



The Wide Powers of the Contractor-General

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The Government of Jamaica is one of the largest purchasers of goods and services within the Jamaican economy. As a result, individuals or companies usually submit bids and are awarded contracts by government entities based on specified criteria. It is not surprising that the Office of the Contractor General was set up to supervise the discharge of functions by public officers who award these contracts and the contractors who implement them.

Generally, the Contractor General has the power to monitor the award and implementation of government contracts. Specifically, this entitles the Contractor General to investigate the means by which contractors are registered with the National Contracts Commission (NCC), the processes under which bids are submitted and evaluated, the negotiation of contracts and the discharge of the contractual obligations by the successful parties. Accordingly, investigations are carried out into cost overruns and potential and/or actual conflicts of interest.

The Contractor General Act grants extensive investigative powers to the Contractor General. For instance, he may initiate investigations on his own accord and during investigations will have access to all documents and records belonging to the government whether these documents are in the possession of a contractor or an officer of a public body (except documents, the disclosure of which would prejudice the security or the defence of Jamaica). The Contractor General may also have access to premises on which government contracts are carried out and to documents which are in the possession of persons who are not public officers. After his entry onto such premises, the Contractor General has the power to retain documents or other property which he may deem necessary to the carrying out of his investigations. It is important to note that for the purposes of his investigations, the Contractor General has the power of a Judge of the Supreme Court in examining witnesses and requesting the production of documents.

While the Contractor General Act provides that the Contractor General "shall not be subject to the direction or control of any other person or authority", the reports resulting from his investigations are laid before Parliament if these reports recommend disciplinary action against a public officer. The findings of the report, as well as fair and accurate comments on the report, are the subject of absolute privilege. This means that a defamation action, based upon statements made by the Contractor General in his report to parliament, cannot be sustained.

The Contractor General's powers apply to public bodies such as ministries, government agencies, statutory bodies and companies in which the government is able to influence policy due to its shareholding. Case law interpreting the ambit of the Contractor General Act suggests that the Contractor General may even investigate contracts entered into by a company in which the government holds a minority interest provided that the government is in a position to influence the policy of the company.

There are certain contracts which are outside the purview of the Contractor General. For instance, he is precluded from monitoring the award and/or implementation of government contracts entered into for the purposes of defence or for the supply of equipment to the Jamaica Constabulary Force, the Jamaica Defence Force or the Island Special Constabulary Force. In addition, the courts have determined that the Contractor General does not have the power to monitor the award or implementation of contracts for the sale of land.

Generally, the Contractor General plays an important supervisory role in the public sector, however, his actions and decisions could have consequences in the private sector. Private entities may not only experience a public relations nightmare but may also be found liable for criminal offences. It is incumbent on private sector contractors to become knowledgeable of the Contractor General's powers, government procurement guidelines and the statutory framework dealing with corruption prevention. In this regard, it may be time for companies to develop internal best practices to ensure that they do not become the subject of an investigation by the Contractor General.

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