Part Two

MoFPS lease of sections of the Oceana Hotel Complex ground floor for use by Accountant General's Department (AGD) and renovation works

Executive Summary

The Accountant General's Department (AGD) is an operational Department within the Ministry of Finance and the Public Service (MoFPS) and is charged with facilitating and reporting the flow of funds within the public sector. The AGD is responsible for the management and custodianship of the Consolidated Fund, which is the principal instrument of parliamentary control of public monies. This includes (but not limited to) the responsibility for the collection, safekeeping and proper disbursements of all monies due to and payable from the Consolidated Fund.

We conducted a special audit to determine whether proper due diligence was conducted in relation to MoFPS' lease of sections of the ground floor of the Oceana Hotel Complex and whether subsequent renovation works were done in accordance with procurement and other Government regulations.

The subsequent rental of the Complex and parking stalls, led by the Ministry of Finance and the Public Service (MoFPS) for office accommodation by the Accountant General's Department (AGD) and the resulting renovation works were also examined. The key findings of the audit are summarized below.

Key Findings

Lease arrangements

1. **The Ministry of Finance and the Public Service (MoFPS) agreed to pay 77.4 per cent and 39 per cent more for rent and parking spaces respectively, on AGD's behalf, against the Commissioner of Lands' advice.** However, given that the MoFPS cannot sign lease agreements, the Commissioner of Lands was indemnified from all liabilities associated with the signing of the agreement. The Commissioner of Lands recommended a rental rate between $950 and $1,000 per square foot per annum. In addition, the Commissioner recommended parking rates of $4,500 for uncovered and $6,500 for covered parking per month. However, the MoFPS agreed to a rental rate of $1,774 and parking rate of $9,030. This decision will cost the government an additional $591 million over the lease term when compounded at 7.5 per cent as agreed in the lease. In June 2016, MoFPS informed the Public Administration and Appropriations Committee (PAAC) that the lease was negotiated within the context that Justice Square was required urgently and previous attempts to locate suitable alternative premises proved unsuccessful. Further, the Ministry indicated that international funding of $7.5 billion would be lost if the AGD did not relocate from the current premises by the end of 2016 to facilitate the Justice Square Project. To date, the

AGD has not relocated; the leased premises remain unoccupied and $75.77 million have been accumulated in rent up to February 2017.

Renovations works

2. On March 14, 2016, MoFPS and the Contractor signed an agreement for the construction build-out of the Accountant General's Department offices valued at $400.09 million[21]. The works were scheduled to commence on April 1, 2016, with expected completion on July 31, 2016. However, inadequate planning resulted in variation costs of $52.05 million or 13 per cent of the contract sum and the payment of $9.2 million for time over run, as at January 27, 2017. It was disclosed that a complete set of construction drawings were not submitted to the bidders at the time of tender, to allow for proper costing of the renovation works. This resulted in variation costs of $44.79 million, while the remaining $7.26 million was to level the uneven floor. Section 1.5.3 of the Government Procurement Guidelines, indicates that for contracts in excess of $300 million, cumulative variations in excess of 10 per cent will require National Contracts Commission (NCC) endorsement and Cabinet's approval. No approval was obtained for these variations. As at January 27, 2017, we noted that $285.43 million (or 63 per cent) of the total value of works have been completed. UDC indicated that the project is scheduled for completion by March 31, 2017.

Recommendation

In light of the negative financial exposure arising from the leasing arrangements, the GoJ must review its property leasing policy to minimise its risk exposure from future lease arrangements undertaken by MDAs. The policy must provide clarity regarding the role of MDA versus the role of the Commissioner of Lands, in order to eliminate inconsistencies in applications.

[21] including a contingency sum of $20 million and $9 million provisional sum for increases in material and labour costs

AGD's Lease of a section of the Hotel Complex

2.1 The Accountant General's Department (AGD), a department of the MoFPS, currently occupies 20,683 square feet of space at the Public West Building located on 13 King Street, since 1994. Over the years, MoFPS sought suitable office space to house the AGD, due to various reasons, including structural problems with the building. However, MoFPS indicated that the common prohibitive factor was the cost of the build-out in addition to the purchase price[22]. Further, the Ministry of Justice (MOJ) and the Court of Appeal identified the Public West Building for the Justice Square Redevelopment Project.

2.2 By way of letter dated January 29, 2015, MoFPS indicated an interest to lease a section of the ground floor of Oceana Hotel Complex to house the AGD's offices. By way of correspondence dated June 17, 2015, the Commissioner of Lands recommended a rental rate of between $950 and $1,000 (excluding maintenance) per square foot per annum. The Commissioner also advised that parking fees should not exceed $4,500 for uncovered and $6,500 for covered parking per month.

2.3 On June 19, 2015, sections of the ground floor (51,253 square feet) were leased from the new owners for the AGD. The agreement stipulated a rental of $1,610 per square foot per annum and a parking rate of $8,400 per month for each of the allotted 70 parking spaces. MoFPS indicated that due to delays in engaging a Contractor to undertake renovation works, the lease agreement was amended in April 2016 with an increased rental of $1,774 to commence May 1, 2016, and $9,030 for each parking space. MoFPS agreed to accept the owner's revised offer and by way of letter dated June 22, 2015, MoFPS under the signature of the Director General (MoFPS), agreed to indemnify the Commissioner of Lands.

The Ministry of Finance and Planning accepts the terms and conditions of the said Addendum to the lease agreement, despite the written objections of the Commissioner of Lands and further indemnifies and holds harmless the Commissioner of Lands from any and all liabilities associated with the acceptance of the said terms and conditions after the signing of the addendum to the lease agreement. The extent of indemnification is limited to the representation made by the Commissioner of Lands.

Source: MoFPS Letter of Indemnity to Commissioner of Lands dated April 25, 2016.

2.4 Recognizing that the rental rates would not be in conformity with the Commissioner of Lands recommendation, MoFPS provided another letter of indemnity signed by the Financial Secretary dated April 25, 2016 to the Commissioner of Lands, to allow for signing of the Addendum. This letter absolved the Commissioner from any and all liabilities associated with the acceptance of the said terms and conditions.

2.5 Prior to signing the Addendum, MoFPS engaged the services of a chartered surveyor/real estate dealer at a cost of $83,880 to determine the current market rate and maintenance and parking charges (per stall) of the Hotel Complex. Review of the valuation report indicated market rate for rental of $1,582.10 per square foot, and $1,220 for the

[22] The MoFPS was considering purchasing a location, prior to pursuing leasing arrangements.

maintenance charge and $7,000 and $7,500 respectively, for uncovered and covered parking. This opinion, even though it was higher than the Commissioner's recommendation was still less than the actual agreement between the AGD and the new owners.

2.6 The project managers, UDC, estimated that leasehold improvements to enable occupancy by AGD would cost $459.25 million. The lease agreement[23] stipulates that all leasehold improvement immediately becomes the property of the Lessor. We were unable to determine whether MoFPS conducted a cost benefit analysis to determine value for money based on the agreed price and value of leasehold improvements.

2.7 MoFPS also agreed to delete Section 11.03 (iii) of the lease agreement dated June 19, 2015, which obligated the Landlord to:

i. demolish all walls (except structural walls and columns), existing ceiling and flooring[24], and
ii. pay cash allowance of $1000 per square foot of rentable space not previously built out [25].

2.8 The deletion of the cash allowance clause equates to $51.3 million being given up by the MoFPS[26]. MoFPS indicated that the deletion of the cash allowance was to offset the Lessor's rental loss due to the change in commencement date from October 15, 2015 to May 1, 2016. However, we noted that the addendum provided for a 10 per cent increase in rent, given the change in commencement date.

2.9 In June 2016, MoFPS informed the Public Administration and Appropriations Committee (PAAC) that the lease was negotiated within the context that Justice Square was required urgently and previous attempts to locate suitable alternative premises proved unsuccessful. Further, the Ministry indicated that international funding of $7.5 billion would be lost if the AGD did not relocate from the current premises by the end of 2016 to facilitate the Justice Square Project.

2.10 We estimate that the MoFPS acceptance of the offer by the owner, coupled with other amendments, have resulted in a negative budgetary impact of $643.83 million (**Figure 8**).

[23] Section 1.02 (xi) defines Leasehold improvements, which means all items generally considered as leasehold improvements, excluding trade fixtures but including without limitation all installations, alterations and additions from time to time made, erected or installed in the Demised Premises by or on behalf of the Lessee, or any previous occupant of the Demised Premises or any portion thereof including, without limitation, all partitions however affixes and whether or not moveable, heating, ventilation and air conditioning systems, facilities and equipment, light fixtures, internal stairways and doors, and floor, wall and ceiling coverings, counters, cabinets, shelves and built-in furniture and furnishings, and any items not normally considered Lessee's Trade Fixtures.

[24] Lessee recognizes that the space is to be occupied will be completely free of all walls (except structural walls and columns) without ceiling and without final floor covering in order to allow the Lessee to install its ceiling and flooring to exactly suit its layout.

[25] Lessor will provide to the Lessee a cash allowance of $1000 per square foot of rentable area to allow the Lessee to cover the cost of the Lessee building out the ceiling and floor to suit the Lessee's requirement. The cash allowance will be paid to the Lessee on the commencement date of the lease.

[26] $1000 times 51,253 square feet

Figure 8 – MoFPS decisions vs. Commissioner of Lands Recommendation

Terms & Conditions	**Commissioner of Lands recommended rate**	**Addendum to lease agreement (June 19, 2015) executed on April 29, 2016**	**Variance / Budgetary impact ($)**
Rental rate (per square foot) [Lease amount over lease term]	$950-$1,000 $725.08M	$1,774 $1,286.29M	561.21 M[1]
Parking rate (per stalls) [Parking fees over lease term]	$4,500 - $6,500 $77.24M	$9,030 $107.30M	30.06 M[2]
Terms and Conditions	**Lease Agreement (June 19,2015)**	**Addendum to lease agreement (June 19, 2015) executed on April 29, 2016**	
Limited Free Parking	Free parking for 70 leased stalls during the first two months of the Lease term	Deleted	1.26M
Section 11.03 (iii)	Cash Allowance Clause	Deleted	$51.3M
Section (D) (B) (vi)	i. Air Conditioning plant will be provided to supply the Demised Premises ii. The Lessee shall be responsible for all duct work installation from the discharge outlet of the plant to suit the Lessee's layout	i. Air Conditioning plant will be provided to supply the Demised Premises **with chilled water** iii. Lessee shall be responsible for all **new** duct work and **air handling equipment** as required to suit	-
TOTAL			**643.83 M**

Source: AuGD's review of documents relating to the lease

Notes:
1. The higher rate of the Commissioner's recommendation was used in the calculation.
2. The covered parking rate was used as majority of the parking facility is covered.

Renovation of the Ground Floor

2.11 As per agreement dated July 15, 2015, UDC was contracted by MoFPS, as project manager for the build-out of the AGD's offices. The Project Manager invited bidders to tender for the renovation works, with an initial bid submission deadline of December 03, 2015, subsequently extended to December 17, 2015. During the interim, the Project Manager submitted five addenda to the bid documents covering the period November 12, 2015 to December 9, 2015.

2.12 Cabinet and the NCC granted approval on February 4, 2016 and February 15, 2016 respectively, for the renovation of a section of the ground floor.

UDC records showed that four bids were received, as under:

Figure 9 – Analysis of Bids

Options	Bid Price ($M)	Evaluation
Bidder No. 1	295.68	Deemed non responsive due to failure to include and price the revised Mechanical Services, Electrical Works, Fire Protection System, Air Conditioning and Ventilation System and Plumbing as per instructions issued in Addendum No. 4 dated December 03, 2015. No evidence was provided to confirm that this Bidder signed the Addenda to the initial tender.
Bidder No. 2	400.09	Evaluated
Bidder No. 3	510.33	Bidder disqualified for failure to submit in bid package that contains a valid copy of TCC and NCC registration
Bidder No. 4	518.9	Evaluated

Source: AuGD's review of bid documents

2.13 UDC subsequently recommended that the contract be awarded to Bidder No. 2, for $400.09 million, with a contract period of four months after the date of possession.

Renovation contract incurring time overrun of three months

2.14 **The renovation works was only 39 per cent complete with time overrun in excess of three months, as at October 21, 2016.** On March 14, 2016, MoFPS and the Contractor signed a contract for the construction/build-out of the Accountant General's Department Offices valued at $400.09 million[27]. The works were scheduled to commence on April 1, 2016, with expected completion on July 31, 2016. However, as at January 27, 2017, $285.43 million (or 63 per cent) of the total value of works have been completed. UDC indicated that the project is scheduled for completion by March 31, 2017. As a consequence, AGD accumulated $75.77 million up to February 2017 on the lease since the commencement of the lease without occupation.

2.15 Review of MoFPS and UDC records, highlighted that delays in the completion of the works were mainly due to the timing of orders as well as variations. This resulted in time overrun and payment of extension of time allowance of $9.2 million.

2.16 MoFPS approved variations to the contract totalling $52.05 million; $7.26 million to level the uneven floor, while the remaining $44.79 million was attributable to increased costs due to the failure of the project manager (UDC) to supply the Contractor with detailed drawings and information to allow for proper pricing of electro-mechanical items. UDC indicated that this was a requirement as per Addendum No. 4, dated December 03, 2015 to the tender documents. UDC reported that:

[27] including a contingency sum of $20 million and $9 million provisional sum for increases in material and labour costs

…following a detailed investigation of the correspondences, which transpired during the tender stage, it was confirmed that the Contractor did not receive a full set of Construction Drawings such as the drawings for the Fire Protection system, the Air Conditioning and Ventilation System and the Security system at the time of Tender.

Source: Letter from UDC to MoFPS dated August 17, 2016.

2.17 Approved variations totalled $52.05 million (or 13 per cent) of the contract sum. Section 1.5.3 of the Government Procurement Guidelines, indicates that for contracts in excess of $300 million, cumulative variations in excess of the 10 per cent will require National Contracts Commission (NCC) endorsement and Cabinet approval. No approval was obtained for these variations.