

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 Marc Timothy Telemaque

1. I am MARC TIMOTHY TELEMAQUE of [redacted] and I am currently Secretary for National Security. I make this witness statement in response to the request of the Commission of Inquiry duly appointed by the Premier on 24th 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. I have been asked to comment generally on the Auditor General's concerns or criticisms contained in the report on the Consolidated Fund for those financial years that large expenditures by departments for which I had charge had not been approved by Cabinet, were paid where there were no signed contracts or agreement and where any such contracts or agreements had not been tendered. Further, I have been asked to comment on my understanding of the process followed by those persons in the Ministry for which I was responsible at the time.
3. Adopting the order and thereafter numbering of the Commission in its letter to me of 25th July 2016, I would respond as follows:

Processing of Payments

4. With respect to the Bermuda Police Service (BPS), I am advised by the Commissioner of Police as follows:
5. The following table represents the payments that are being queried. I provide the following explanations:

Table 5.3: Police (7)

Supplier #	Supplier	Particulars	Bact#	Doc #	Amount Tested	Total
226131	Telecom Bermuda	Repairs And Maintenance Other Equipment Smartzone Access Fee	792615	20092873	98,752	1,185,073
835702 7243878	Taser International	Taser & Accessories	826558	20176150	80,000	80,000
731495	Tetragon Tasse Distributors Inc	Materials & Supplies Remington UMC	823593	20170005	65,644	65,644
220425	Marshall's Maintenance Company	Janitorial Services	803068	20121798	6,025	312,845
224573	RUBIS Energy Bermuda Ltd	Gasoline Super Unleaded Bulk Gas	809036	20136966	9,322	245,590
						1,880,161

- (a) Telecom Bermuda is the East End Telecom police radio contract. The BPS used East End Telecom with respect to the maintenance of its two-way radios since 2001. The payment in question was made in 2009. In a letter dated 12 January 2009 from East End Telecom (attached) they state “ ... effective February 1, 2009 Telecommunications Networks Limited will extend your existing contract for two-way radio service and support on a month-to-month basis until the tender process for the new communications system is complete ...” The payment is supported by a temporary agreement to supply goods and services. The new contract came into effect on 30th November 2010 and is supported by Cabinet Conclusion 28(10)3. A new Cabinet Conclusion that supports an RFQ for a new radio system has recently been issued.
- (b) Taser International relates to the purchase in 2010 of Taser X2 electro-muscular disrupter (EMD) devices (“tasers”) and Axon-flex officer mounted video recorder. The BPS took the decision to provide additional less lethal use of force options to its officers, to enhance use of force accountability measures, and to enhance post-incident investigations following the use of lethal force, against the backdrop of increased gun violence in Bermuda. Taser International is the only manufacturer that produces conducted electrical weapons to an international law enforcement standard. The purchase should have been supported by a Sole Source Waiver, but it did not relate to a contract and it was made prior to E1. There are, subsequently, no other records on our file.
- (c) The payment to Tetragon Tasse is for ammunition purchased that year. The BPS uses Tetragon because it is a company that has overcome the procedural difficulties related to supply ammunition across international boundaries. While many other companies provide ammunition, few have the required federal clearances to ship ammunition outside of their

jurisdictions. There is no contract with Tetragon, and purchases of ammunition are made against invoices on each occasion.

- (d) The BPS first hired Marshall's Maintenance to clean the Southside Police Station in 2007. There is a "Letter of Agreement" in our files (attached) which states that the BPS and Marshall's agreed to continue with the 2007 pricing of \$6,025 effective 2010. There is no end date to the agreement. Our records do not confirm whether three quotes were obtained in 2007.
 - (e) The Rubis contract is for the purchase of fuel. There are only two fuel providers in Bermuda: Esso and Rubis (formerly "Shell"). In 2002, the BPS initiated a supplier agreement with Esso. The system did not, however, provide security or audit controls. Rubis later offered the BPS a "Gas Boy" that includes control, audit and security features. Rubis agreed to install the system free of charge as part of a bid for a supplier agreement. As a result, the BPS entered into an agreement in 2007 for the provision of fuel using Rubis (Shell). Esso did not bid submit a bid for the provision of a "Gas Boy" system. The Supply/Loan Agreement with Rubis (attached) is a 10 year agreement that expires in June 2017.
6. This section of the Commission's letter to me then queries matters surrounding the delegation of accounting responsibility to the Ministry of Transport and Tourism (sic) for the period 2010, 2011 and 2012. I can confirm that no matters of this sort relate to my area of responsibility for the relevant period.

Specific Contracts

Bermuda Emissions Control Ltd.

(i) Why did the Ministry waive the tendering process for BECL?

7. If this refers to a decision of August 2001, I can confirm that I was not the Permanent Secretary at this time and therefore cannot comment.

(ii) Why the Ministry selected BECL as the preferred contractor? In particular, please explain why BECL was considered to have the experience and qualifications for the contracts.

(8) If this refers to a decision of August 2001, I can confirm that I was not the Permanent Secretary at this time and therefore cannot comment.

(iii) The circumstances in which approval was given to proceed with the contract even though an open tender had not been carried out as required by the Cabinet approval.

8. At its meeting of 10th June 2003, Cabinet considered a Paper, the purpose of which was to invite Cabinet's approval to introduce vehicle emissions testing and to outsource the safety inspection of vehicles from the Transport Control Department (TCD) to a private contractor, namely BECL.
9. In the course of that discussion, Cabinet was advised that the primary recommendations of BECL, and the complete "package" to be considered included the initial design and construction of a new vehicle testing and administration facility at the current TCD location and the construction of two smaller testing facilities at the eastern and western ends of the Island respectively.
10. By its Conclusion 23(03)2 Cabinet approved **"the proposal to contract Bermuda Emissions Control Limited to provide an emissions inspection maintenance programme and to outsource the vehicle safety inspection service as amended and outlined in Annex 1"**
11. No open tender was directed by this Conclusion of Cabinet which authorized the entire intended project with respect to BECL and the emissions project. Subsequent Cabinet Conclusions refer to this approval of the entire emissions project.
12. I recall that sometime in 2005, Cabinet considered a paper related to the construction of the satellite testing facilities. That resulted in a Conclusion that the construction of these facilities be the subject of an open tender process. This was incongruous with the earlier Conclusion of 2003 and at variance with the manner in which the Ministry was proceeding in advancing this initiative.

13. I also recall internal discussions (MoT, Finance, Accountant General Etc.) regarding how to approach this state of affairs with Cabinet Conclusions apparently in conflict and the concurrent delays that had already been experienced in bringing this initiative to fruition. In a memo of 18th April 2006 from the Ministry's then Controller (copied to me) to the Accountant General (page 9-59) she sets out that *"...BECL are in compliance with the following section(sic) of the Financial Instructions (value for money and documentation for goods and services in excess of \$50,000). Estimates based on the same architectural drawings have been requested from 3 companies for both Rockaway and Southside satellite station (sic). Thus far 5 estimates have been received, 3 for Rockaway and 2 for Southside..."*

(iv) How payments were authorized when the requirements in Financial Instructions (evidence of approvals and tendering) could not have been provided?

14. As has been noted in numerous reviews and reports, this project was managed by the department and I cannot specifically recall being involved in the authorization of payments. However, in my experience and as I understand it on this project, where appropriate documentation was not provided for payments to be made, they were withheld pending receipt of the same.

Heritage Wharf

(i) The rationale for delegating this capital project to the Ministry of Tourism and Transport.

15. Any consideration related to the development of a second cruise pier for Bermuda at Dockyard must be viewed through the lens of a rapidly changing cruise ship industry generally and a changing relationship between Bermuda and the cruise industry specifically during the period 2005-2009. In the Special Report of March 2015, the Auditor General sets out the lengthy periods of inaction between discussions on the development of cruise port infrastructure and concurrent cruise ship policy for Bermuda.

16. In October 2006 Cabinet considered how to approach the development of Dockyard in particular and ultimately approved the construction of the second cruise pier. It was

determined early-on and accepted by the then Ministry of Works & Engineering that the nature of this project was such that there was not the “in-house” capacity to design, build and manage the project, particularly in light of the aggressive timelines against which this project was required to be delivered. It is important to note that the Ministry of Tourism and Transport’s position was that this project was ideally suited to a public / private partnership with one of Bermuda’s cruise line partners and this was commended to Cabinet for their consideration. Part of any public / private partnership of this kind would necessarily involve preferential berthing and long term contracts with the cruise line partner to realize the maximum return on their investment. With that in mind and the ceding of control over which ships would call at any new pier, Cabinet determined that the Government of Bermuda would fully fund the development in an effort to retain control and flexibility around the management and berthing arrangements for this significant tourism asset.

17. Media reports from the time confirm that the 2008/2009 cruise schedule was impacted by a major cutback in the number of cruise ships calling at Bermuda and docking at Hamilton and St. George’s in particular. Two important factors contributed to this; firstly, cruise lines were selling their older and smaller ships and moving them to new emerging markets; secondly, competition for cruise visitors was increasing from destinations like Alaska and Europe. Cruise lines were regularly redeploying ships to Europe in increasing numbers.
18. Unexpectedly, Royal Caribbean exercised its right to redeploy a ship that had been expected to call in Hamilton regularly in 2008 (the Azamara Journey) and at the end of 2007’s cruise season therefore left Hamilton without a contract ship for 2008. There simply were no smaller cruise ships that could safely and reliably dock in Hamilton at that time and eventually, the same fate befell St. George’s.
19. In light of the foregoing, the development of a second cruise pier for Dockyard became and even more important national imperative and moreover, with the global economic factors beginning to affect tourism, the pier had to be ready in April 2009 to receive the first ships and to prevent any loss of revenue to the Government and those businesses dependent on cruise passenger dollars for their livelihood.

20. The process by which Correia Construction was selected is set out in the Special Report and an examination of the chronology will indicate that once Cabinet approved the proposal to construct a second cruise pier for Dockyard, they then approved the engagement of project managers who oversaw, on behalf of the Government of Bermuda, a preferred contractor selection process based on soliciting recognized marine contractors in the jurisdiction. That process and resultant recommendation was approved by Cabinet.

(ii) Whether the Minister of Finance had given a direction, pursuant to section 3(1) of the Public Treasury (Administration and Payments) Act 1969, the W&E should delegate this capital project to MoTT?

21. I have specific knowledge of this.

(iii) The rationale for instructing the project manager to select the contractor rather than carry out a public tender?

22. See (i) above.

(iv) Whether the Minister of Finance had given a direction, pursuant to section 3(1) of the Public Treasury (Administration and Payments) Act 1969, that the tendering process / cabinet approval requirement mandated by Financial Instructions was not required in selecting the contractor?

23. I have no specific knowledge of this, but would refer the Commission to the fact that Financial Instructions are a “guide” and as indicated by the Auditor General,

“The Financial Instructions are not clear when it comes to open tender. Actually there is no recommendation for the open tendering process to be undertaken. It does say that contracts and agreements for goods and services over \$50,000 the accounting officer should consider tender for the contract.”

-Hearing of the Public Accounts Committee, 1st July 2010.

- (v) How payments were authorized when the requirements in Financial Instructions (evidence of approvals and tendering) could not have been provided?

24. In addition to (iv) above, the approval for all facets of this project was evidenced through the Cabinet Conclusions from October 2006 through March 2007.

1. Port Royal Golf Course

25. I am unable to assist in this area of the Inquiry as I played no material role in this project.

Global Hue

- (i) What is your understanding of why the Ministry of Tourism and Transport did not put out the 2009 contract to tender?

26. The 2009 contract for Global Hue was viewed as a renewal of its contract for services.

This was not in any way unusual within the then Bermuda Department of Tourism. It is important to note that where a destination has engaged a company charged with its branding, marketing and overall management of the promotion of its tourism product, in the absence of some failure to perform or obvious dissatisfaction with that company, best practice would suggest that the relationship be maintained for brand consistency and marketplace certainty and confidence. In fact, it has been a source of criticism as part of the rationale for the formation of the Bermuda Tourism Authority (BTA) that too frequent changes of agency partners either in compliance with the rules of government or owing to changes in ministerial outlook caused undue confusion in the marketplace and resultant negative impact on Bermuda tourism.

27. It is therefore, overly simplistic and ignorant of best practice to suggest, without more, that a contract of this nature should be tendered automatically, simply because it has expired.

28. It is important to note that the benchmark against which the BTA has most recently measured their performance is the year 2008.

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

29. The award of the 2009 contract to Global Hue was approved by Cabinet.

(iii) Did the Cabinet review and identify if the Minister of Finance gave authorization not to follow Financial Instructions which appear to require a tendering process for all contracts?

30. My recollection is that the practice was to seek the approval of the Minister of Finance (evidenced by a signature on the actual Paper) with respect to contracts or Cabinet Papers which had financial implications and where that approval or support had not been evidenced that would be reflected in the ultimate Minutes of the meeting.

31. Further, it is important to note that, as set out above, Financial Instructions is a "guide" and *"The Financial Instructions are not clear when it comes to open tender. Actually there is no recommendation for the open tendering process to be undertaken. It does say that contracts and agreements for goods and services over \$50,000 the accounting officer should consider tender for the contract."*

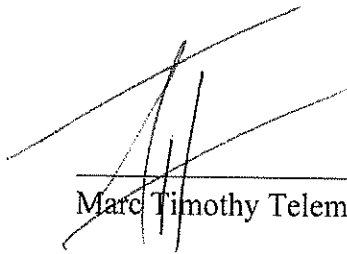
(iv) Given your knowledge of the original Global Hue contract issues, what changes if any, did the Ministry make to the 2009 contract to deal with the concerns expressed by the Auditor General about the Global Hue contract, specifically Global Hue's apparent inability to obtain invoices from Cornerstone Media and the fact that this could lead to abuse?

32. I was not involved in this matter at the material time and as such I have no knowledge of the specific nature of the 2009 contract.

(v) The Auditor General was concerned that there was no information on the principals of Cornerstone Media. Did you ever meet with the principals of the company?

33. I do not recall ever meeting the principals of Cornerstone Media.

34. I believe that the facts stated in this witness statement are true to the best of my knowledge and belief.



Marc Timothy Telemaque

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Date