

In the matter of the Commission of Inquiry appointed pursuant to section 1A of the Commission of Inquiry Act 1935 dated 24 February 2016

Witness Statement of Cherie-lynn Whitter

1. I am Cherie-lynn Whitter and I am currently the Deputy Head of the Civil Service for the Government of Bermuda and Permanent Secretary for the Cabinet Office. I make this witness statement in response to the request of the Commission of Inquiry duly appointed by the Premier on 24 February 2016 to inquire into the findings of the Auditor General's report on the Consolidated Fund for the Financial Years 2010, 2011 and 2012.
2. By way of background, I initially joined the Civil Service at the middle management level before leaving. I returned to the Civil Service on 1 September, 2004 in the capacity of Director of Tourism. I remained in this role until 2 May, 2007.
3. On 5 May, 2007, I assumed the role of Acting Assistant Cabinet Secretary (Policy). I was later appointed to this role on a substantive basis and remained in this position until 9 April, 2008. During this period I had no responsibility for any matters pertaining to the Department of Tourism.
4. On the 10th April, 2008 I was assigned to the post of Permanent Secretary for the Ministry of Tourism and Transport and the post of Permanent Secretary for the Ministry of Economy, Trade and Industry on 13 January, 2011.

Processing of payments

5. I have reviewed the Auditor General's statement with respect to the above and note the observations. As a note, Department Heads are responsible for the day-to-day operations of their budgets and departments. Department Heads were required to adhere to Financial Instructions.
 - a) Response to the Auditor General's stated concern/criticism that had not been approved by Cabinet and/or were paid without signed contracts or agreements and/or had not been tendered
6. It should be noted that Heads of Departments make every effort to adhere to Financial Instructions, given the volume of transactions during the period in question however, errors sometimes occurred. In this respect, failures were the exception and not the norm.
7. Upon review of the non-specific matters it was noted that contracts not approved by Cabinet and/or were paid without signed contracts or agreements and/or had not been tendered generally fell in to one of a few categories:
 - I. contracts that had multi-year approval that had previously been approved by Cabinet;
 - II. individual payments that were supported by purchase orders wherein the cumulative value within the fiscal year totaled or exceeded \$50K;
 - III. contract renewals for vendors that had provided an ongoing service for the Government over an extended period of time;

- IV. Other – errors or anomalies.
8. In each of the scenarios associated with the failure to adhere to Financial Instructions (where this was deemed to be the case, as in some cases the Auditor's view was questionable), there was a logical rationale.

b) Set out your understanding of the process followed by those in your department and the Accountant General's department and how payments were apparently made without proper support.

9. Typically some form of documentation existed to support the transaction. Segregation of duties reduced the risks. The Department Head or Department manager was required to sign the related purchase order for the product or service; the accounts assistant entered the purchase order into the system. An officer who was approved as a signatory, other than the officer who signed the purchase order was required to approve the invoice for payment and the Accountant General's office, subject to the submission of supporting documentation, processed the payment.
10. The checks and balances built into the system reduced the risks however it is accepted that processing errors occurred in some cases. Officers in my Departments practiced segregation of duties and were always keen to ensure that purchase orders raised and payments made had the appropriate supporting documentation and were authorized by Cabinet as required.

Specific Contracts

1. Heritage Wharf Contract

- (i) Who made the decision to delegate oversight to the Ministry of Tourism and Transport and the reason behind it?

11. As previously stated, I was assigned to the role of Permanent Secretary for the Ministry of Tourism and Transport on 10 April, 2008. In accordance with documentation contained in the file, the Ministry of Works and Engineering "...assigned all responsibility for the management of the contract, including all of its conditions and vetting and approval of payments, to the Ministry of Tourism and Transport" by way of formal correspondence on 4 May, 2007. The decision taken predates my tenure therefore I have no direct knowledge of the discussions and the decision to delegate oversight to the Ministry of Tourism and Transport.

- (ii) Who made the decision to select Entech Ltd. to manage the project and select the contractor on behalf of the Bermuda Government and the reason behind this decision?

12. I have no direct knowledge of the discussions and the decision to select Entech Ltd. to manage the project and select the contractor on behalf of the Bermuda Government as that decision predates my assignment to the Ministry of Tourism and Transport. By way of assistance to the Commission, it appears that Cabinet "...approved the consultancy of Entech Limited to conduct project management responsibilities for development of a 2nd cruise pier, terminal and ground transportation area adjacent to the existing King's

Wharf at Royal Naval Dockyard...” at its meeting on 9 January, 2007. See page 12-10 of my witness bundle.

(iii) Why was Cabinet approval not obtained for such contracts?

13. In accordance with the documentation on file at page 12-29, “Cabinet approved the selection of Correia Construction as the preferred contractor for the construction of the second pier at Dockyard; and Authorized the Premier, as the Minister of Transport, to negotiate the terms of the contract with Correia, subject to further approval from Cabinet” in February 2007; the record will further show at page 12-29, that in May 2007, the Ministry of Works and Engineering sent formal correspondence to the Ministry of Tourism and Transport that it (the Ministry of Works and Engineering), on the advice of the Attorney-General’s Chambers, “...had been requested to prepare and sign contracts...to develop a second Cruise Ship pier in Dockyard.” The contract was signed by the Ministry of Works and Engineering. The administrative actions associated with the approval process predate my tenure and therefore I am unable to provide any additional information.

(iv) Whether you believe Financial Instructions were followed in relation to the above contracts?

14. I have referred to the Financial Instructions dated January 1, 2007 with respect to Capital Development and Tenders and it reads as follows:

“12.1.2 Capital Development

The accounting responsibility for capital development rests with the Permanent Secretary for the Ministry of W&E, who is the Accounting Officer for all projects in the Capital Development Estimates, with the exception of Minor Works. For Minor Works, the accounting responsibility remains with the applicable Accounting Officer.

The Permanent Secretary of W&E is obligated to ensure that proper consultation with the applicable Accounting Officer is maintained throughout all phases of the project.

12.2 Tenders

Before the commencement of any capital project, the Permanent Secretary of W&E must obtain tenders on behalf of the appropriate Accounting Officer. The tendering process must be in accordance with FI Section 9 or W&E written procedures (per W&E internal publications: P.F.A. 2000 - Purchase of Goods & Materials and P.F.A. 2002 - Procurement of Contract Services.), depending on the department responsible for the project. All capital development should be the subject of a written contract with the successful tenderer.”

15. I was not at the Ministry at the time that this matter occurred, however it is clear from the documents presented that technical officers made every effort to respect the principles of Financial Instructions whilst adhering to the policy direction of the Government. To this

end Financial Instructions were not followed explicitly but all actions were well documented.

Port Royal Golf Course remediation works

- (i) Whether the Minister of Finance had given a direction, pursuant to section 3(1) of the Public Treasury (Administration and Payments) Act 1969, that W&E should delegate this capital project to the Trustees and/or MoTT? In any event, what was your understanding of the basis upon which the delegation had occurred?

16. As previously indicated, I was assigned to the post of Permanent Secretary for the Ministry of Tourism and Transportation 10 April, 2008. That said, the record shows that Cabinet approved the remediation plan for the Port Royal Golf Course and the estimated cost of \$13,599,726.20 at its meeting on 20 November 2007. Whilst a great deal of the capital development work occurred during the period that I was the Permanent Secretary for the Ministry of Tourism and Transport, project planning, assignment of work and development plans had long commenced prior to my arrival at the Ministry. In this respect page 11-1 of my witness bundle presents a November 20, 2006 Capital Request 2007/2008 for Port Royal Golf Club brief prepared by the then General Manager for the Board of Trustees. Page 11-10 of my witness bundle is a Port Royal Golf Course Renovation brief dated September 12, 2007 presented to the then Premier and Minister of Tourism and Transport by the then General Manger and Chairman of the Board; and page 11-14 and 11-16 are the Cabinet Memorandum and associated Cabinet Conclusion, dated November 2007 approving the Port Royal Golf Course remediation plan and the estimated cost of \$13,599,726.20. My understanding was that the Board of Trustees of the Golf Courses was a statutory corporate body with the power to manage and control its own affairs. Furthermore, I understood the Board had the ability, with the approval of the Minister responsible for Golf Courses, to make use of any services of a Government Department and that the costs of such services would be charged to the accounts of the Board of Trustees. The Golf Courses (Consolidation) Act 1998 states:

"10 (1) Any proposed capital development expenditure shall be subject to the prior approval of the Minister and the Minister of Finance and shall be included in the Annual or Supplementary Estimates.

(2) Any funds appropriated by the Legislature for the operation or maintenance of the Golf Courses or for capital development shall be applied, subject to the terms of the appropriation, in accordance with — (a) any instructions issued by the Minister of Finance or any direction issued by him under section 3(1) of the Public Treasury (Administration and Payments) Act 1969; or (b) any other instructions issued by the Minister."

17. Further, I have referred to Financial Instructions dated 1 January, 2007, in its Introduction it states:

“Financial Instructions cannot override the requirements of governing legislation”.

Also, “Financial Instructions should form the minimum standard for financial controls in every department, ministry, or Quango with additional specific procedures formulated at the departmental level.”*

** “If a Quango chooses to use these Financial Instructions, any modifications must be documented in writing. If a Quango chooses not to utilize these Financial Instructions, the organization must have written financial procedures in place. These financial procedures must be provided to the Accountant General’s Department and the department or agency that provides funding to the Quango.”*

18. It was my understanding that Port Royal Golf Course had its own written financial procedures in place in accordance with Financial Instructions. It was my understanding that the delegation had occurred on the basis of the provisions of the Golf Courses (Consolidation) Act 1998 that provided for the Board, a body corporate - more commonly known as a Quango, to undertake capital development projects subject to funds being appropriated by the Legislature. On 7 November, 2007 the Minister of Finance had signified her approval for same at paragraph 11 of a Cabinet Memorandum dated 16th November, 2007 as seen at pages 11-14 and 11-15 of my witness bundle. This memorandum was approved by Cabinet at its meeting of 20 November, 2007 as seen at page 11-16.
- (ii) How payments were authorized when the requirements in the Financial Instructions (evidence of approvals and tendering) could not have been provided? In this regard, what if any specific inquiries did you make as Permanent Secretary before authorizing payments?
19. The Port Royal Golf Course capital development project was an initiative undertaken by the Board of Trustees. My understanding of the assignment of the project to the Board is set out immediately above herein.
20. The Total Authorized Figure (TAF) was authorized by the Legislature. At the time of this project, Quangos that opted not to use Financial Instructions but rather used their own financial procedures were not necessarily required to seek Cabinet approval for contracts in excess of \$50,000. Any tendering process that the Quango followed was in accordance with their own financial procedures. It is important to restate that, in accordance with Financial Instructions, Quangos were required to use either Financial Instructions or some other financial guidelines as approved by the Accountant General.
21. As Permanent Secretary I would have first verified that the TAF was authorized by the Legislature. I recall that the Ministry Controller was assigned to attend the Port Royal Board meetings to provide a heightened level of oversight with respect to the funding and its use. The project manager, retained by the Board, was required to approval all invoices

and the Ministry Controller was required to verify all invoices prior to presenting invoices to me to authorize payment.

GlobalHue

(i) Why did the Ministry not put out the 2009 contract to tender? Please deal specifically with the concern that the 2006 contract did not contain an option to renew and accordingly the 2009 contract appears to be a new agreement.

22. The Minister made a policy decision not to conduct an agency review. An agency review is the industry term associated with tendering in the advertising industry. His decision not to undertake an agency review was supported by his Cabinet colleagues who approved the Procurement of Services Contract Award Contract Recommendation – GlobalHue as set out at page 7-37 of my witness bundle. It is acknowledged that technically it was a new contract though in advertising agency terms it was regarded as a contract renewal. The submission to Cabinet specified that it was a single source bid. The inclusion of the reference to “single source bid” in for Procurement Services was as directed by Finance. The practice at the time, as per the Ministry of Finance was to ensure that any contract that had not been tendered was disclosed to the Cabinet in this manner.

(ii) Who were the decision makers in relation to the decision to contract with GlobalHue in 2009?

23. The Minister and Cabinet made the decision to contract with GlobalHue in 2009.

(iii) Did the Ministry obtain authorization from the Minister of Finance not to follow Financial Instructions which appear to require a tendering process for all contracts?

24. There is no evidence to support that the Ministry obtained specific authorization from the Minister of Finance not to follow Financial Instructions to adhere to the tendering process. At the time, the practice, as directed by the Ministry of Finance, was to specify that the contract was the result of a single source bid. The Minister of Finance was a Cabinet Minister and contributed to the decision making process at the Cabinet table – to refuse and/or to authorize. Cabinet retained the right to refuse a submission and direct that the process was restarted.

(iv) In your view did Financial Instructions require a tendering process?

25. Technical Officers sought to advance the policy decision of the Minister whilst adhering to Financial Instructions. This adherence to Financial Instructions took the form of a submission of a Procurement of Services request for approval. This process and/or policy change was as directed by Finance and/or Cabinet. Technical Officers did not advance this position of their own accord. It should be noted that to ensure that a level of due diligence was applied, technical officers caused an internal review of the agency to be undertaken which included a review of the handling of the financial aspects of the contracts. This review allowed for the gaps in billing and supporting documentation to be highlighted, documented and a clear understanding of requirements to be set out both

procedurally and contractually. See references to the formal review process undertaken at paragraph 2 of page 7-37 of my witness bundle.

(v) What changes if any did the Ministry make to the 2009 contract to deal with the concerns expressed by the Auditor General about the GlobalHue contract, specifically GlobalHue's apparent inability to obtain invoices from Cornerstone Media and the fact that this could lead to abuse?

26. I have reviewed both contracts as set out at pages 7-3 and 7-45 of my witness bundle and it is clear that the issues relative to the processes and procedures for the use of third party vendors and billing were addressed. Based on a review of the 2006 contract and the 2009 contract, the most significant contractual changes included the insertion of clauses related to "Dealings with Third Party Suppliers" and "Operating Procedures. These clauses essentially specified Bermuda Department of Tourism approval was required in writing for any third party usage as well as laid out the procedures. Also, the "Consideration & Compensation Schedule" clauses were strengthened mandating specific media buying requirements, invoicing requirements, as well as the requirement for original third party invoices. All of these changes served to reduce the risks that could lead to abuse.

(vi) The Auditor General was concerned that there was no information on the principals of Cornerstone Media. Did you ever meet with principals of the company and do you recall their names?

27. I recall that representatives of Cornerstone Media attended the Bermuda Department of Tourism to present their media buying processes. This meeting included representatives from GlobalHue, the then Auditor General and the assigned Auditor as well as technical officers. I do not recall if those presenting were principals of the company and I do not recall their names.

Ambling Contract

(i) When did Ambling begin providing services to the Bermuda Government? In particular, please discuss whether you believe there was an agreement prior to the contact dated May 17, 2010.

28. I do not know when Ambling began providing services to the Bermuda Government. It would appear from the documents provided at page 8-1, that Cabinet approved the engagement of Ambling Development Partners on the 4th March, 2008.

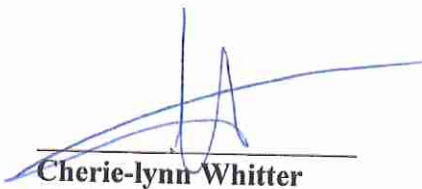
(iii) The reasons (if known to yourself) why the contract with Ambling was not tendered?

29. I was not involved in this process or with the vendor and so I do not know why the contract with Ambling was not tendered.

(ii) The reason why the contract was made with the Department of Tourism rather than the Ministry of Planning or W&E.

30. To be clear whilst I was the Permanent Secretary for the Ministry of Tourism and Transport at this time, the responsibility for hotel development remained the

30. The Cabinet Memorandum was for the Ambling contract handled by the Cabinet Office. I recall that the scope of work spanned three Ministries one of which was the Ministry of Tourism and Transport via the Department of Tourism. In accordance with the content at page 8-2 of my witness bundle the other Ministries were the Ministry of Works and Engineering and the Ministry of Environment and Sports. The payment was shared by all three Ministries \$460,000 per payment over the duration of the contract term.
31. Invoices for payment were sent from the Cabinet Office to the Department of Tourism and authorized by the technical officer responsible for hotel development.
- (iv) What actual services did Ambling provide the Department of Tourism of which you are aware? Were any reports produced and if so please provide copies?
32. As far as I am aware Ambling provided hotel development consultation for the Cabinet Office and by extension the Department that had responsibility for various aspects of hotel development in accordance with the relevant legislation. As noted above, whilst I was the Permanent Secretary for the Ministry of Tourism and Transport at the time, the responsibility for hotel development remained the responsibility of the Cabinet Office. I have been unable to determine if any reports were produced and therefore I am unable to provide copies.
33. I believe that the facts stated in this witness statement are true to the best of my knowledge and belief.


Cherie-lynn Whitter

22 Sept. 2016
Date