

AFFIDAVIT IN SUPPORT OF THE COMMISSION OF INQUIRY

I, PAULA ANN COX, Barrister and Attorney, do hereby depose and say that:

a MAKE OATH AND SAY AS FOLLOWS THAT:

1. I am a former Minister of Finance of the Government of Bermuda, having served in that capacity for the period from mid-January 2004 to December 17, 2012 and that the facts and matters to which I depose herein are true to the best of my knowledge, information and belief. Where it appears that the facts are not within my personal knowledge, I believe those facts to be true.
2. I have no recollection of ever being asked to authorise any Minister and/or Permanent Secretary with responsibility for works and engineering, to delegate their functions in respect of capital projects for (i) the Port Royal Golf Course remediation works, (ii) Heritage Wharf or (iii) Bermuda Emissions Control Ltd and no direction was given by me in my capacity as the Minister of Finance for any such delegation in respect of any or all of these capital projects.
3. Under the provisions of the Public Lands Act 1984, (the "Act") as amended, the Minister with responsibility for works and engineering is assigned the charge and management of (i) public works and engineering as well as the charge and management of all public lands (other than parks and highways) and public buildings and the construction, erection, improvement, maintenance and repair of such lands and buildings. Section 7 of this Act provides that the Minister may delegate any of his functions to the Permanent Secretary or to such other officers as the Permanent Secretary may specify.

4. The Good Governance Act 2011 (the “2011 Act”) established the Office of Project Management and Procurement and also encompassed a number of amendments relating to good governance, including strengthening the Internal Audit Act and introducing a whistle-blowing measure to the Employment Act 2000. The key provisions of the 2011 Act are as follows:-

(1) Enhancing oversight and control by:

- a. establishing the Office of Project Management and Procurement and setting out the functions of the Director;
- b. requiring all public authorities, particularly Quangoes, to comply with Financial Instructions and the Code of Practice for Procurement;
- c. amending the Internal Audit Act to include a clause which provides that the Director of Internal Audit’s power to obtain documents “trumps” other statutory provisions or rules of privilege that would otherwise prevent the disclosure of documents or information.

(2) Ensuring best practice and transparency by:

- a. introducing regulations defining Financial Instructions and a Code of Practice for Procurement; and
- b. providing for an annual report on procurement to be laid before the Legislature.

(3) Demonstrating zero tolerance for non-compliance by creating offences for:-

- a. non-compliance with any part of the Public Treasury (Administration and Payments Act) and its associated regulations;

- b. a public officer involved in the awarding of contracts who does not disclose a conflict of interest; whether legal, fiduciary, beneficial, family or otherwise;
- c. wilfully destroying or concealing documents and increasing the penalty for such offences. This offence has also been introduced in the Internal Audit Act and Audit Act and;
- d. increasing the penalties for certain offences in both the Internal Audit Act and the Audit Act

(4) **Finally, protection of those who expose wrong doing** by introducing a Whistle-Blower clause to the Employment Act to provide a new ground of unfair dismissal if a person is dismissed for making a protected disclosure to the Bermuda Police Service or other relevant agencies that are responsible for investigations.

The 2011 Act did not include an offence of provision of inducements to obtain preferred treatment given existing legislation in place within the Criminal Code act 1907,section 111.

5. I advised the Honourable House of Assembly by way of a Ministerial Statement of the rationale for establishing the Office of Project Management and Procurement and indicated that this was another pillar in the Government's efforts to strengthen financial accountability in Government and to enhance our governance framework. I stated that by establishing this Office, a strong and clear message was being communicated to the public that the Government has zero tolerance for behavior and practices that do not

accord with the highest standards of good governance. Further I indicated that when fully staffed, the Office of Project Management and Procurement would be manned with people with the requisite skill and experience to ensure that there is no bias in the tendering process; that the Government will obtain value for money; and so that there is adequate oversight of capital projects. The Office of Project Management and Procurement was also to ensure that the processes for tendering and selecting qualified vendors are transparent and in accordance with international standards; and that all businesses, including small business owners, will have an equal opportunity to obtain government contracts to provide goods and services.

6. On or about March of 2011, the Ministry of Finance advertised for the provision of an Interim Director for the newly established central office of Project Management and Procurement in order to:

- Restore public trust in the procurement function by bringing transparency and best practice to the function;
- Achieve enhanced value for money from Government spend by improving consistency of approach, compliance and effectiveness;
- Increase opportunities for small and medium sized businesses to contract with Government;
- Provide professional project management and technical support to projects; and
- Identify and implement cost saving initiatives.

7. The achievements of the Office of Project Management and Procurement for the first

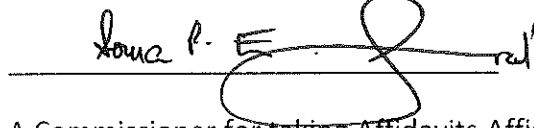
eleven months were the development and introduction of performance measures; a reduction in training costs, an analysis of departmental capability, the implementation phase of the online tendering and project management system; a review of major project contracts that led to the running of the substance abuse treatment facility being put back on track; existing project compliance reviews; the introduction of standard pre-procurement processes; the review of procedures and processes; the recruitment of the wider team for the department; the implementation of a new contract evaluation process; the drafting of a certificate of non-collusion, the introduction of a mandatory debrief of all unsuccessful bidders and the drafting of a procurement code of practice that was already in the consultation phase and that had the intent to set a e of performance that had not previously existed.

8. I cannot confirm the status of the draft Code and whether it has now been finalised following consultation and whether the regulations have been drafted and brought into force by the current Government.

SWORN by the within named **PAULA ANN COX**)
in the City of Hamilton in the Islands of Bermuda)
this 22nd day of August 2016)



BEFORE ME



A Commissioner for taking Affidavits, Affirmations

And Declarations in the Islands of Bermuda