

2013

Ministry of Local
Government and
Community
Development

By: Ministry Investigation
Team

FINAL REPORT ON THE INVESTIGATION INTO THE OPERATIONS OF THE MARKETS AND OTHER PROJECTS UNDER THE JURISDICTION OF THE CLARENDON PARISH COUNCIL

Dated June 19, 2013

REPORT ON THE INVESTIGATION INTO THE OPERATIONS OF THE MARKETS AND OTHER PROJECTS UNDER THE JURISDICTION OF THE CLARENDON PARISH COUNCIL

EXECUTIVE SUMMARY

The investigation into the construction of temporary shops in the Spaldings Market in Clarendon emanated from the publication of an article published April 7, 2013 in the Sunday Gleaner entitled "Mystery shops and a meddling minister - Contractor collecting rent for buildings in Spalding Market; rent money paid to agent at government minister's constituency office".

A Team was mandated by the Permanent Secretary in the Ministry of Local Government and Community Development to conduct an investigation into the following:

- (1) Operation of the Spaldings, May Pen and Chapelton markets and other projects between the period January 2010- April 2013;
- (2) The procurement process and the award of contracts to construct and /or repair shops and rental of same in these markets and other projects;
- (3) To assess the role of the Secretary /Manager and other officers of the Clarendon Parish Council in respect of the operation and management of these markets and other projects;
- (4) To assess the role of the Finance and Estate, Commercial Services, Planning and Development, Procurement and Roads & Works Committees of Council in the operation and management of these markets and other projects;
- (5) To make an assessment of the findings and make recommendations as it relates to the proper procedure and processes to be followed in respect of the award of contracts and the operation and management of these markets and other projects; and
- (6) To submit a formal report to the Permanent Secretary and the Hon. Minister of Local Government and Community Development as it relates to the appropriate action to be taken.

Interviews were conducted with several employees of the Parish Council, the Political Directorate and other individuals. Most importantly, the team was able to interview the contractor, Mr. John Bryant.

It is important to note that while the Terms of Reference indicated that the team would look at other projects under the jurisdiction of the Clarendon Parish Council, the focus of this report is on the investigation into the construction and rental of temporary shops at the Spaldings Market.

However, this investigation revealed serious concerns about the use of Force Account procurement method by the Clarendon Parish Council in the construction of Phase One of the market. Accordingly, the Ministry's Technical Services and Major Projects Unit was asked to review the documentation and provide a response. The details of their report, while summarized herein are attached in the Appendices.

That Unit also conducted a site visit to the Spaldings Market where they conducted an assessment on the work previously done on the temporary shops with a view to determine quality and cost. The details of their report, while summarized herein are attached in the Appendices.

FINDINGS FROM INVESTIGATION

- Hon. Minister Azan was aware of the existence of the temporary shops at least as early as September 4, 2012 as he indicated that on his return to Spaldings on that date the Contractor had presented to him a model shop which he suggested could be used to accommodate the vendors.
- According to Minister Azan, meetings were held with the Clarendon Parish Council in or about the third week of September 2012 with a view to discuss the proposals for the temporary shops and for Council to take over management of same. The Officers

of Council and the Mayor contend that this meeting was to discuss variation work and payment;

- Officers of the Clarendon Parish Council knew of the existence of the temporary shops at least as early as September 4, 2012 but certainly became aware on the day of the Opening Ceremony for the market on September 5, 2012;
- By his own admission, the Mayor knew of the existence of the shops on the day of the opening ceremony and by October 2012 he was advised of the shops being leased by the Commercial Services Manager and that the rental amounts were being paid into Minister Azan's Constituency Office;
- By his own admission, the Contractor built the shops without the knowledge or approval of the Minister Azan or the Clarendon Parish Council;
- The registration of vendors was facilitated at Minister Azan's constituency office;
- Rental amounts were paid to a secretary in Minister Azan's constituency office who then remitted same to the Contractor and Minister Azan was aware of this;
- No steps were taken by Council to have the shops removed by the Contractor;
- All the proceeds from the rental of the shops have been paid over to Council;

GENERAL RECOMMENDATIONS

Governance

Procurement

- A more progressively elaborated, comprehensive and robust procurement policy, process and procedures to guide the utilization of the Force Account Procurement Method for

implementation of projects by Local Authorities and other procuring entities to include but not limited to :

- (a) Definition, standardization, orientation and understanding of the method;
 - (b) Justification for the use of this methodology;
 - (c) Circumstances in which this method should be utilized;
 - (d) Threshold value stipulations for this method if required and
 - (e) Reporting Requirements
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- Rigorous monitoring of award of contracts with Special Audits being conducted in the use of Force Account Procurement Methodology for such awards in all Local Authorities.
 - Tendency of fragmenting contracts needs to be eliminated.
 - Reorganization of the Procurement Committee in keeping with the Guidelines. A Councillor may sit on the Procurement Committee, provided that the conflict of interest provisions contained in the GOJ Procurement Handbook and the Parish Council Act are not contravened. Councillors shall not chair the Procurement Committee and shall not comprise more than 40% of the Committee's membership. (There is no Councillor on the committee at present). The reorganization will mitigate duplication of roles in the procurement process and any perceived conflict of interest.
 - A Procurement Unit to include a designated position of Procurement Officer be established in all Councils to ensure clearly demarcated roles in the procurement process, recommendation and award and supervision of contracts.
 - Increased due diligence in the preparation of bids during the planning phase and prior to the award of contract to avoid or eliminate variations- changes in the deliverables under the original contract
 - Appropriate Action to be taken for non-compliance with GOJ Procurement Reporting Requirements.

Accountability, Management and Financial Responsibility

- It is recommended that Forensic Audit be conducted in respect of the operations of the Clarendon Parish Council.
- A comprehensive management and supervision of Councils properties, assets and regular monitoring of projects and of the inventory of assets.
- A projectized plan for the management, financial viability and revenue capability of commercial services entities of Council
- Enforcement and zero tolerance approach to encroachment on Council's property.

Reinstatement of a Commercial Services Manager with the requisite competencies and skills and support staff should be expedited by Council.

- Committee Operations- There is a need for the Commercial Services Committee and other identified committees such as Planning to undertake site visits to their portfolio operations so as to better understand on a first hand basis, what is actually taking place. They would thus be in a better position to understand their subject matter and not be totally reliant on the reports of the technical staff.
- Committees of Council must start to operate more strategically rather than simply addressing matters being brought before them. Consequently, they must mandate the preparation and delivery of operational and strategic plans which they will then use to assess performance particularly of key areas of the council's operations.
- The proper preparation of reports and Minutes need to be taught to key staff members of the Councils given the importance of such records for posterity, forward planning, legislative action and other related matters.
- A more vigilant, time-sensitive and business- like approach to address matters that concern the Council in general and its operations. Council's revenue was being collected and managed without its approval for too long, over 6 months.

- The decisions to be made by Council in respect of the temporary shops should be made in light of the following considerations:-
 - a. The overall development plan for the township of Spaldings including the market transportation centre;
 - b. The development programme being considered with JSIF;
 - c. The plans for the re-vitalization of the markets in the parish.
 - d. Recommendations from Council's Planning Unit
 - e. Recommendations from the Report of the Ministry's Technical Services and Major Project's Unit
 - f. Interests of local self-management and community participation in governance

Planning and Sustainable Development

- Planning approvals should be done in Council and approvals out of session should be avoided to ensure that there is adequate deliberation of such matters as well as to embrace transparency.
- Planning Department should be consulted on all matters within its remit –including regularization of breaches.
- A more coordinated approach and plan in implementing projects that involve other agencies, Programmes such as (JEEP) and other stakeholders including the citizens and the Members of Parliament.

BACKGROUND

The subject of this investigation has been in the public domain since the publication of an article published April 7, 2013 in the Sunday Gleaner entitled "Mystery shops and a meddling minister - Contractor collecting rent for buildings in Spalding Market; rent money paid to agent at government minister's constituency office".

The team conducted interviews, a site visit and a review of documentation including but not limited to copies of tender documents, contracts, invoices, rent receipts and any other documentation which were deemed relevant to this investigation.

The Technical Services Unit in the Ministry of Local Government and Community Development conducted a site visit to the Spaldings Market, with a view to assess the works previously done on the shops and to determine quality and cost . The Unit provided a report on the construction work in respect of the ten shops which are the subject of the investigation.

It is important to note that while the Terms of Reference indicated that the team would look at other projects under the jurisdiction of the Clarendon Parish Council, the focus of this report is on the investigation into the construction and rental of temporary shops at the Spaldings Market.

SCOPE OF THE INVESTIGATION

By Memorandum dated April 19, 2013, the Team was asked to conduct an investigation into the following:

- Operation of the Spaldings, May Pen and Chapelton markets and other projects between the period January 2010- April 2013;
- The procurement process and the award of contracts to construct and /or repair shops and rental of same in these markets and other projects;
- To assess the role of the Secretary /Manager and other officers of the Clarendon Parish Council in respect of the operation and management of these markets and other projects;
- To assess the role of the Finance and Estate, Commercial Services, Planning and Development, Procurement and Roads & Works Committees of Council in the operation and management of these markets and other projects;

- To make an assessment of the findings and make recommendations as it relates to the proper procedure and processes to be followed in respect of the award of contracts and the operation and management of these markets and other projects; and
- To submit a formal report to the Permanent Secretary and the Hon. Minister of Local Government and Community Development as it relates to the appropriate action to be taken.

METHODOLOGY

The team conducted over thirteen (13) interviews with a view to obtaining first-hand information from the following persons:

Employees of the Parish Council to include

- Secretary/Manager
- Director of Finance
- Superintendent of Parochial Roads and Works
- Deputy Superintendent of Parochial Roads and Works
- Director of Planning

Political Directorate

- His Worship the Mayor, Scean Barnswell
- Councillor Winston Maragh Minority Leader
- Councillor Gavin Hayles, Chairman of the Planning and Development Committee
- Hon. Richard Azan, M.P. Minister of State, Ministry of Transport, Works and Housing

Other individuals

- Mr. John Bryant, Contractor
- Three Lessees of three of the temporary shops and other Vendors at the Spaldings Market

The team reviewed documentation and files that were available and in the guardianship of the Council at the time of the team's investigation. A review of a taped interview between host,

Emily Crooks and Hon. Minister Azan on Nationwide Radio Programme "This Morning". The interview was conducted on around the morning of Monday, April 8, 2013, a day after the published Sunday Gleaner article.

A site visit was also conducted by the investigation team members, in order to view the shops and interview the lessees and vendors at the Spaldings Market. Another visit was made to the Spaldings market by a team from the Ministry's Technical Department.

LIMITATIONS

The findings and recommendations of the Team are based in part on information received following interviews with the following persons (in the order in which they were interviewed) details of which are set out below. It must be noted however, that the reports are not verbatim and reflect a representation of the interviewers' notes. Additionally, the team was unable to interview the former Commercial Services Manager. The Secretary in the NW Clarendon Constituency Office and the former Secretary/Manager Clarendon Parish Council were ill and interviews were not conducted as a result of this. In addition, it should be mentioned that documents (files, minutes, vouchers among others) required for clarification purposes and further reconnaissance were not available to the Ministry's Investigation team due to the fact that a number of them were requisitioned by and were in the custody of the Office of the Contractor General personnel

RESULTS OF INTERVIEWS

JOHN BRYANT-CONTRACTOR

1. An interview was conducted on Monday, the 15th of April 2013 with Mr. John Bryant, the contractor at the centre of the investigation. He reported to the team that he had been a registered contractor since the 1990s and was a Grade IV contractor in the area of Construction. He is registered with the National Contracts Commission.

2. He had participated in the tender exercise and in July 2012 was awarded the contract for Phase 1 of the rehabilitation of Spaldings Market and started the work. He further reported that the contract received for carrying out works at the Spaldings Market took three (3) to four (4) months to execute and finalized spanning the months of July to October 2012.
3. He indicated that the detailed scope of works undertaken were – grill work for the market; putting in a sewerage system and preliminary work on the road infrastructure within the market (mall was laid down, graded and leveled).
4. Mr. Bryant, when questioned, indicated that at the time of the interview he had not received full payment for the works undertaken and presented to the team a bill detailing variation in the sum of \$2.155M for which, he has to date, received payment of \$600,000. Mr. Bryant also indicated that he is yet to receive the retention amount of about \$320,000. It should be noted that, subsequent to being interviewed the retention monies were paid and the variation was reduced to \$1.382M.
5. It is important to note that when questioned about the temporary shops at the Spalding Market Mr. Bryant indicated as follows:
 - Persons in Spaldings had communicated to him that they were having difficulty with the police while vending on the streets and there was the need for shops. He indicated to them that he would speak to the Hon. Richard Azan, Member of Parliament for North West Clarendon.
 - He thereafter raised the idea of the temporary shops with MP Azan during the opening ceremony for the Spalding Market and the MP had indicated to him that he would discuss the idea with the Council; It is of note that on the day of the opening of the market, model shops were available for viewing and hence this reported statement appears inaccurate.
 - He went ahead and constructed ten (10) shops (3 duplex and 1 quad) without the knowledge or approval of the MP or Council;
 - The ten (10) shops so constructed were valued at \$1.8M;

- He is of the opinion that although the construction of the shops took place with the knowledge of the Council's Management, Council must have been aware as officers were always passing through;
- A woman by the name of Bridgette (from MP, Mr. Azan constituency office) was asked to oversee the selection of persons for rental of the temporary shops and for collecting the rental. Bridgette was then to remit the money to him. The arrangement was that Bridgette would telephone him and request that he collect the money.
- He admitted to making two (2) mistakes namely, constructing the shops without the approval of the Council and renting the said shops;
- Rental monies amounting to \$213,000 collected was turned over to the Council and this represented all the monies collected;
- He stated that the shops were made of T4 ply and with proper care will last in excess of two (2) years;
- He stated that he became acquainted with the MP only during the works carried out by him at the Spalding Market;
- He indicated that even though it is not what is preferred, if it is required, he is prepared to cut his losses since he accepts that the shops were built without the requisite approval of the Council.

ROWHAN BLAKE- ACTING SECRETARY/MANAGER

On Monday, the 15th of April 2013, the team interviewed the Acting Secretary/Manager, Mr. Rowhan Blake and the following is a summary of his responses:

- Mr. Bryant was selected to complete the 1st phase of the Spaldings Market in March 2012. The original contract sum for the works to be undertaken was \$3,257,800M. The works to be undertaken by Mr. Bryant had to do with the basement section of the market and involved the following:
 - (a) Work carried out on the roadway within the market;
 - (b) Grill work;

- (c) Electrical installation works;
- (d) Putting in a sewerage disposal system.

- Mr. Blake indicated that there was variation to the original scope of work having to do with the sewerage system in the amount of \$1,378,840;
- The market was officially opened in September 2012;
- Mr. Blake indicated that prior to the works undertaken by Mr. Bryant other works were carried out at the market using the Force Account method. It was the recommendation of the Superintendent of Parochial Roads and Work to utilize the Force Account Method and this was approved by the former Secretary/ Manager, Mrs. Judy Lawrence.
- The initial value of the works carried out using the Force Account method was approximately \$3.8M and included the following:
 - (a) Bushing & drainage works;
 - (b) Earth excavation;
 - (c) Sub-basement works;
 - (d) Construction of retaining wall;
 - (e) Grill works;
 - (f) Installation of doors;
 - (g) Floor finishing;
 - (h) Plumbing works

- Mr. Blake explained that the management of the markets is the responsibility of the Commercial Services Manager (CSM). The CSM is expected to establish the revenue target for the Council and to supervise the Collectors so as to ensure that the said targets are met.

- As it relates to the temporary shops at the Spaldings Market, he became aware of the existence of the said shops during a visit to the market in December 2012. Mr. Blake said that the CSM must have been aware of the existence of the temporary shops at the market prior to December 2012 since he had made several visits to the market as evidenced by submitted mileage claims. The CSM was formally instructed

to resolve the situation of the temporary shops but failed to take any meaningful action to do so. Mr. Blake stated that it was for this reason along with the general poor performance that informed the decision of the Council not to renew the contract of the CSM which had expired in January 2013;

- Mr. Blake made a number of recommendations that in his opinion would impact positively on the operations of the markets and the revenue earned. They are as follows:
 - (a) Recruiting of a CSM who is prepared to spend the substantial part of his/her time at the markets;
 - (b) Registering all vendors;
 - (c) Increase the enforcement activities;
 - (d) Acquiring an additional motor vehicle that will enable the simultaneous monitoring of markets and towns;
 - (e) Shops are to be provided with their own meters facilitate individual billing for electricity usage.]

MR. GAVIN HAYNES, COUNCILLOR & CHAIRMAN, PLANNING & DEVELOPMENT COMMITTEE

An Interview was conducted on Monday, the 15th of April 2013 with Councillor Haynes, Chairman of the Planning and Development Committee and his response is set out below:

- Mr. Haynes indicated that the Planning & Development Committee consists of all Councillors (full Council) and deliberate on the way in which the parish is designed (layout) and consider plans submitted for the erection of buildings with a view to approve same if the criterion are met;
- He stated that plans for the construction of markets would only come before the committee if the markets are to be concrete structures;
- Mr. Haynes indicated that the plans for the Spaldings Market did not come before the committee for consideration and possible approval and accepted that all

plans probably should come before the committee even in instances when the works will be executed by Force Account in part or of the whole.

HIS WORSHIP THE MAYOR SCEAN BARNSWELL

On Tuesday, the 16th of April 2013, His Worship the Mayor Scean Barnswell was interviewed by the team. This interview was conducted in the presence of Mayor Barnswell's legal representative, Mr. Seymour Stewart. Mayor Barnswell offered the following responses to our questions:

- He indicated that there was a current drive to ensure that markets are properly organized and managed. To this end, the process of registering vendors is underway and vendors will be differentiated by way of colour coding that is vendors who sell ground produce and vegetables will be given a different colour from those that sells dry goods etc.;
- He stated that about five (5) markets are operational (Chapleton, Kellits, May Pen, Spaldings and Rocky Point) and of the five (5), none are currently profitable and it is not envisaged that any of the five (5) can be profitable using the existing model;
- He further stated that for the markets to be profitable it will require a shift away from the concept under which the markets currently operates; for example the leasing of the cold storage facility at the Kellits Market in order to earn revenue;
- He indicated that while efforts are being made to boost revenue, steps are also being taken to contain cost. For example, at the May Pen market, the installation of the metre centre will allow the Council to determine the electricity usage for each user within the market. This will enable the Council to bill each user based on their consumption. Additionally, the metre centre also allows the Council to disrupt the electricity service to users who are in arrears;

- He further indicated that there is a drive to get rid of illegal buildings erected on the Council's property. The Council has sought to improve the relationship with vendors and this has resulted in the provision of information by the said vendors in respect to the existence of illegal buildings;
- As it relates to the Spaldings Market, the Mayor stated that he first became aware of the temporary shops at the official opening ceremony for the completed phase one (1) of the market that took place on the 5th of September 2012. The temporary shops, four (4) in all, two (2) complete and two (2) in construction were seen and presented as model shops;
- He further stated that it was in October 2012 that he became aware of the temporary shops being leased. In discussions with the Commercial Services Manager (CSM) he was advised by him that he had seen a copy of a lease. The CSM further advised him that the monies for the leasing of the temporary shops was being collected at the Constituency Office of MP Azan;
- The Mayor indicated that the matter of the erection of the temporary shops and the leasing of same was officially discussed at the November 2012 Commercial Services Committee Meeting. At this meeting he had sought to get information on the temporary shops from the CSM but was unsuccessful as the CSM stormed out of the meeting without providing the information;
- The Mayor indicated that it was not until January 2013 in a meeting with Mr. Bryant (the Contractor) that he was aware that the number of shops had increased from four (4) to ten (10) shops. In that meeting the Contractor advised him that persons had approached him about building the shops and he had discussed the idea with MP Azan who said it was a good idea;
- The Mayor further indicated that the discussion with the Contractor also centered around two options concerning the shops- leasing the shops and the purchase of

same from the Contractor. The contractor indicated that if Council wanted to buy the shops from him then he would sell them.

- The Mayor requested that the Contractor submit the costs to build the shops and Council would look at it and discuss it. The Contractor valued the temporary shops at \$2.5M and he was of the opinion that the value quoted by the Contractor was excessive;
- He also stated that in a recent meeting of the Finance Committee it was agreed by the members in attendance that the shops had some value and should not be demolished and it was suggested that the Contractor should be paid for the temporary shops;
- The Mayor indicated that no final position has been taken in respect to the way forward in resolving the issues related to the temporary shops and what to do with the shops. However, if the decision taken is to assume ownership of the shops then Mr. Bryant will be paid for the shops net the recovery of any associated cost and the payment will be made in installments over a period of twelve (12) to twenty four (24) months;
- The Mayor indicated that the matter escalated into what it is now because the CSM failed to act and to act decisively when instructed to resolve the matter. It was also mentioned that it is because of the CSM poor performance in this matter of the temporary shops and in general that led to the decision not to renew his contract. In sum, the CSM's contract was not renewed due to dereliction of duty and behaviour.
- When contacted by telephone on June 10, 2013 he indicated that there was a meeting with MP Azan in late September but this meeting concerned variation works in respect of the Spaldings Market and not the model shops.

- The Mayor also raised some concerns about other projects that were carried out by the Clarendon Parish Council such as:
 - (a) Employment contract and evaluation- Mr. Ralston Peters (former Commercial Services Manager)Erection of Claro/Digicel Cell Tower site in May Pen
 - (b) Permit Parking System for May Pen with contractor, Mr. Ian Reid
 - (c) Housing Development by Jugganant
 - (d) Summer Employment Programme for 2010-2013
 - (e) Minor Water Supply Programme
 - (f) Work conducted in respect of the Mineral Heights round-a-bout

GARFIELD THOMPSON-DEPUTY SUPERINTENDENT OF ROADS & WORKS AND CHAIRMAN OF PROCUREMENT COMMITTEE

Mr. Thompson was interviewed on Tuesday, the 16th of April 2013 and re-interviewed on Tuesday, the 23rd of April 2013. His responses to questions posed during the interviews are highlighted below:

- In his first interview, indicated that he became aware of the existence of the temporary shops on September 5, 2012. He admitted to seeing an incomplete structure on blocks and believed that it was there for exhibition purposes.
- He further stated that in a meeting of the Commercial Services Committee (CSC) the Commercial Services Manager (CSM) was formally instructed to regularize the situation having to do with the temporary shops at the Spaldings Market.

In the interview conducted on 23rd April, 2013, it was revealed that:

- He acted as Superintendent of Roads & Works for the period the 2nd of August 2012 to the 7th of September 2012 vice the Superintendent of Roads & Works who was off on vacation leave and was acting as the Superintendent of Roads & Works during phase one (1) of the construction work taking place at the Spaldings Market;
- He indicated that he was unable to state definitively when the contract of works to be executed by Mr. Bryant started but suggested that since the contract was signed off on the 2nd of July 2012 work would have started within a week of signing the contract that is the 9th of July 2012;
- He further indicated that he was unable to state the specific period for which the Force Account work had taken place but was certain that there was an overlap between the Force Account work and the work undertaken by Mr. Bryant under his contract ;
- He stated that while acting as the Superintendent of Roads & Works he visited the Spaldings Market site probably twice but admitted that he was uncertain of the number of times that he had actually visited the Spalding Market site since he had lost/misplaced the diary used for making notes;
- He indicated that the asphaltting of the Spaldings Market was done through the Jamaica Emergency Employment Programme (JEEP) overseen by the National Works Agency (NWA). The financing of the asphaltting of the Spalding Market was done at no cost to the Council;
- He stated that he attended a meeting in August 2012 at the office of the Jamaica Social Investment Fund (JSIF). The meeting was held to have discussions on phase two (2) of works to be undertaken at the Spalding Market. Some of the attendees at that meeting were:
 - (a) The Hon. Mr. Azan, MP;
 - (b) Mr. Wayne Brown, Acting Secretary/Manager;

- (c) The Hon. Mr. Scean Barnswell, Mayor;
 - (d) Mr. Jumaane Robinson, Director of Planning;
 - (e) JSIF Representatives.
- It was at this meeting held at the JSIF's Office that MP Azan hinted that he was contemplating the opening of the Spalding Market in September 2012. It was also at this meeting on the August 2012 2012 that he became aware that there would be an official ceremony to open the recently completed phase one (1) of the Spaldings Market and that the Council was not involved in the planning activities leading up to the official opening ceremony for the Spaldings Market. He further stated that he mentioned to Minister Azan to delay the opening as there was no electricity at the facility. However, the power supply was put in place on September 5, 2012;
 - On the 3rd of September 2012 final inspection of electrical works (*prior to the official opening of the market*);
 - As it relates to the adjusted variation order of \$1.382M submitted by Mr. Bryant, he was uncertain that he went on site to examine the works done so as to certify the correctness and value of the variation order claim;
 - In his capacity as Chairman of the Procurement Committee he made a number of visits to the Spaldings Market as follows:
 - (a) On the 18th of July 2012 inspection of electrical works carried out;
 - (b) On the 10th of August 2012 inspection of grill work done;
 - (c) On the 20th of August 2012 along with the Director of Planning carried out a site visit;
 - He stated that invitation to tender for Phase One (1) of the works would have been advertised by way of notices placed on notice boards at the Post Office and at the Council's Office and suggested that it would have been through the advertisement placed on the notice boards that would have informed Mr. Bryant and led to the submission of the tender documents;

WAYNE BROWN-DIRECTOR OF FINANCE

Mr. Brown was interviewed on Tuesday the 16th of April 2013 and re-interviewed on Monday, April 23, 2013. A short telephone interview was conducted on Monday, June 10, 2013 to provide clarification on an issue raised by Hon. Minister Azan. In response to our questions, Mr. Brown made the following submissions:

- He stated that he acted as Secretary/Manager during the period of the week commencing the 30th of July to the 10th of September 2012 and on assuming the desk of Secretary/Manager (Acting) he received no report (verbal or written) nor did he request any such report as it relates to works being undertaken at the Spalding Market from the Deputy Superintendent of Roads & Works;
- He further stated that he was unaware of the planned opening of the Spaldings Market prior to the then targeted date.
- He also stated that there were no participants from the Council's Administrative Staff in the planning of the official opening ceremony of the Spaldings Market and the following Administrative Staff were present at the official opening ceremony. They are as follows:
 - (a) Mr. Wayne Brown, Acting Secretary/Manager;
 - (b) Mr. Garfield Thompson, Acting Superintendent of Roads & Works;
 - (c) Mr. Jumaane Robinson, Director of Planning; and
 - (d) Mr. Peters, Commercial Services Manager.
- He indicated that he was present at the official opening ceremony for Phase One (1) of the Spaldings Market and had seen a temporary shop under construction but did not enquire who was building the shop;
- He was unable to confirm that MP Azan during his presentation made any reference to the said 'model' shop;

- He was adamant that the then CSM must have known of the existence of the temporary shops prior to the official opening ceremony in September 2012 since he had submitted several mileage claims leading up to September 2012;
- He stated that he was not informed formally or informally of the temporary shops at the Spaldings Market. It was later that he learned that the contractor was building the shops but was not formally apprised;
- He is a member of the Commercial Service Committee (CSC) and that there was no meeting of the CSC during the month of October 2012 due to the passing of Hurricane Sandy;
- He indicated that the Accounts Department had received a variation order from Mr. Bryant concerning works undertaken at the Spaldings Market in the amount of approximately \$1.2M and of which, \$600,000 has been paid. In addition, the cheque for the retention amount for the original contract sum was drawn on the 12th of April 2013;
- He stated that Mr. Bryant has been involved in other Council related works such as road/drain projects and other projects financed through MP Azan CDF disbursed funds.
- He indicated that there was a meeting with MP Azan in late September but this meeting concerned variation works and payment in respect of the Spaldings Market and not the model shops.

WAYNE MITCHELL-SUPERINTENDENT OF ROADS & WORKS

Mr. Mitchell was interviewed on on Tuesday, the 16th of April 2013. A short telephone interview was conducted on June 10, 2013 to discuss an issue raised by Hon. Minister Azan during his interview. During the interview Mr. Mitchell offered the following responses:

- He indicated that he was on vacation leave during the official opening of Phase One (1) of the Spalding Market but watched the ceremony on television and noticed the temporary structures in the background;
- He stated that on resumption in September 2012 he made enquiries about the temporary shops constructed and was told that the temporary shops were intended to be 'models' constructed by Mr. Bryant based on an understanding with MP Azan;
- He also stated that he had discussion with the then Secretary/Manager (Ms. Lawrence) who indicated that she had no interest in the matter of the temporary shops being constructed without being approved by the Council;
- He further stated that he also had discussions with the CSM who told him that he was instructed to regularize the situation of the temporary shops at the Spaldings Market;
- In a discussion with Mr. Bryant he was advised by him that the temporary shops had nothing to do with the Council and was an arrangement between himself and MP Azan; and that discussion was taking place with the then Acting Secretary/Manager to regularize the situation as regards the temporary shops;
- Concerning the assessment of the value of the temporary shops he reported that this was done by an experienced Building Officer and then submitted to the Superintendent of Roads & Works;
- He reported that in light of the site visit conducted on the 15th of April 2013 he is of the opinion that a reduction in the previous estimated value of the temporary shops was in order and suggested a review estimate of about \$85,000 per unit was advanced;
- He indicated that the additional work done on the Spaldings Market was valued in excess of \$2.15M but was not supported by him and was reduced to \$1.4M; of this amount of \$1.4M an amount of \$600,000 has been paid.

- He indicated that there was a meeting with MP Azan in late September but this meeting concerned variation works in respect of the Spaldings Market and not the model shops.

JUMAANE ROBINSON- DIRECTOR OF PLANNING

Mr. Robinson was interviewed on Tuesday, the 23rd of April 2013 and offered the following responses:

- He stated that he is the Clerk of the Planning & Development Committee and it is his responsibility to schedule meeting of the Committee and to brief Committee members;
- He further stated that the official opening ceremony for Phase One (1) of the Spaldings Market was mentioned by Councilor Trevor Gordon during the PDC meeting on the 6th of September 2012;
- He stated that phase two (2) planning documents for the Spaldings Market was approved out of session in January 2013 by the Mayor and the Secretary/Manager as permitted by the bye-laws of Council and ratified at the next meeting of the PDC in February 2013;
- The Phase two (2) planning documents were initially approved out of session so as to facilitate meeting a deadline imposed by JSIF;
- He was instructed by Mr. Wayne Brown in his capacity as Acting Secretary/Manager to assist Mr. Garfield Thompson (Deputy Superintendent of Parochial Roads and Works) as it relates to the proposal for Phase Two (2) of the Spaldings Market which resulted in the officers (Robinson/Thompson) carrying out a site inspection of the Spaldings Market on the 20th of August 2012.

- He attended a meeting on the 22nd of August 2012 at the JSIF office and the following persons were in attendance:
 - (a) Mr. Wayne Brown, Acting Secretary/Manager;
 - (b) Mr. Garfield Thompson, Acting Superintendent of Roads & Works;
 - (c) Hon. Mr. Azan, MP;
 - (d) JSIF Representatives

- He was informed via the telephone by Mr. Wayne Brown on the 3rd or 4th of September 2012 of the opening ceremony of phase one (1) of the Spaldings Market;

- He advised that the official opening ceremony took place on the afternoon of the 5th of September 2012 and while at the ceremony the following observations were made:
 - (a) The parking area was complete;
 - (b) An unfinished temporary structure (no roof) of which one half was made of wood and the wooden portion of the structure was being painted.

- He stated that the Mayor mentioned in the Planning and Development Committee meeting of the 6th of October 2012 that emphasis should be on the Transportation Center;

- He proceeded on vacation leave on the 29th of October 2012 and resumed on the 28th of November 2012;

- He stated that he became aware of the temporary shops at the Spaldings Market via the media and convened a meeting of all members of the Planning Department on the 8th of April 2013. In that meeting of the 8th of April 2013 he questioned whether anyone was aware of the existence of the temporary shops at the Spaldings Market and was there any building plan for the temporary shops. His staff was unaware of any such plans or the existence of the shops;

- He advised that temporary structures like shops require that a planning and building application be submitted to Council;

- He was of the opinion that the Planning Department has a role to play in regularizing the situation of the temporary shops at the Spaldings Market but made it very clear that neither he nor any member of his staff was consulted on the matter;
- At the Heads of Department meeting on the 15th of April 2013 the Secretary/Manager briefed the senior managers on the developments as it relate to the temporary shops at the Spaldings Market and advanced what has to be done going forward;
- He offered the following observations and recommendation:
 - The temporary shops as they now exist are impeding on the parking spaces;
 - The temporary shops are located too close to the area designated for drainage;
 - The temporary shops should not be regularized since in the proposal for phase two nineteen shops have been earmarked for construction in addition to ten more shops to be built in the Transportation Centre).

WINSTON MARAGH- COUNCILLOR –ROCKY POINT DIVISION & MINORITY LEADER

This interview was conducted on Monday, the 29th of April 2013 and Councillor Maragh offered the following responses:

- He first learnt of the temporary shops at the Spaldings Market at the Finance Committee meeting held on Thursday, the 28th of March 2013. The information was provided by Mayor Mr. Sceán Barnswell who told the attendees at the Finance Committee meeting that he had received a letter from the Contractor (Mr. Bryant) in regards to the temporary shops constructed by him;
- He stated that the former Commercial Services Manager (Mr. Peters) at the March 2013 Finance Committee meeting had submitted proposals having to do with the rental fee to be charged for the temporary shops. In light of the proposals submitted by the former Commercial Services Manager (CSM),

they were led to believe that these shops were a part of the approved Phase One (1) works at the Spaldings Market;

- He stated that at the March 2013 Finance Committee meeting it was one of the Councillors from the North who advanced that perhaps someone gave permission. When pressed as to who gave permission, it was said MP Azan.
- At the March 2013 Finance Committee meeting the Mayor Mr. Scean Barnswell reported that the following actions are to be taken as regards the temporary shops at the Spaldings Market:
 - (a) The Contractor (Mr. Bryant) will be compensated for the temporary shops;
 - (b) The temporary shops are to be taken over by the Council;
 - (c) The Superintendent of Roads & Works has been instructed to undertake a valuation of the temporary shops so as to decide on the compensation to be paid to the Contractor (Mr. Bryant);
- He admitted that there is definitely a need for the temporary shops but was not in support of the process which led to the shops being constructed and how the Mayor was seeking to impose the matter on Council members;
- He also stated that no money should have been collected at the Constituency Office for rental for shops that were built on Parish Council property;
- He mentioned that Councillor Reynolds had suggested that Contractor Bryant should have been locked up for building the temporary shops without the Council's permission and approval;
- He stated that the matter of the temporary shops at the Spaldings Market was raised in February 2013 by the Commercial Services Manager (CSM) and Deputy Mayor Purcell questioned who built the shops;

- He further stated that at the April 2013 Finance Committee meeting the disclosure was made that a CSM is to be recruited and Mr. Maragh had asked what informed the decision to recruit a CSM that is was there any empirical evidence or otherwise that a CSM would be able to improve on the revenues being earned from the revenue sources to which he/she would manage;

HON.RICHARD AZAN- MEMBER OF PARLIAMENT FOR NORTH WEST CLARENDON

Minister Azan was interviewed on Tuesday, the 14th of May 2013. He submitted the following responses during the interview:

- Discussion was held between himself and Mayor Barnswell concerning vendors plying their goods (haberdashery items) on the streets and the need to build shops to accommodate said vendors. In the discussion the Mayor had indicated the inability of the Council to finance the proposed venture;
- The contractor, Mr. Bryant, raised the question of the shops with him and he indicated to Mr. Bryant that he had discussions with Mayor Barnswell.
- On return to Spaldings on the 4th September 2012, the Contractor had presented to him a model shop which he suggested could be used. He telephoned Mayor Barnswell later that night and indicated that all was looking good.
- On the 5th of September 2012 discussions were held with the Council (Mayor Barnswell) and Contractor Bryant at the Spaldings Market in respect to the use of a joint venture approach (Council/Contractor Bryant) to be used to construct the temporary shops;
- Also on the 5th of September 2012 the haberdashery vendors plying their wares on the streets sought audience with Hon. Mr. Azan and indicated that they were given a deadline to be off the streets and indicate a willingness to occupy and pay a fee of \$5,000 per month for the shops;

- He stated that following questions from the vendors as to where they could do the registration he gave permission for his Constituency Office to be used as a temporary facility for the registration of vendors interested in occupying the temporary shops. This was done with the clear understanding that the Clarendon Parish Council would assume the management of the said shops during the month of September;
- The Hon. Mr. Azan, MP stated that the potential vendors for the temporary shops to be constructed had selected the Secretary at his constituency office to oversee the registration process and to temporarily collect the rental fee;
- He stated that the Hon. Prime Minister who was at the opening ceremony of the Spaldings Market on the 5th of September 2012 had suggested that there should be a two (2) weeks grace period for vendors in respect of the payment of market fees:
- He stated that a meeting was held at the office of the CPC on the 20th of September 2012 to discuss the matter of the Spalding market and the attendees at the meeting were-
 - a) Hon. Mr. Azan, MP;
 - b) His Worship, Mayor Sean Barnswell;
 - c) Mr. Wayne Brown, Director of Finance;
 - d) Mr. Wayne Mitchell, Superintendent Roads & Works;
 - e) Councillor for the Spaldings Division;
 - f) Mr. Peters, Commercial Services Manager (was absent).
- The meeting was held among other things to discuss a proposal prepared by the CSM having to do with the staffing of the Spaldings Market. The CSM was not present at that meeting. He left the meeting thinking that the Council would assume full control of the shops and it was not until he received a call from the Gleaner that he realized that people were still paying rent.

- Concerning the alleged use of his Justice of the Peace stamp, he stated that there was a move away from the use of stamps and seals were now being used by Justice of the Peace (JP). He further stated that no one but himself is allowed to use the seal and his secretary does not have access to it;
- He stated that he did not recognize the stamp shown in the newspaper article and furthermore, he had nothing to do with the collection of the rental fees for the temporary shops;
- He indicated that there were over forty receipts and only one had a JP stamp on it. He reported to us that he met with a lady named Sarah Haynes who indicated that the receipt with the purported JP stamp was in the name of her spouse Raymond Campbell. Ms. Haynes indicated to him that Michael Stern had told her that if he could get the receipt from her then he could assist her in getting a refund from the Parish Council;
- He categorically stated that at no time did he instruct Mr. Bryant to construct the shops. In discussions with Mr. Bryant he indicated that he would have discussions with the Mayor and then get back to him. The Mayor had indicated to him that it was not a bad idea but the Contractor went ahead and built the shops without approval.
- He stated that no one objected to the building of the shops and no notices had been served.
- He is of the opinion that the temporary shops are a far better option than what existed before for the following reasons:
 - (a) The vendors are off the streets;
 - (b) Congestion in the town has been reduced significantly;
 - (c) Customers and vendors now have easier access to the sanitary conveniences;
 - (d) Favorable endorsement of the marked improvement within the market district by a returning resident.

- In going forward he sees the use of joint venture type arrangement between the Government and Private Sector to promote economic development within the Division/Parish.

SUMMARY OF MAIN POINTS FROM HON. MINISTER AZAN'S INTERVIEW ON NATIONWIDE RADIO'S "THIS MORNING" WITH EMILY CROOKS

- Minister Azan indicated to Ms. Crooks that at no time did anyone from the radio station telephone him and that he was not lost. He was at a church service and he was not aware of anyone leaving a message on his phone. He checked his messages and none were left on his phone. He indicated that he was not hiding.
- He indicated to Ms. Crooks that the genesis of the matter was when the vendors were on the road leading up to 2011 and they were suffering with the rain and sun, and he promised during the election that the first project he would restart was the construction of the market. While they were doing the market he personally sought help from different organizations for funding.
- Those vendors in the haberdashery asked where they would go because the police said they could not stay on the road. He said to them, maybe it would be good if we could find someone to build the shops and rent them, maybe that would help and he would try.
- When he found some he called the Mayor and indicated he found someone who could construct the shops. We did two model shops.
- After eight months those shops were constructed and no one from the Parish Council found it important to do what they are supposed to do it shows that they were incompetent. When asked if his role was to get someone who was willing to build the

shops and did he take that person to the Parish Council to build the shops. He admitted that his role was to get someone who could build the shops and the Parish Council was aware. The third week of September he requested a meeting with the Mayor to discuss the matter and he sat in the Mayor's office and the instruction was given for them to do what they were supposed to do.

- He admitted that the rent was being collected by someone in his constituency office.
- He indicated that he did not have a relationship with the contractor.
- He made a mistake for allowing his office to be used for collecting the rent and for building the shops as he should have allowed the people to demonstrate...
- When asked what the punishment should be he indicated that the punishment would be that he would be the first one to take down the shops.
- He admitted that three weeks after he asked the Parish Council to take over the collection. He would not know that they were still not collecting the rent. The Parish Council was to come and make the proper arrangements and take over the shops.

SITE VISIT TO SPALDINGS MARKET

The Ministry's team visited the Spaldings Market on the morning of the 16th of April 2013 and was joined by the Deputy Superintendent & the Superintendent of Parochial Roads and Works. The Deputy Superintendent of Roads & Works (Mr. Garfield Thompson) gave an overview of the vision behind the market and also provided information on the source of financing used starting with the Lift Up Jamaica Project and concluding with the completion of phase one (1) which was financed by way of a joint venture between the Jamaica Social Investment Fund (JSIF) and the Council.

An inspection of the temporary shops was carried out and these are the observations and findings. There are ten (10) shops in total in three (3) units of twos and one (1) unit of four.

The shops were located at the far end of the asphalted car park and were made up primarily of T4 ply board and were raised slightly off the ground by way of concrete blocks and wooden stilts. The shops were painted and had zinc roofs.

Based on a visual examination of the temporary shops it was observed that the materials used to construct the shops did not appear to be new material for the most part. For example, the T4 ply and hinges that were used in the construction.

At the time of our visit to the market there were three (3) vendors present occupying three (3) of the temporary shops. We had short discussions with all three (3) vendors. The third vendor indicated that two (2) of the temporary shops were completed by the date of the official opening ceremony of the market. One of the vendors indicated a problem when it rained. It was noted that her shop was located in front of the channel for water run-off. Another vendor indicated that it was the shop vendors who suggested a fee of Five Thousand Dollars monthly.

REPORT ON SITE VISIT CONDUCTED BY THE MINISTRY OF LOCAL GOVERNMENT AND COMMUNITY DEVELOPMENT'S TECHNICAL SERVICES AND MAJOR PROJECT'S UNIT

A special investigation team was formed by the Ministry of Local Government and Community Development based on concerns arising from the procurement process of rehabilitative works carried out at the Clarendon PC. The special investigation team requested a review of the scope of works carried out under the procurement processes that utilised the Force Account and Selective Tender Methodologies in acquiring goods, services and works for the rehabilitation of the Spaldings Market in Clarendon.

The Quantity Surveyor within Technical Services and Major Projects Unit was requested to review and report on findings. The documents regarding the market rehabilitation were reviewed and on that basis, the objective of this report is to outline and analyse observations, present conclusion and to make recommendations based on findings from documentations. In reviewing the use of the Force Account and the works carried out under same and comparing

that of the work carried out by the Contractor, the following is a summary of the main findings and recommendations are set out below:

- There is a balance of \$411,728.53 on sum approved for Force Account
- Based on time of payment and expenditure for Phases 1 (Force Account) and 2 (Selective Tender) it appears that the two phases have been synchronised.
- Some activities to be executed under the Force Account were executed by Bryant Construction at rates higher than estimate approved for Force Account Method.
- Works that were to be executed under Force Account Method were done under the contract awarded to Bryant or as variation to the contract.
- There is a disagreement between the scope of activities for additional works to be paid to the Contractor and what was approved for variation payment.
- Based on findings a total of sum of \$7,431,566.47 has been expended on market rehabilitation.
- There could be double payment of works that were to be carried out utilizing Force Account, executed under the contract and approved Variation Order.

The Force Account Methodology was justified on the basis that there are benefits to be derived from such method. It was further stated that the work output can be maximised and cost savings in terms of Councils' zero rating status and elimination of Contractor's profit approval. However, there was a shift from the Force Account Approach. This was evident for the scope of activities that were included as variations to the Contract with Bryant Construction.

Provisional Sums are treated as automatic payments to the Contractor.

RECOMMENDATIONS FROM THE TECHNICAL SERVICES AND MAJOR PROJECTS UNIT CONCERNING THE USE OF THE FORCE ACCOUNT

- State the rationale for the variations and explain why additional works were necessary.
- Determine what activity is to be done under Force Account and Selective Tender.
- Obtain and examine rates for additional works not included in contract.
- The in-house estimate is to be kept confidential prior to tender opening

- The comparable estimate is to be current at time of tender.
- Bid offers and in-house estimates are to be separately priced.
- Works under Provisional Sums that could not be quantified due to insufficient information at the time of tender are to be fully described and quantified before making payments for such works.

TECHNICAL SERVICES AND MAJOR PROJECT'S UNIT ANALYSIS, FINDINGS AND RECOMMENDATIONS IN RESPECT OF TEMPORARY SHOPS

As it relates to the assessment of the quality of the construction of the shops, the Technical Services and Major Projects Unit's findings and recommendations are as follows:

- The shops currently do not have the capacity for strength and stability and as such cannot resist strong wind forces as a consequence to how they have been constructed.
- The materials used were not adequately protected from climatic conditions, the workmanship was of poor quality and the construction appeared patchy and unintentional.
- It was evident that there was no proper supervision of the shop construction. The choice of materials (in particular to units 1 to 3) appears to have been based on what was readily available to the builder. The roofing materials such as the ridge caps, edge caps and decra metal sheets did not have a harmonious colour scheme. The edge caps were only placed to the front and were not continuous. In addition, the grooved plywood was sometimes placed at front, back, and or sides of shop units.
- Shops that were comprised of grooved plywood had a higher initial construction cost but the grooved plywood showed a lower rate of depreciation when compared with the form plywood construction.

- It however appears that there was an intended figure for the shops. The estimates show a consistent reduction in costs of construction which was mainly due to the cheapening of the construction process where the use of grooved plywood was gradually eliminated.
- The shop units were poorly and cheaply constructed. The poor quality in construction of the units could be due to a lack of specifications, detailed drawings and lack of proper supervision.
- The lack of necessary details and supervision may be related to improper procedures in the preparation and implementation of the market shops construction.

RECOMMENDATIONS OF TECHNICAL SERVICES TEAM

- The shops can be easily removed from the site.
- The shops, if they are to remain, require adequate protection against the conditions associated with wind, rain and sun.
- They are to be secured to firm bases.
- Hurricane straps are to be installed on roofs and edge caps completely installed.
- All sides are to be protected against moisture, fungal growth, primed and painted.
- Future projects must include work specifications and necessary drawings
- Future projects must be supervised by the Council
- Projects must be implemented in a professional manner.

ANALYSIS AND FINDINGS OF DOCUMENTATION PROVIDED TO SPECIAL INVESTIGATION TEAM

(1) There was no conflict in respect to information obtained by way of interview notes made during the interview of Mr. Bryant and the documents presented and reviewed.

The documents reviewed are as follows:

- Copy of excerpts from the monthly meeting of the Finance & Estate Management Committee held on Thursday, the 27th of July 2012;
- Copy of the report produced by the Council's Evaluation Committee from meeting held on the 31st of May 2012;
- Letter from Mr. Bryant dated the 11th of March 2013 to the Secretary/Manager titled, 'Sale of Board Shops to the Clarendon Parish Council';
- Internal memorandum from the Superintendent Roads & Works dated the 1st of March 2013 to the Secretary/Manager titled, 'Estimate-Temporary Shops Spalding Market';
- Letter dated the 11th of March 2013 from Mr. John Bryant to the Secretary/Manager with attached spreadsheet detailing rental fees collected for the period September 2012 to February 2013 for the temporary shops constructed;
- Letter from the Secretary/Manager dated the 1st of February 2013 to the legal firm Jess & Associates seeking assistance in instructing Mr. John Bryant in writing to cease and desist from collecting rental fees for the temporary shops at the Spaldings Market;
- Letter from Jess & Associates to Mr. John Bryant dated the 2nd of February instructing him to cease and desist from collecting rental fees for the temporary shops at the Spaldings Market;
- Internal memorandum dated the 20th of November 2012 from the Superintendent Roads & Works to the Secretary/Manager in respect to variation in the work order for the Spaldings Market in the amount of \$1,378,840. This is significantly less than the valuation place on the variation in the work order in the amount of \$2.155M;
- Payment voucher number 008338 dated the 18th of February 2013 for part payment on variation order in the amount of \$689,420.

- (2) Based on the interview notes and the abovementioned documents there is no evidence linking Hon. Minister Azan MP and Mr. John Bryant prior to the Spaldings Market contract.
- (3) The information given by the Acting Secretary/Manager and recorded by way of notes made on the 15th of April 2013 does not contradict information contained in documents provided by the Council. It was stated during the said interview that the then Commercial Services Manager (CSM) Mr. Peters was officially instructed to regularize the situation of the temporary shops at the Spaldings Market in December 2012. However, there was no documentation provided by the Council to support this assertion.
- (4) The Secretary/Manager should be required to furnish the documentation to support the assertion that he had instructed Mr. Peters to regularize the situation of the temporary shops at the Spaldings Market. In addition the Secretary/Manager should also provide the submitted and honored payment vouchers of mileage claims made by Mr. Peters for the period September to November 2012. *[It should be borne in mind that the Secretary/Manager assumed the post in October 2012]*
- (5) Mr. Haynes stated that only structures to be erected consisting predominantly of concrete would come before the Planning & Development Committee (P & DC). This position was not supported by the Director of Planning (Jumaane Robinson) who stated during his interview that, 'Temporary structures like shops require that a planning and building application be made'. This is in keeping with the law
- (6) A comparison of the interview notes made during the interview of the Mayor and that given by other Officers interviewed differs as indicated below. The difference is as follows-
 - The Mayor stated during the interview that on the 5th of September 2012 during the official opening ceremony he saw four (4) temporary shops (two completed and two being constructed). However, other interviewees reported seeing only one temporary shop.

- It is difficult to assess the validity of the information obtained during the interview with the Mayor and the following documents and records detailed below may provide additional information so that a position can be taken in respect to the completeness of information provided by the Mayor and the following documents will be reviewed prior to finalization of the report:

- (a) November 2012 minutes of the Commercial Services Committee meeting;
- (b) Draft proposal presented by the Commercial Services Manager (Mr. Peters) having to do with the Spaldings Market in general and the regularization of the temporary shops in particular;
- (c) January to March 2013 minutes of the Finance Committee meetings.

(7) Mr. Thompson was interviewed twice in the capacity of the Deputy/Acting Superintendent Roads & Works and as the Chairman of the Procurement Committee. When questioned in his capacity as Deputy/Acting Superintendent of Roads & Works it was stated that he visited the Spaldings Market on two (2) occasions but visited the said market on four (4) occasions during the month of July, August and September 2012 as the Chairman of the Procurement Committee. One such visit was on the 3rd of September 2012 but stated that he only became aware of the temporary shops towards the middle of September 2012.

(8) Mr. Brown, Director of Finance was interviewed twice and a review of the interview notes showed that even though he acted as Secretary/Manager for the period the 30th of July to the 10th of September 2012 he showed a lack of knowledge as it relates to the Spalding Market in general and the matter having to do with the construction of the temporary shops which would have occurred under his watch.

(9) It is instructive to note that Mr. Robinson is not in support of the regularization of the temporary shops; a position that runs contrary to that held by the Secretary/Manager and the Political Directorate of the Council and that of Hon. Mr. Azan, MP. The erection of these shops is contrary to the proposed plan for the facility.

(10) Mr. Maragh stated that he became aware of the existence of the temporary shops at the Spaldings Market during the sitting of the Finance Committee held on the 28th of March 2013. This statement contradicts another report given by Mr. Maragh when he stated that the then Commercial Services Manager (Mr. Peters) had raised the matter of the temporary shops at the Spaldings Market in February 2013. The Minutes of the March 2013 Finance Committee meeting and February 2013 Commercial Services Committee meeting will be reviewed in this regard.

(11) A number of additional documents related to the investigation were made available by the Clarendon Parish Council (CPC), the documents are:

- Bid form and letter of acceptance dated May 2012;
- Letter of acceptance from the CPC dated June 2012;
- Letter from Bryant's Construction dated the 17th of July 2012;
- Inter-office memo dated the 24th of July 2012;
- Payment voucher dated the 19th of July 2012;
- Payment voucher dated the 10th of August 2012;
- Payment voucher dated the 12th of September 2012;
- Minutes of the Public Health & Sanitation Committee (PH & SC) dated the 19th of September 2012;
- Minutes of the Finance & Estate Management Committee (F & EMC) dated the 27th of September 2012;
- Inter-office memo dated the 20th of November 2012;
- Minutes of the Finance & Estate Management Committee dated the 22nd of November 2012;
- Inter-office memo dated the 24th of April 2013;
- Inter-office memo dated the 25th of April 2013;
- Letter dated the 26th of April 2013.

(12) Of note, was the September 2012 minutes of the Public Health & Sanitation Committee minutes of the PH & SC which captured the following statement attributed to Councilor T. Gordon who said the vendors were allowed to use the market

(Spaldings) without being charged for about 2 weeks'. This statement agrees with that captured in the interview with the Hon. Richard Azan, MP.

(13) The September 2012 minutes of the Finance & Estate Management Committee indicate a discussion about the rental of shops at Spalding Market. For example,

- 'The Commercial Services Manager (CSM) recommended that Stalls be leased at a rate of Five Thousand Dollars (\$5,000.00) monthly and Shops at a rate of \$10,000.00 per month'.
- 'His Worship the Mayor mentioned that an agreement should be drafted for the persons who rent shops'.

However, it is not clear if the temporary shops at the Spalding Market were the subject of the statements of the CSM and the Mayor. There was also no conflict with responses given by the Mayor and captured in the interview notes.

(14) In the November 2012 minutes of the Finance & Estate Management Committee meeting, the Commercial Services Manager was recorded as having referred to twelve (12) shops. Even though there is a difference of two (2) shops (twelve rather than ten) it does appear that the temporary shops at the Spalding Market are the subject of the quote above. *The attendance list indicate that the Mayor was at the meeting and if present at the time when the CSM gave his 'report' would have been aware that the number of shops had increased from four prior to the meeting with Mr. Bryant in January 2013.*

ANALYSIS OF THE USE OF FORCE ACCOUNT METHOD BY THE CLARENDON PARISH COUNCIL

The **GOJ Handbook of Public Sector Procurement Procedures acknowledges Force Account in Appendix 5** as a project implementation method whereby a Government entity undertakes rehabilitative or developmental works by using its internal resources rather than contracting a **private entity**.

In such instances, the Government entity may be required to procure raw material or engage temporary labour to carry out the works. In addition, where the implementing entity cannot provide the required resources, the Entity is allowed to hire from a private source, using the National Works Agency's (NWA) schedule of equipment rates. Hireage of equipment at rates exceeding this schedule should be approved by the NWA. Similarly, the procurement of raw material should be acquired from the NWA's suggested list of quarries.

- Based on the definitions of Force Account in the Handbook and the Ministry of Finance Circular No. 21, it is not clear that the Council had the internal resources to execute the works, and in this case should not have contracted an external entity or a private entity (Bryant Construction).
- The Procuring Entity (Clarendon Parish Council) should disclose contracts with force account procurement to:
 - (a) The Ministry of Finance using the Procurement Reporting System; all transactions should be reported on a monthly basis.
 - (b) The Office of the Contractor General in their Quarterly Contract Awards (QCA) Report. This is required for transactions which fall within the reporting range (currently \$250, 000 to \$3999, 999.99).
Please note that the Reporting range was increased to thresholds over \$500,000.

- Further to review of the Ministry of Finance Procurement Reporting System monthly report and the OCG Public Body Contract Awards Report for the period during which the force account was executed this procurement was not reported either to the Ministry of Finance or the OCG.
- The current GOJ Handbook of Public Sector Procurement Procedures has not recognized the Force Account Method of Procurement as Procurement Methods for the procurement of goods, works and general services. Section 1 of the Handbook identifies International Competitive Bidding, Local Competitive Bidding, Limited tender, Direct Contracting and Contracting under Emergency Circumstances. Force Account Method is mentioned in

Appendix 5 of the Handbook. It does not elaborate on the circumstances under which this method is permitted and the justification for using this method.

FINDINGS FROM INVESTIGATION

- Hon. Minister Azan was aware of the existence of the temporary shops at least as early as September 4, 2012 as he indicated that on his return to Spaldings on that date the Contractor had presented to him a model shop which he suggested could be used to accommodate the vendors.
- According to Minister Azan, meetings were held with the Clarendon Parish Council in or about the third week of September 2012 with a view to discuss the proposals for the temporary shops and for Council to take over management of same. The Officers of Council and the Mayor contend that this meeting was to discuss variation work and payment;
- Officers of the Clarendon Parish Council knew of the existence of the temporary shops at least as early as September 4, 2012 but certainly became aware on the day of the Opening Ceremony for the market on September 5, 2012;
- By his own admission, the Mayor knew of the existence of the shops on the day of the opening ceremony and by October 2012 he was advised of the shops being leased by the Commercial Services Manager and that the rental amounts were being paid into Minister Azan's Constituency Office;
- By his own admission, the Contractor built the shops without the knowledge or approval of the Minister Azan or the Clarendon Parish Council;
- The registration of vendors was facilitated at Minister Azan's constituency office;

- Rental amounts were paid to a secretary in Minister Azan’s constituency office who then remitted same to the Contractor and Minister Azan was aware of this;
- No steps were taken by Council to have the shops removed by the Contractor;
- All the proceeds from the rental of the shops have been paid over to Council;

RECOMMENDATIONS

Governance

Procurement

- A more progressively elaborated, comprehensive and robust procurement policy, process and procedures to guide the utilization of the Force Account Procurement Method for implementation of projects by Local Authorities and other procuring entities to include but not limited to :
 - (f) Definition, standardization, orientation and understanding of the method;
 - (g) Justification for the use of this methodology;
 - (h) Circumstances in which this method should be utilized;
 - (i) Threshold value stipulations for this method if required
- Rigorous monitoring of award of contracts with Special Audits being conducted in the use of Force Account Procurement Methodology for such awards.
- Tendency of fragmenting contracts needs to be eliminated.
- Enforcement and zero tolerance approach to encroachment on Council’s property.
- A comprehensive management and supervision of Councils properties, assets and regular monitoring of projects and of the inventory of assets.

- Reinstatement of a Commercial Services Manager with the requisite competencies and skills and support staff should be expedited by Council.
- A projectized plan for the management of commercial services entities of Council
- Reorganization of the Procurement Committee in keeping with the Guidelines. A Councillor may sit on the Procurement Committee, provided that the conflict of interest provisions contained in the GOJ Procurement Handbook and the Parish Council Act are not contravened. Councillors shall not chair the Procurement Committee and shall not comprise more than 40% of the Committee's membership. (There is no Councillor on the committee at present). The reorganization will mitigate duplication of roles in the procurement process and any perceived conflict of interest.
- A more vigilant, time-sensitive and business- like approach to address matters that concern the Council in general and its operations. Council's revenue was being collected and managed without its approval for too long, over 6 months.
- Planning approvals should be done in Council and approvals out of session should be avoided to ensure that there is adequate deliberation of such matters as well as to embrace transparency.
- Planning Department should be consulted on all matters within its remit –including regularization of breaches.
- A more coordinated approach and plan in implementing projects that involve other agencies, Programmes such as (JEEP) and other stakeholders including the citizens and the Member of Parliament.
- Increased due diligence in the preparation of bids during the planning phase and prior to the award of contract to avoid or eliminate variations- changes in the deliverables under the original contract
- Appropriate Action to be taken for non-compliance with GOJ Procurement Reporting Requirements.

- Committee Operations- There is a need for the Commercial Services Committee and other identified committees such as Planning to undertake site visits to their portfolio operations so as to better understand on a first hand basis, what is actually taking place. They would thus be in a better position to understand their subject matter and not be totally reliant on the reports of the technical staff.
- Committees of council must start to operate more strategically rather than simply addressing matters being brought before them. Consequently, they must mandate the preparation and delivery of operational and strategic plans which they will then use to assess performance particularly of key areas of the council's operations.
- The proper preparation of reports and Minutes need to be taught to key staff members of the councils given the importance of such records for posterity, forward planning, legislative action and other related matters.
- The decisions to be made by Council in respect of the temporary shops should be made in light of the following considerations:-
 - (a) The overall development plan for the township of Spaldings including the market transportation centre;
 - (b) The development programme being considered with JSIF;
 - (c) The plans for the re-vitalization of the markets in the parish.
 - (d) Recommendations from Council's Planning Unit
 - (e) Recommendations from the Report of the Ministry's Technical Services and Major Project's Unit
- It is recommended that Forensic Audit be conducted in respect of the operations of the Clarendon Parish Council.
- Refer other complaints and concerns that have been aerated in our investigation relating to other contractual engagements to the Office of the Contractor General (OCG) with a view to them conducting further investigations in an effort to ascertain the merits of the complaints, given their power to fully discharge their lawful mandates.

CONCLUSION

The Report has outlined the substantive findings and key recommendations of the investigation team from the Ministry into the construction and rental of temporary shops at the Spaldings Market.

It is important to note that while the Terms of Reference indicated that the team would look at other projects under the jurisdiction of the Clarendon Parish Council, the team was constrained by time and other competing priorities and deliverables to investigate same. These will be referred to the Ministry' Internal Audit Team who will be conducting special audits shortly.

The Office of the Contractor General who had initiated this investigation into a complaint against the construction of and rental of these shops prior to the published Sunday Gleaner article will provide a more detailed and comprehensive investigation report given their power to fully discharge their lawful mandates. The OCG will need to conduct further investigations into other complaints and concerns that have been aerated in our investigation relating to other contractual engagements, in an effort to ascertain the merits of the complaints in the exercise of full jurisdiction over the contract award of Government contracts.

The Ministry's investigation has unearthed breaches and critical issues relating to governance, financial management and accountability. There is the urgent call for **all** members of Council to be more vigilant, proactive, rigorous in their approach and attitude to the Council's business and to employ the effective internal control measures to ensure full compliance with the guidelines and laws. The Ministry will continue to facilitate the Council and be even more rigorous in their monitoring and inspections by increasing the frequency and intensity of special audits in the Local Authorities. In this regard we will continue to work closely and collaboratively with the Auditor General's Department and the Office of the Contractor General.

The recommendations are to be keenly monitored for implementation.

