

COMMISSION OF INQUIRY

BERMUDA

Further statement of Derrick Burgess made at the request of the COI.

1. I Derrick Burgess have had sight of additional documents emailed to me last week which I am told has just come into the hands of the COI as a result of a request made by them to the HSBC bank in Bermuda formally known as the Bank of Bermuda.
2. I can say that having seen these documents numbered 10-267 to 10-294 inclusive that I have no recollection of having seen these documents before and I deal with them individually below.

Credit Memorandum 10-267

3. This is an internal memo within the bank and I would not have had sight of it. It deals with the request by Messrs Matvey and McLeod (MMM) to secure additional temporary funding to buy out the shares held by Lisgar Construction following a falling out between the partners. I was aware of this falling out, although I cannot say precisely when I knew it had become clear that there were ongoing issues with the partnership. I did know that MMM were to sever the relationship but the detail of the internal arrangements made by the company to buy out their former partners was of no real concern to me beyond their continued viability to carry out their contract.

Letter from Bob Horton to HSBC 10-268/9

4. This letter though apparently copied to me is not a document I have any recollection of. It is a relatively routine letter to a contractor's bankers setting out the existence and value of a government contract and the state of progress. I note that it states that the contract though behind schedule was not "...viewed as substantially the fault of LLC..." It is likely that I would have been made aware of the contents but I would not have regarded this as important.

Internal Banking Analysis of Funding Application 10-270 to 281

5. This is an internal banking document dated 27<sup>th</sup> November 2008 prepared by the Relationship Manager Mr McGuinness. I had nothing to do with this application nor was I privy to the detailed application neither was I present at any of the meetings with MMM or the bank.
6. I note that it makes reference to a meeting between bank officials, Matvey, Hollinsid, Winters Burgess and Julian Hall (in his capacity as legal advisor to W&E) on 21<sup>st</sup> November 2008. Hall was providing legal advice to the department as to the terms

of the new contract. It is to be noted that neither I nor the PS were present at this meeting and I anticipate that Hall's attendance was to give some comfort to the bank as to the arrangements for the new contract before they were about to extend further financial facilities to LLC. I reiterate this was none of my business: I was only interested in the continued viability of the company to carry out its obligations under the terms of the contract. Whether it was strictly necessary to draft a new contract or amend the old one was not a matter that I was overly concerned with and left that to be agreed between the AG's chambers, the PS and LLC and their lawyers.

7. I think it highly unlikely that I was even aware of this meeting on the 21<sup>st</sup> November 2008. I would have left all this to the PS Bob Horton in whom I had complete trust.
8. I note that the internal document refers to the new contract and in particular the matters that had given rise to concerns between LLC the former architects and Canadians such as prompt payment by 21<sup>st</sup> of each month and the hard rock issues which caused additional work to be done.
9. It also identifies the \$1,000,000 saving on the contract and the retention of 10% in lieu of the performance bond that I wished to secure.

W&E Contract Award Recommendation Veritas Place

10. This document dated 15<sup>th</sup> September 2010 drafted by someone from W&E together with Bob Horton would have been seen by me at some point. It recommends LLC as the contractor for fitting out the BPS high command at Veritas. I refer the reader to both my second statement and my evidence in relation to this matter and the various quotes that the department had received in relation to this matter prior to the two bids that we see in this document. It will be observed that the W&E architect's department estimated the scope of the works to cost circa \$1.25m. Following my direct intervention, the work was done for less than a quarter of the price.
11. The fact that LLC were the ongoing contractor for the new Police Station across the road and that the relationship between the company and W&E was now a good one made a difference to the selection of the contractor.
12. I note that Winters Burgess is named as a Principal in the company. I am not entirely clear what "principal" actually means but I can say that from 2009 whenever I visited the site at the new court building he was always there in a managerial role working with MMM. I can further add that I do not ever recall seeing Hollinsid at a site inspection or site meeting. I remained wholly unaware of Hollinsid's apparent arrangements with MMM. I am still unaware of what the detailed arrangements are/were until told by counsel for the COI during questioning (both in respect of Hollinsid and W Burgess) and from what I have subsequently read. I can say, as I

volunteered to the Parliamentary Committee earlier this year, there came a point in which I discovered that he did have an interest; though, when, I cannot say.

Extract of Minutes of Cabinet Meeting 30/9/10 10-282

13. The minutes would have been seen by me. They reflect the decision of the Cabinet. They would have had the paper at page 10-284.

Cabinet Memorandum - Contract Award Recommendation 10-289 to 294

14. This document dated 14<sup>th</sup> February 20110 drafted by someone from W&E together with Bob Horton and the Cabinet Office would have been seen by me at some point. It recommends LLC as the contractor for the works at Waste Management Facility at Marsh Folly. This was a project that was desperate for the work to be completed urgently it having been repeatedly delayed. In the event LLC were awarded the contract because they could complete the work in 20 weeks (rather than 32 as proposed by the next nearest bidder).
15. I note that Winters Burgess is named as a Principal in the company. I am not entirely clear what principal actually means but I can say that from 2009 whenever I visited the site at the new court building he was always there in a managerial role working with MMM. I did not know what arrangements he had with LLC or MMM save that he is indicated as a principal of LLC on this cabinet paper. I had no reason to question that.

Extract of Minutes of Cabinet Meeting 29/3/11 10-287/8

16. The minutes would have been seen by me. They reflect the decision of the Cabinet. They would have had the paper at page 10-289.

In response to the specific questions I have been asked by the COI I can say the following:

- i. Did he know of Mr Hollinsid's involvement prior to 1 December 2008 (when the second contract was signed)?  
Ans. Not to the best of my recollection.
  - ii. Did he give instructions / guidance in relation to the second contract's terms and what they should be?  
Ans. Only as to the generality but specifically to include the \$1m saving.
  - iii. If so, did Mr Hollinsid's involvement have any impact on the contract negotiations in relation to the second contract.  
Ans. No.
  - iv. Why he did not bring Mr Hollinsid's involvement to Cabinet's attention?  
Ans. Did not know.
17. I should point out that it was my understanding that the process for cabinet memorandums in relation to contract awards recommendations was that the names of company principals be included in the cabinet documents by the PS who must then send the memo to the cabinet Secretary who prepares the final documents

before delivering them to Ministers. If Mr Hollinsid's name is not included then I guess he would not have been regarded as a principal. The Responsibility for informing cabinet of who the principals in a company are lies with the PS's.

A handwritten signature in black ink, appearing to read "Derrick Burgess". The signature is written in a cursive style with a long horizontal stroke extending to the left.

Derrick Burgess  
5<sup>th</sup> December 2016