THE SMARTTYS CONSPIRACY

HOW GHANA'S PROCUREMENT "SAFEGUARDS" WERE USED TO RIP THE COUNTRY OFF

THE BUS BRANDING SCANDAL – A RECAP



HOW OCCUPYGHANA GOT HERE

- BRANDED BUSES PARKED AT STATE HOUSE (FORECOURT)
- BUSES LATER PUT IN OPERATION
- BREAKING NEWS FROM PARLIAMENT OF A ‘SWEETHEART’ DEAL INVOLVING STATE FUNDS
- CHIEF OF STAFF INSTRUCTS A-G TO INVESTIGATE
- A-G INVESTIGATES AND PRESENTS REPORT TO CHIEF OF STAFF – CONTENTS NOT DISCLOSED
- MINISTER FOR TRANSPORT RESIGNS
- NEGOTIATIONS WITH SMARTTYS LEADS TO REFUND OF CERTAIN SUMS

HOW OCCUPYGHANA GOT HERE

- OG WRITES TO A-G DEMANDING ALL RELEVANT DOCUMENTATION
- A-G REFUSES TO PROVIDE THE DOCUMENTS
- OG AND CITIZEN-GHANA GO TO COURT UNDER CONSTITUTIONAL RIGHT TO INFORMATION PROVISIONS
- BEFORE THE DATE SLATED FOR ARGUMENTS, A-G CAPITULATES AND CALLS TO SAY WE WILL HAVE THE DOCUMENTS
- A-G THEN FILED AFFIDAVIT PROVIDING DOCUMENTS, BUT REFUSES TO DISCLOSE CONTENTS OF HER INVESTIGATIONS

NORMAL CONTRACT PROCUREMENT

1. COMPETITIVE TENDER – A REQUEST FOR QUOTATIONS…
2. SELECTION OF WINNER BASED ON THE SELECTION CRITERIA (INVOLVING THE PPA)
3. ATTORNEY-GENERAL VETS DRAFT CONTRACT & TERMS
4. SIGN THE CONTRACT
5. CARRY OUT THE WORK
6. PAY THE COMPANY

SINGLE-SOURCE PROCUREMENT

SECTION 40(1) PROCUREMENT BOARD APPROVAL, BASED ON

(A) AVAILABILITY FROM A PARTICULAR PERSON;

(B) NO DILATORY CONDUCT => UNFORESEEN CIRCUMSTANCES => URGENT NEED => TENDER IMPRACTICABLE;

(C) URGENCY CAUSED BY CATASTROPHIC EVENTS => TENDER IMPRACTICABLE;

(D) ADDITIONAL ITEMS => STANDARDISATION -> COMPATIBILITY WITH EXISTING ITEMS => REQUIRED FROM EXISTING SUPPLIER;

(E) JUSTIFIABLE LIMITED SIZE OF PROPOSED PROCUREMENT CONCERNING AN ORIGINAL PROCUREMENT;

(F) CONTRACT FOR RESEARCH/EXPERIMENT/STUDY/ DEVELOPMENT. DOESN'T APPLY WHERE GOODS ARE PRODUCED IN COMMERCIAL QUANTITIES; OR

(G) NATIONAL SECURITY PROCUREMENT, WHERE SSP IS MOST APPROPRIATE.

PUNISHMENT

- ANY CONTRAVENTION OF THE ACT IS AN OFFENCE (JAIL TIME FOR UP TO 5 YEARS) – SECTION 92(1)

- SECTION 92(2)

(A) ANY COLLUSIVE AGREEMENT WHERE PRICES QUOTED ARE OR WOULD BE HIGHER THAN WOULD HAVE BEEN THE CASE BUT FOR THE COLLUSION BETWEEN THE PERSONS CONCERNED

(B) ANY INFLUENCE OVER THE PROCUREMENT PROCESS TO OBTAIN UNFAIR ADVANTAGE IN THE AWARD OF PROCUREMENT CONTRACT.

REQUEST FOR QUOTATION?… DON'T BOTHER

1. 10 April 2015: Ministry of Transport requests quote from bus manufacturer Liaoning to brand buses

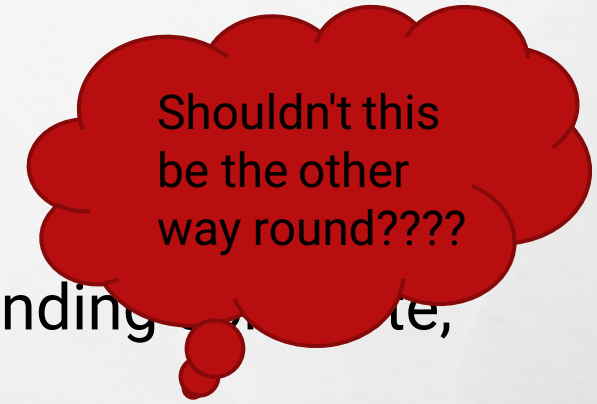
Address: "THE GENERAL MANAGER, HUANGHAI AUTOMOBILE IMP & EXP CO. LTD., 546 HUANGHAI AVENUE, DANDONG, LIAONING, 118008 P R CHINA, ACCRA"

2. 17 April 2015: Liaoning quotes US$1.1M

3. May 2015: MoT sends buses to Smarttys for branding [no quotation requested??]

PAY AND WORK

PLEASE TREAT AS URGENT!!



- 8 July 2015: MoT informs Ministry of Finance that branding [illegible]te, requests Smarttys be paid GH¢3.65M
- 15 July 2015: MoT requests quotation from Smarttys for the branding of the buses…
- 17 July 2015: Smarttys quotes for … surprise surprise: GH¢3.65M
- 23 July 2015: MoF approves “urgent” payment of GH¢ 3.65M

OOPS,…. WHAT ABOUT PROCUREMENT?

- 28 July 2015: MoT requests single source procurement approval of Smarttys to brand the buses (after MoF 23 July Approval for Smarttys to be paid for the completed contract)

APPROVE
D!!

- 29 July 2015: Public Procurement Authority approves the single source request "AFTER THOROUGH CONSIDERATION AND THE URGENCY ATTACHED…"

OOPS,…. WHAT ABOUT PROCUREMENT?

- "APPROVAL IS HEREBY GRANTED… IN ACCORDANCE WITH SECTION 40(1)(B) OF ACT 663…"

- SECTION 40(1)(B): "WHERE THERE IS AN URGENT NEED FOR THE GOODS, WORKS OR SERVICES AND ENGAGING IN TENDER PROCEEDINGS OR ANY OTHER METHOD OF PROCUREMENT IS IMPRACTICAL DUE TO UNFORESEEABLE CIRCUMSTANCES GIVING RISE TO THE URGENCY WHICH IS NOT THE RESULT OF DILATORY CONDUCT ON THE PART OF THE PROCUREMENT ENTITY"

- NO DILATORY CONDUCT => UNFORESEEN CIRCUMSTANCES => URGENT NEED => TENDER IMPRACTICABLE;

- DILATORY: SLOW TO ACT OR INTENDED TO CAUSE DELAY, TARDY, REMISS, BEHINDHAND, NEGLIGENT, LAZY, LAGGARD, OPPOSITE OF "PROMPT"

WHAT REASONS WERE GIVEN?

- 1. URGENCY – ‘WRONG’ COLOUR – NO WHO CAUSE AM?
- 2. NATIONAL SECURITY RISK: THREATENED STRIKES OVER TRANSPORT FARES
- 3. MOT WANTS TO DEPLOY BUSES BY 31ST AUGUST 2015
- 4. INCONVENIENCE AT STATE HOUSE

RECAP PPA APPROVAL

- "AFTER A THOROUGH CONSIDERATION OF YOUR REQUEST AND THE URGENCY ATTACHED, APPROVAL IS HEREBY GRANTED MINISTRY OF TRANSPORT IN ACCORDANCE WITH SECTION 40(1)(B) OF ACT 663, TO SOLE SOURCE MESSRS. SMARTTYS MANAGEMENT & PRODUCTIONS LTD. TO REBRAND THE 116 HUANGHAI BUSES AT A TOTAL ESTIMATED COST OF GHC3,649,044.75."

WHAT ABOUT A CONTRACT?

- 29 July 2015: On the same day Procurement Authority granted approval, MoT sent a contract to Smarttys for the bus branding
- 31 July 2015: 1½ - page Contract executed
- Refers to “Conditions of Contract” – None Attached
- No review of contract by Attorney-General

LET'S GET PAID…



- 3 August 2015: MoT sends MoF request for payment of the GH¢3
  - Money to come from "Ministry of Transport Ghana Railway Develo
    Admin HQ"!
- 6 August 2015: Government of Ghana issues a Payment Voucher for payment in regard of the Ghana Railway Development Authority under the following:
  - Program: "Railways Transport"
  - Sub-Program: "Railway Infrastructure Development"
  - Activity: "Construction – Western Corridor Rail Project Activities"
  - Location: "Greater Accra AMA Metropolis Osu Klottey"

PAYMENT APPROVED BEFORE INVOICE

- 6 August 2015: Warrant issued for payment of Smarttys on the Gov't payment system
- 10 August 2015: Smarttys issue an invoice
- 11 August 2015: Bank of Ghana Swift Transfer, GH¢3,466,592.51 to Smarttys
- 13 August 2015: Controller and Accountant-General's Department authorises Bank of Ghana to make GH¢3.65M available to MoT to pay Smarttys

I-CAN'T-THINK-SMARTTYS

- WHAT WOULD GHANAIANS PREFER? THIS MONEY USED TO PLACE THE FACES OF PAST AND CURRENT LEADERS ON BUSES, OR USED FOR THE WESTERN RAILWAY CORRIDOR PROJECT ITSELF?
- MONEY PAID FOR COMPLETELY OVERPRICED AND CORRUPT TRANSACTION?
- SHOULD THIS BE THE END OF THE MATTER, OR SHOULD IT BE PURSUED TO ITS LOGICAL AND LEGAL CONCLUSIONS?

FROM THE HORSE'S OWN MOUTH…

- SOURCE: EUGENE DAVIS | B&FT ONLINE | GHANA
- DATE: DECEMBER 21, 2015
- MOT BUDGET SLASHED. SPEAKING ON THE FLOOR OF PARLIAMENT DURING 2016 ANNUAL BUDGET ESTIMATES DEBATES, MINISTER: STIFLE RESTRUCTURING AND STREAMLINING EFFORTS.

"***THE ALLOCATION AS AGAINST THE PLANNED BUDGET IS WOEFULLY INADEQUATE TO MEET DEVELOPMENTAL NEEDS OF THE SECTOR IN 2016***."

HTTP://THEBFTONLINE.COM/BUSINESS/ECONOMY/16582/TRANSPORT-BUDGET-WOEFULLY-INADEQUATE-ATTIVOR.HTML

FROM THE HORSE'S OWN MOUTH…

- SOURCE: GHANA|MYJOYONLINE.COM
- DATE: 26-04-2016 TIME: 02:04:45:PM

"I WANT TO REMIND YOU THAT IT IS YOUR VOTE THAT WILL DECIDE IF … I WILL BE PROSECUTED AND PUT BEHIND BARS OR NOT."

HTTP://WWW.MYJOYONLINE.COM/POLITICS/2016/APRIL-26TH/IF-YOU-DONT-VOTE-FOR-NDC-I-WILL-GO-TO-JAIL-UNDER-NPP-DZIFA-ATTIVOR-EXPRESSES-FEARS.PHP

CHANGING LIVES? WHOSE?





DOSSIER TO ATTORNEY-GENERAL

- 20-PAGE DOSSIER DELIVERED THIS MORNING TO A-G, SPEAKER, MAJORITY LEADER, MINORITY LEADER, CHAIRPERSONS OF ALL POLITICAL PARTIES
- COPIES AVAILABLE TO EVERYONE VIA EMAIL
- READ OUT EXECUTIVE SUMMARY

IS THAT ALL?

- **IT WILL** BE HARD **WE KNOW**
- AND THE **ROAD WILL BE MUDDY AND ROUGH**
- BUT WE'LL GET THERE
- HEAVEN KNOWS HOW WE **WILL** GET THERE
- **WE KNOW** WE **WILL**