation pursuant to section 15 may be 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."



Section 63 of the Integrity Commission Act

"63.—(1) Notwithstanding the amendment or repeal of an Act under this Part, as from the appointed day any legal proceedings or claims pending immediately before the appointed day, which, before the appointed day, were brought, continued or enforced by or against the Commission in the same manner as they would have been brought, continued or enforced before the appointed day.

(2) The Commission established under this Act may—

- (a) commence or assume any investigation, swear any information or commence or conduct any prosecution in respect of an offence committed, or alleged to be committed before the appointed day under a provision of either of the amended Acts that has been amended or repealed by this Act, or under the repealed Act, and each such amended or repealed provision and the repealed Act shall be deemed to remain in full force and effect, for the purposes of any such investigation, information and prosecution as it had been immediately before the appointed day; or*
- (b) continue to do any act, thing or investigation which was pending before the appointed day.*

(3) The Court shall, in respect of any proceedings instituted following any investigation under subsection (2), have all powers that it could exercise pursuant to the amended Acts and the repealed Act as if they remain in full force and effect."