

BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY

HEARINGS: DAY 35

(FRIDAY 17 SEPTEMBER 2021)

International Arbitration Centre
3rd floor Ritter House
Wickhams Cay II
Road Town, Tortola

Before:

Commissioner Rt Hon Sir Gary Hickinbottom

Ms Lauren Peaty of Withers LLP (instructed by the Attorney General) appeared for various BVI Government Ministers and public officials.

Counsel to the Commission Mr Bilal Rawat also appeared.

Dr Drexel Glasgow gave evidence.

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Those present:

Session 1

Ms Lauren Peaty, Withers LLP

Mr Bilal Rawat

Dr Drexel Glasgow

Mr Steven Chandler, Secretary to the Commission

Ms Juienna Tasaddiq, Assistant Secretary to the Commission

Mr Dame Peters, Audio-Visual Technician

Officer Junior Walker, Royal Virgin Islands Police Force

P R O C E E D I N G S

Session 1

COMMISSIONER HICKINBOTTOM: Good morning, everyone.

Just before we start, can I just raise one point with Ms Peaty.

Ms Peaty, we had a letter, in fact, it was from you overnight, which said this: "We write further to the Hearing of today, at the end of the Hearing, the Commissioner stated that the Premier had accepted that the revocation of the Climate Change Trust Fund Board was 'illegal'. The Premier was surprised to hear his evidence so described, as he does not consider that it is an accurate summary of what he said. He's very troubled by the Commissioner's statement because it may be that the Commissioner misunderstood his evidence on this point. We raise this at the earliest opportunity so that there can be no mistake that the Premier does not accept this view."

Now, Ms Peaty, we heard the Premier's evidence yesterday as to the Attorney General's advice in 2019 and how that advice was understood, so we have that evidence.

In respect of--and I will have to make of that evidence what I will.

But in respect to this concern of the Premier, as "illegally" is put into inverted commas, I'm not quite sure whether that's his concern because the term used otherwise yesterday and indeed the final direction, which we were

1 discussing when I used the term "illegal" was "unlawful", and I
2 certainly did not mean by "illegal" anything more or less than
3 "unlawful", so it may be that simple point.

4 But, if the concern is that whatever the Attorney
5 General's advice was in 2019, the revocation of the membership
6 of the Climate Change Trust Fund Board was legal, then that's
7 obviously something that I would allow the Attorney to put in
8 submissions on, as I have allowed her to do in respect of the
9 BVI Ports Authority Board.

10 So, what is the position? Is the position the latter?
11 Does the Attorney to want put in legal submissions in relation
12 to the revocation, the lawfulness of the revocation of the
13 Climate Change Trust Fund Board?

14 MS PEATY: You will appreciate that having sat late
15 last night and just coming in this morning, we haven't discussed
16 this in great length with the Premier, and I think he will be
17 considering the position today. I would be grateful, if we can,
18 expand the submissions onto the two limbs, so it's the Climate
19 Change Trust Fund and the Ports Authority.

20 COMMISSIONER HICKINBOTTOM: No problem.

21 MS PEATY: If so advised, if you're content with that.

22 COMMISSIONER HICKINBOTTOM: I'm completely content
23 with that. And I think that that will simply mean amending the
24 direction from yesterday literally to add after the words "BVI
25 Ports Authority Board" and the "Climate Change Trust Fund

1 Board". No problem with that at all as the direction is framed
2 in the terms of whether that was lawful, if the Attorney, upon
3 reflection, considers that it was, indeed, unlawful, then the
4 submission can simply say that. It's only if she considers that
5 it was lawful that she needs to give reasons.

6 Just one further point--I'll check with Mr Rawat that
7 he has nothing to add to this--one of--well, let me go back.

8 Both in terms of submissions and indeed in terms of
9 notes which include submissions and evidence in one document,
10 increasingly these documents do not have any name on them. They
11 must have a name on them. Evidence, I need to know whose
12 evidence it is and who can speak to the evidence. Legal
13 submissions, I need to know who's legal submissions they are in
14 terms of individual advocates.

15 So, in respect of this note, which is legal
16 submissions, so it will have some advocate or advocate's names
17 on the bottom, that's fine. As I stressed yesterday, no
18 evidence. As I stressed yesterday, no more than five pages. I
19 stress that again, because despite making directions limiting
20 the length of documents, sometimes the IRU have put in very long
21 documents together with, at some times, hundreds of pages of
22 Annexes. That is not what I want in this instance.

23 But also--because I think this points' very
24 important--I would like confirmation in respect of this note
25 that the Attorney has seen the note, considered it, and confirms

1 that that is her view.

2 Yes?

3 MS PEATY: Yes, sir. And we have been taking on board
4 the feedback, so I think we put in two notes this week, but do
5 you have the names of the persons submitting them on. We are
6 conscious that you don't want lots of documents. It may be that
7 we would refer to Transcripts or other documents in the record,
8 obviously within submissions. I hope that that would be
9 appropriate, and maybe we don't append them.

10 COMMISSIONER HICKINBOTTOM: Well, that's appropriate,
11 as long as they go to the two matters that I've asked for
12 submissions on, Ms Peaty, certainly.

13 Mr Rawat, anything else on that?

14 MR RAWAT: Nothing, Commissioner.

15 COMMISSIONER HICKINBOTTOM: I'm just getting a
16 notebook. That would be my fault because I haven't got it.

17 Okay. Good.

18 Yes. Good morning, Dr Glasgow.

19 Mr Rawat.

20 MR RAWAT: Good morning, Commissioner.

21 Just to explain before I begin my questions of
22 Dr Glasgow, he has, with your agreement, got his own laptop with
23 him. That is only for the sole purpose of allowing him to be
24 able to read his Affidavit on screen.

25 COMMISSIONER HICKINBOTTOM: Yes.

1 MR RAWAT: Which is something that he finds easier to
2 do.

3 COMMISSIONER HICKINBOTTOM: Yes. Certainly.

4 BY MR RAWAT:

5 Q. Dr Glasgow, thank you for returning to give evidence
6 to the Commission today. I say "returning" because of course on
7 the last occasion you were not in the hearing room, you were
8 remote. But on that occasion, which I think was the 8th of
9 July, you made an affirmation. There is no need for you to do
10 so again. The affirmation still binds you.

11 You will see that, I think in front of you, there is a
12 bundle of documents, you will be familiar with those. You also
13 have the Affidavit that you prepared, and we will look at those
14 as we go through your evidence.

15 Could I ask you just to remember to keep your voice
16 up. The microphone doesn't amplify, and so if anything, you
17 probably could do with pulling it a bit closer to your mouth as
18 we go through.

19 The other thing to caution, and it's a caution that
20 applies to both myself and you, is we should both try and avoid
21 speaking across each other. The reason for this is that we have
22 a remote Stenographer who will want to make sure that we have an
23 accurate record of your evidence today.

24 A. Okay.

25 Q. If I just explain and just in terms of background

1 context, when you last gave evidence, you told the Commissioner
2 that you first began in Public Service, I think, in 2003.

3 A. That's correct.

4 Q. And then your current role now, which you've occupied
5 since the 17th of February 2014, is that of Director of Projects
6 within the Ministry of Finance?

7 A. That's correct.

8 Q. Now, on the 10th of March, the Commission sent Letters
9 of Requests to the Cabinet Secretary and the Minister of
10 Finance, seeking disclosure concerning the provision of security
11 services at Elmore Stoutt High School. I'm going to call the
12 high school ESHS, as you do in your Affidavit. The disclosure
13 that was provided lead then to letters requesting Affidavits.
14 And those letters were addressed to Dr The Honourable Natalio
15 Wheatley and also to The Honourable Premier and Minister of
16 Finance.

17 You have provided an Affidavit in response to those
18 letters. They utilize information provided by colleagues within
19 Public Service, and they are intended--and that Affidavit is
20 intended and designed to address the questions that have been
21 raised in both letters to those two Ministers; is that right?

22 A. That's correct.

23 COMMISSIONER HICKINBOTTOM: Just before we start the
24 questions, I would like to thank you very much for the
25 Affidavit, Dr Glasgow, and it's clear the care and attention you

1 have given to the Affidavit. The background to this is not
2 straightforward, and it would be frankly without your Affidavit,
3 to me anyway, incomprehensible, so thank you for the work you
4 have done on the Affidavit. It's much appreciated.

5 THE WITNESS: Thank you.

6 BY MR RAWAT:

7 Q. Dr Glasgow, can I join in the Commissioner's thanks.
8 I think also that thanks should extend to the colleagues that
9 inputted to the Affidavit because, and we won't necessarily go
10 into that detail, but you cross-refer to information that's been
11 provided to you.

12 A. Correct.

13 Q. And that's colleagues in two Departments, isn't it--or
14 two Ministries, forgive me.

15 A. Yes.

16 Q. Now, if I take you to the last page of your Affidavit,
17 what I think is your internal page 17 and our page 29.

18 A. I'm there.

19 Q. Please just confirm that that's your signature,
20 please, Dr Glasgow.

21 A. That is correct. That is my signature.

22 Q. And it's dated the 2nd of September 2021?

23 A. Correct.

24 Q. Unless you say otherwise, Dr Glasgow, I'm going to ask
25 that that formally becomes part of the record of evidence before

1 the Commission.

2 It's your Second Affidavit. The first that you
3 provided concerned the law and practice in relation to
4 procurement of government contracts, and that was what we asked
5 to you assist on when you gave evidence on the 8th of July.

6 Now, if we start off perhaps with some historical
7 context, really, if I take you to paragraph 3.1 in your
8 Affidavit at page 14. In paragraph 3.1, you note that
9 section 59 of the Education Act--which Commissioner, for your
10 note you can find at page 38 in the bundle--gives the Minister
11 for Education that power to designate school security officers
12 to assist a principal and teachers of any school. And at
13 3.4--sorry, 3.3 on the same page--you note there, you say that
14 there was a history of crime at ESHS, including vandalism and
15 theft with numerous break-ins, a possible case of arson,
16 together with related concerns about poor lighting and fencing
17 on the site. And you record there the various Cabinet Papers in
18 which those concerns about security at the school have been
19 raised, some of which refer to it by its old name BVI High
20 School.

21 And one of the points you note is that the school
22 campus is open in that the grounds are used as a thoroughfare to
23 get to the Lower Estate and the Long Bush communities.

24 So it has, has it not, for a significant period of
25 time presented a security challenge, particularly perhaps to the

1 staff working at the school?

2 A. Yes.

3 Q. If we turn to page 43 in the bundle, this is an
4 Executive Council Memorandum. It's dated the 29th of June 2005,
5 but it also gives us some useful background again as to the
6 history of security provision at the school.

7 You see at paragraph 1, it's noted that, in 1998,
8 after years of vandalism, theft, and a case of arson, what was
9 then the Ministry of Health, Education and Welfare entered into
10 a contract with All Island Security Services Limited to provide
11 24-hour security at what was then BVI High School, and that
12 contract then continued on a rolling basis, and it was still in
13 place in 2005, the time of this memo.

14 Then as we see from paragraph 3 of the memorandum, a
15 contractual agreement was entered into with Top Priority
16 Security Limited, and I'm going to refer to them as we go
17 through as TPSS. And that arrangement was for a block wall and
18 security system at the school. It was an initial contract for
19 one term with monthly payments of \$11,500, but since then the
20 contracts have been renewed annually.

21 So, at least between 2001 and 2005, I think the
22 position at the school was that there were two contractors, one
23 essentially providing block cordons, so internal security, and
24 the other one, I assume, providing gate security?

25 A. That's correct.

1 Q. And you noted in your Affidavit that the contract, the
2 2001 contract, with TPSS wasn't available, although I think as
3 part of your research you and your colleagues couldn't uncover
4 that contract?

5 A. We could not get our hands on that contract.

6 Q. If we take you back to your Affidavit, then, at
7 paragraph 14 and paragraph 3.6, what you say there, Dr Glasgow,
8 is that on the 20th of August 2003, the then Chief Education
9 Officer wrote to All Island informing them of a decision that
10 their contract would be ended in September 2003, but seeking a
11 month to month arrangement until the end of the Year
12 December 2003, and the reason that was given was that the
13 Ministry of Education was making preparations to procure a full
14 security service of the whole campus, for which All Island would
15 then be invited to tender.

16 So, in terms of the sort of chronology, is that the
17 first point in time where consideration is given to tendering?

18 A. In terms of chronology and the information that I was
19 able to come across, that is the case. I cannot confirm that
20 tendering was not a consideration before this time, but at least
21 at this particular point, the decision was made to move away
22 from the original contract which had, as you mentioned, the
23 month to month, and also the addition of services by Top
24 Priority.

25 At this particular point, the decision, wherever that

1 decision was made from, to stop that arrangement, and enter into
2 a tender process was made. Before, as you've mentioned, since
3 1988, as indicated in paragraph 1, I cannot confirm that a
4 tender process was not put in place to actually start that
5 arrangement. It could very well may have been so.

6 Q. I see.

7 A. You would-you would note, however, that that
8 date--those dates corresponds to the introduction of the
9 Procurement Act and also the Procurement Regulations which
10 started in 2005. So, the Procurement Act was in 2004, and the
11 Procurement Regulation was in 2005. So, this, I'm not aware of
12 any previous Procurement Regulations or Acts or legislation
13 before that time. So, for sure, in 2005, they would have been
14 obligated to follow the Regulations.

15 Q. Certainly, that's the date to be taken at which
16 Ministry's looking to engage or issue Major Contracts should
17 have had the Procurement Regulations in mind?

18 A. Based on the timing of the procurement legislation,
19 yes.

20 Q. Thank you.

21 If we look at 3.7 and 3.8 of your Affidavit, in
22 July 2004, the principal of the ESHS recommended that Top
23 Priority supply the security services for the whole campus. And
24 then on the 17th of February 2005, Top Priority wrote to the
25 Ministry. And as you say, this was when there was still two

1 contractors in place but the effect of what Top Priority was
2 suggesting to the Minister of Education was that it would be
3 more cost-efficient and less messy for one provider to supply
4 the security services, and they made a proposal to provide a
5 complete service?

6 A. Correct. They did make a proposal to do a complete
7 service. I'm not sure from the records why they would have done
8 that, but for sure they made the case to actually have one
9 company do that work.

10 Q. So, you say you're not sure from the records why they
11 would have done that, so what you didn't uncover was any
12 evidence as to whether they were prompted to put the proposal
13 forward or whether it was an unsolicited proposal?

14 A. No.

15 Q. If we go back to page 43 in our bundle and we look at
16 that Memorandum, to summarise the decision that's being sought,
17 the first point that was being proposed to the Council was that
18 an ad hoc Public School Security Committee should be established
19 to examine the issue of school security in the Territory's
20 public schools and make recommendations. Then there was to be a
21 tender process to provide and to select security providers for
22 relevant public schools, and that the idea was that the school
23 security company would advise on the selection of those security
24 services for the public school system.

25 Now, that 29th of June 2005, as you just indicated as

1 a date, would chime with the introduction of the Regulations.

2 Now, the Committee appears to have been formed because
3 you refer to it at paragraph 3.12 of your Affidavit, which is at
4 page 15.

5 What ultimately happened to the Committee?

6 A. That's a very good question. I have absolutely no
7 idea.

8 And the reason I pointed to that is the Committee,
9 from what I've seen, it was constituted--I have seen information
10 coming from advice that they had given. But as it relates to,
11 as you mentioned, the decisions sought which says that the
12 school's Security Committee is designated as the official body
13 to advise the selection. I do not see that being outside of the
14 Central Tenders Board process because, the Regulations 2005
15 gives provisions for the Central Tenders Board to appoint, if
16 they choose to do so, to appoint a technical evaluation
17 Committee, which could have well included persons and the advice
18 of the schools' Security Committee.

19 So, I see that not necessarily as a conflict but
20 as--you know, if you're going to get advice about what the
21 security should be, be it under tender or even to assist with
22 the evaluation, this should be the priority. But I would
23 imagine that around this time based--I'm not sure of the month
24 the Regulation was posted--but in 2005, I would imagine around
25 this time that general procurement would have been in the hand

1 of the Procurement Coordinator, Ministry of Finance, et cetera.

2 Q. I want to ask you some more about the current tender
3 process, but let's deal with some of it now.

4 You have spoken to the Central Tenders Board, so all
5 tenders are going to go through the Central Tenders Board, and
6 they can make a recommendation to Cabinet, who will ultimately
7 make the decision as to who gets the contract; is that right?

8 A. That's the correct procedure.

9 Q. But before what the Central Tenders Board can do is,
10 as you say, appoint an evaluation committee to look at the
11 tenders?

12 A. So, what happens, if I may, the publishing of a
13 tender, the invitation is done through the Central Tenders
14 Board, so the Regulation says that the Central Tenders Board
15 shall issue a tender--not in so little words--but they receive
16 the tender, so the Central Tenders Board would receive the
17 tenders. They would go through and open them and make sure that
18 they are in order. Then they may select a Technical Evaluation
19 Committee to review the tenders on their behalf because, of
20 course, they would have more technical persons on the Committee.

21 So, in retrospect, everything is still being done
22 under the Central Tenders Board's purview, so even if there is
23 an evaluation, it's because of the Central Tenders Board
24 selected an Evaluation Committee.

25 Q. And that the Central Tenders Board can do that, could

1 negate the need for a Public School Security Committee because
2 if we take ESHS as an example, the Central Tenders Board could
3 have an evaluation committee that brings in a procurement expert
4 who can look at it from a value of money perspective, but also
5 you could have on there somebody who comes from a security
6 dimension, and could assess a tender on that basis.

7 A. Correct.

8 Q. So, you would achieve through that Technical
9 Subcommittee the same purpose that seems to have been behind the
10 proposal to establish the public school security?

11 A. Exactly.

12 I believe--and I can't say this because I haven't read
13 it per se, but there are certain ad hoc committees that are put
14 together to make recommendations, and so definitely what I would
15 have seen from this particular Committee recommendations on--a
16 review of, you know, security et cetera, at schools in general
17 and recommendations made. But so far as a recommendation for
18 the selection of a person, that rests in the Central Tenders
19 Board.

20 And what the Regulation actually says is it gives the
21 Central Tenders Board the--not the Authority but the
22 responsibility to review the tenders, and what it says, the
23 Central Tenders Board may appoint an evaluation. So the Central
24 Tenders Board can evaluate if they so wish to. In my time at
25 the Ministry of Finance, I have never seen that done, but they

1 can--they can do so if they wish, but the practice--they have
2 employed a particular clause to say that they may do that, and
3 select an evaluation committee.

4 Q. And that is the practice?

5 A. Yes.

6 Q. If we move on to 3.10 in your Affidavit, please,
7 Dr Glasgow, and just to keep with the chronology, we've looked
8 at the memorandum of June 2005. What happens next is that there
9 is a proposal on the 22nd of November 2005 received by the
10 Ministry of Education from Vanguard Security Services to provide
11 security services at ESHS, so that's the second proposal
12 received in that year. And again, the circumstances in which
13 that came to be sent in to the Ministry of Education, were you
14 able to clarify it at all?

15 A. No, but of course it would be unsolicited, unsolicited
16 proposal.

17 Q. Why do you say that?

18 A. Because it was not a part of a tender process, and you
19 know we were--we were now put under the purview of the
20 Regulations which would have had the Central Tenders Board
21 issuing a tender, and as we read a little earlier, All Island
22 Security--All Island actually received a letter from the
23 Ministry noting that they wished to terminate the services to
24 facilitate a tender process.

25 So, if a proposal was sent in, it would have been

1 unsolicited. Whether somebody say, okay, send a proposal in or
2 a particular company decides to send in a proposal, which
3 appears that way to me here, at this particular time, I can't
4 say the reason why but it's clearly it's unsolicited. It was
5 not a part of a tender process.

6 Q. But is the best that we can do, between 2003 when the
7 letter was sent to All Islands and the end of 2005 is say that
8 the Ministry had the intent to begin a tender process, but you
9 haven't been able to identify any documents to show that one was
10 commenced or initiated in any way?

11 A. Before the 2005, no.

12 Q. So, what we're then into is 2006. And, in 2006, the
13 Minister for Education at that time on the 27th of March 2006
14 wrote in reference to the ongoing security problem at ESHS and
15 asked that the matter be expedited and that the contract be
16 awarded to Vanguard.

17 Now, what appeared to follow was a request or a draft
18 request on 8th of May 2006 to the Executive Council requesting a
19 waiver of the tender process and the use of Vanguard, can you
20 add any more to the circumstances in which that waiver was being
21 proposed?

22 A. I cannot. I have not been able to see anything on the
23 files that gives specific reasons so far that it was actually
24 done.

25 You have noted--quite noted in 3.11 that the then

1 Minister recommended to the Executive Council. And so what
2 would have transpired after that in 3.12 is that, given that the
3 Procurement Regulations were in place, they would have--it would
4 have been in place for them to--it would have been right for
5 them to request a waiver if, indeed, they had an unsolicited
6 proposal, which appeared to be the case in this particular case.

7 Q. Yes, at that point that was the only option, you would
8 have to go for a waiver of the process if you wanted to use that
9 particular company?

10 A. Correct.

11 MR RAWAT: Commissioner, again for your note, we find
12 that request from the Minister at page 70 in the bundle.

13 COMMISSIONER HICKINBOTTOM: 70?

14 MR RAWAT: Yes.

15 COMMISSIONER HICKINBOTTOM: Thank you.

16 MR RAWAT: And Dr Glasgow speaks in his Affidavit at
17 3.12, and I was just asking him about it, about the draft
18 Executive Council paper. That starts at page 55 and goes
19 through to 59. It is a draft.

20 BY MR RAWAT:

21 Q. Dr Glasgow, if you look at page 56, because we can see
22 that it has various annotations on it, but in any event, what
23 appears to happen is that there is input, and we see this at
24 Pages 71 and 72 in the bundle, from both the Attorney General's
25 Chambers and the Financial Secretary questioning why the tender

1 process needed to be waived, and that's part of the process as
2 well, is that if the ministry were making a request for a tender
3 waiver, as is the norm, it seems with anything going to Cabinet,
4 you would need input from those two departments?

5 A. That's correct.

6 I think that the correct term for it now, you would
7 have one cross-Ministry consultation, and you would also have a
8 financial implication, so that would come from the Ministry of
9 Finance. The cross-Ministry would come from the particular
10 Ministry that's involved.

11 So, this is pretty standard for what would have
12 occurred.

13 Q. In any event, what seems to have happened is that it
14 doesn't go much further because, as you say at 3.15 in your
15 Affidavit, which is on page 16, Commissioner, on the 15th of
16 January 2007, the principal of ESHS wrote saying that Vanguard's
17 proposal was inadequate to meet the needs of the school,
18 considering the size of the campus, and that seemed to have
19 brought an end to that.

20 So, the position is as we get to the end of 2008 is
21 that there has been, as far as can be established, no tender
22 process since one was intimated in 2003, and security was still
23 being provided by two firms: Top Priority and All Islands; is
24 that right?

25 A. From the record, that's true.

1 Q. If we move through, then, your Affidavit to 6.2,
2 please.

3 A. 6.2?

4 Q. Yes. Page 18. What you set out there is events in
5 2007 which covered the tender process that began in 2007 and
6 continued into 2008. So, at 6.2, you record that, in June 2007,
7 the Permanent Secretary writes to the principal of ESHS asking
8 her to begin the preparation of Tender Documents.

9 At 6.3 you deal with a draft Tender Notice being
10 provided by the procurement unit to the Minister of Education
11 for publication.

12 So, when you say draft tender, is that, obviously, a
13 notice intended to be published inviting tenders; is that right?

14 A. That's correct.

15 And it's not a draft because it would be prepared and
16 then forwarded to the particular Ministry at that time to have
17 it go through the appropriate channels to be published.

18 COMMISSIONER HICKINBOTTOM: And Dr Glasgow, up to this
19 time, the services were still being provided by two contractors.

20 THE WITNESS: Based on the record, yes.

21 COMMISSIONER HICKINBOTTOM: One, as it were, on the
22 gate and one internal.

23 THE WITNESS: Right.

24 COMMISSIONER HICKINBOTTOM: And in terms of amounts
25 that they were being paid, both being paid on a monthly rolling

1 basis?

2 THE WITNESS: Yes, in accordance with what we referred
3 to before.

4 COMMISSIONER HICKINBOTTOM: One was being paid \$11,500
5 a month, and another was being paid, I forget what.

6 THE WITNESS: I will have to look it up here.

7 COMMISSIONER HICKINBOTTOM: Yes, I'm sorry. It's not
8 a sort of test.

9 BY MR RAWAT:

10 Q. I don't know whether it's in your Affidavit,
11 Dr Glasgow, but page 43 may help. It's paragraphs 1 and 3.

12 A. Okay. This is what I was looking at.

13 COMMISSIONER HICKINBOTTOM: So, one of the contracts
14 was £11,500 a month, and the other contract was just short of
15 \$100,000 a year. Is that...

16 THE WITNESS: Let me just--correct.

17 COMMISSIONER HICKINBOTTOM: I'm just trying to get
18 some feel, the precise figures don't matter, but that means it's
19 something like 220, \$230,000 a year for the security services at
20 this time?

21 THE WITNESS: For both, yes.

22 COMMISSIONER HICKINBOTTOM: Thank you very much.

23 BY MR RAWAT:

24 Q. So, if we go back to 6.3 on page 18, please,
25 Dr Glasgow.

1 So, we've looked at 6.3 in the draft Tender Notice,
2 there is then a Tender Document prepared, which as you say at
3 6.4 was to be made available from the 9th to the 20th of
4 July 2007.

5 There is reference to the Public School Security
6 Committee to have insight in terms of streamlining the process
7 of procuring security for ESHS. But then as you explain at 6.6
8 there were three tenders received in 2007, from All Island, Top
9 Priority, and then a third company called Samuel Security.

10 Now, the upshot was that bid, as you explain at 6.8,
11 was disqualified, and that was I suppose for failure to comply
12 with the requirements and that they didn't provide supporting
13 documentation. Two of those bids went through to the next
14 stage, which was to be evaluated, so that's again an example of
15 the use of an Evaluation Committee.

16 A. Yes.

17 Q. So, that seems to be as a process in line with what
18 you would expect under the Procurement Regulations?

19 A. That's correct. That's correct.

20 Q. But at that stage--and again you explained this at
21 6.10, one of the tenders was disqualified, and that was because
22 the bid, the tender period was to make a bid for three years,
23 and they had put in a bid, as you say at 6.1, for one year.

24 A. Yes. They were supposed to be for two years.

25 Q. I see. Sorry. You're right. I'm misreading your

1 paragraph 6.10.

2 Again, that just didn't meet the technical
3 requirements. So, the upshot was that the company that was left
4 was Top Priority, and Top Priority was recommended for the
5 contract.

6 Now, what you said at 6.10, was that the bid
7 evaluation took place on Wednesday the 15th of August 2007, with
8 the Tender Evaluation Committee appear to have contemplated
9 granting more time to the bidders because of concerns as to the
10 lack of clarity in the Request for Proposals. However, given
11 the urgency of the situation they decided to proceed.

12 And so, was it a situation where the Evaluation
13 Committee was in difficulties because you had to have, I think
14 because the start of school term was imminent--

15 A. September.

16 Q. --you had to have security in place; is that right?

17 A. That's correct.

18 I would presume that that was actually the case
19 because the evaluation is taking place on the 15th. We do have
20 not time to go out to tender again.

21 And in terms of the clarity--the lack of clarity, we
22 weren't able to--I wasn't able to put my hand on the bids, but
23 based on other bids that we probably will talk about a little
24 later, just in the response to the Tender Documents,
25 persons--and if I just give an example, someone would say, well,

1 I need 10 persons--10 officers to properly secure the facility.
2 Another bid would say well, I need only two, so clearly they
3 can't be singing from the same page. It cannot be. In terms of
4 interpretation, they cannot be interpreting apples and apples if
5 somebody is going to take two officers to cover an entire school
6 when another person was at 10.

7 So, looking through the bids and seeing
8 inconsistencies like those is where, at least if it was myself
9 doing the evaluation, I would have said, well, there has to be a
10 lack of clarity because they don't understand exactly what's
11 required. And so, that may have been the--what actually
12 happened there.

13 And so, you can't go to tender within a couple of
14 months. Clearly, everyone, the Ministry--the Ministry of
15 Finance, and also as we looked earlier, the Attorney General
16 wanted us to get from this month-to-month rolling, and start
17 ensuring that we were following what was passed in the
18 Regulations. So, we did not have that much time. So, I would
19 presume at that time, September is upon us, school starts in
20 September, so we do not have time, let's proceed with the
21 Project.

22 Q. Right, because it was better, rather than maintaining
23 the month-to-month--

24 A. Yes.

25 Q. --it's better to at least continue with the one

1 company that had gone through the process?

2 A. Well, not to continue them but to proceed with the
3 evaluation. I wouldn't--I mean, the evaluation perhaps did
4 not--was not completed before--before. So, based on the--what
5 you--what you just opinioned on, the evaluation took place, but
6 I can see that the Evaluation Committee wanted to continue the
7 evaluation process with or without the lack of clarity, as
8 mentioned there even before they would have noted or even before
9 it was concluded that only one effective bidder would have been
10 there because two were thrown out. Based on what I see in the
11 documentation, it does not say that let's not proceed with the
12 evaluation or the tender process because you only have one
13 bidder. It did not say that.

14 So, I wouldn't really use the language it may have
15 been better to continue with the person who had been providing
16 it. It's just for them to continue with the evaluation process
17 through the end no matter what those results came out to be.

18 Q. So, I think two questions from that.

19 First is that--is what you're saying is that your
20 analysis of the documents at a time that suggests to you that
21 the Committee said, yes, we only have one bidder, and one bid,
22 but we will continue with the process?

23 A. No, I didn't exactly say that.

24 Q. Okay.

25 A. What I did say is the Committee would have said, even

1 though we--the time is short and even though there may have been
2 a lack of clarity in the documents, let's proceed with the
3 evaluation process. I presume or I could imagine that that
4 happened, and then after that it's going to sign, that perhaps
5 there was only one effective bidder. I wasn't there, but based
6 on what I see--

7 Q. I see.

8 A. --it suggests that.

9 Q. So, it looked in general at the documents, made a
10 decision before getting into the specifics of it.

11 A. Yes.

12 COMMISSIONER HICKINBOTTOM: But what your Affidavit
13 indicates is that there was only one bidder left at the end of
14 the road, but that bidder was evaluated and was found to be
15 acceptable in terms of provision?

16 THE WITNESS: Correct.

17 BY MR RAWAT:

18 Q. But the fact that they were willing to proceed with an
19 evaluation knowing that there was a lack of clarity in the
20 Request for Proposals, does that render the process defective?

21 A. Effective or defective?

22 Q. Defective.

23 A. No, I would not say that. I think the impetus was we
24 clearly have a situation of the lack of security at the school,
25 and we are now obligated under the Regulations to ensure that we

1 go through a tender process and have it completed.

2 Now, even that that may not have been the most
3 clean-cut or--let me use the word "effective" follow-through of
4 a tender process, of yielding a good result of a tender process,
5 it just shows that a tender process needed to happen, and that
6 particular--I can imagine that the Chairman of the Central
7 Tenders Board at that time wanted to ensure that that occurred.

8 Because you would recall we had, just before that
9 process, the records show that the Attorney General spoke about
10 it and said there was no tender process, and that's the legal
11 entity of--I'm very sure they would have consulted the
12 Regulations, and so they said, okay, it's not good to not have a
13 tender process. And also you had the Financial Secretary giving
14 an opinion on it as well to say he's very concerned about--he or
15 she--I'm not even sure who was it back then--but there was a
16 very big concern that there was not a tender process.

17 And so, I believe there may have been--I don't want to
18 say "pressure" but the impetus was to ensure that this--this is
19 the first tender process that we are doing to get security at
20 the high school, let's complete it. That's one.

21 And then, of course, Commissioner, we had to have this
22 in place within a month--well, less than a month.

23 COMMISSIONER HICKINBOTTOM: I mean, given that the
24 Board, the Tender Board, only ended up with one bidder, they
25 really had a choice. They could either say, well, this is what

1 the process has resulted in, and it's acceptable--it's fair as
2 well--the bidder is acceptable, this is the process, and this is
3 the successful bidder; or they could have said stop and
4 re-tender, go through the whole process again, but that would
5 risk--well, it would certainly have meant, I think, that the
6 bidding process, the tender process, would not have been
7 completed by the start of the school year, which would have
8 meant continuing with the monthly arrangement at least for a
9 time. Those were the choices, weren't they?

10 THE WITNESS: That's correct.

11 COMMISSIONER HICKINBOTTOM: And they chose to say,
12 well, this is the process, this is the successful bidder, and we
13 will go with this company?

14 THE WITNESS: That's correct.

15 COMMISSIONER HICKINBOTTOM: Yes.

16 THE WITNESS: And there is absolutely nothing
17 incorrect about that decision. There was an open tender, and
18 persons submitted. Some persons--some tenderers did not adhere
19 to the particular requirements of the tender process, and they
20 were rejected from the--from the process.

21 And even one bidder--it would have been the same if
22 only one bidder submitted.

23 COMMISSIONER HICKINBOTTOM: Exactly.

24 THE WITNESS: One bidder responded. It's a fair
25 process.

1 COMMISSIONER HICKINBOTTOM: Exactly.

2 Yes.

3 BY MR RAWAT:

4 Q. If we go on to 6.13, so we have the--the position
5 we've reached in chronology is that Top Priority and now the
6 persons who are recommended by ultimately the Central Tenders
7 Board for the contract. As you say at 6.13, on 12th of
8 November 2008, the Cabinet decides to award that contract to Top
9 Priority Security Services, and it's for a two-year period.

10 MR RAWAT: And Commissioner, again, we see that. We
11 don't need to necessarily bring it up, but the record of that is
12 at 356 to 358, the contract was for \$455,550 for a period of two
13 years.

14 BY MR RAWAT:

15 Q. But what you then record at your 6.15, Dr Glasgow, is
16 that, according to the then counsel for ESHS who you spoke to
17 for the purposes of preparing your Affidavit, a paper contract
18 was not issued, and this was Mr Pete Smith, the Accounts
19 Officer, he recalled that the Accounts Department at ESHS was
20 told to proceed with month-to-month payments which continued for
21 more than two years.

22 So, what does that mean in terms of completion of the
23 tender process?

24 A. I would say the tender process was completed based on
25 what I've seen, it was completed. In speaking with Mr Smith, of

1 course, he does not recall a paper contract being issued. Of
2 course, he would have had the legal part of it. He would have
3 had a decision made by the Cabinet based on the recommendation
4 of the Central Tenders Board, and that happened, and so Cabinet
5 made a decision not to award a contract.

6 Now, I have not seen a contract. According to
7 Mr Smith, one was never issued. I'm not exactly sure what that
8 means, but he recalls, as mentioned there, he recalled that his
9 particular Department was told to proceed with the
10 month-to-month payment which continued for more than two years.
11 Month-to-month payments would have been the order of the day
12 because even if a contract was signed, the payments would have
13 been monthly; right?

14 Q. Hmm.

15 A. So, what I'm seeing is it's been acted on the decision
16 of Cabinet, which is appropriate. It's just we do not have
17 evidence that something was actually signed. But I can imagine
18 what would happen, once a Cabinet makes a decision, the Central
19 Tenders Board, through the Procurement Unit, would issue a
20 letter to Mr Smith and say, hey, you've won the tender. If
21 there are any documents to be provided to Government, do so. I
22 can imagine that's what occurred here, but Mr Smith does not
23 recall, and neither have I seen the contract.

24 COMMISSIONER HICKINBOTTOM: And I think this simply
25 records the mechanics of payment carried on as usual?

1 THE WITNESS: Yeah. It carried on--

2 COMMISSIONER HICKINBOTTOM: The mechanics of payment?

3 THE WITNESS: Yes.

4 And once this particular type of service, what the
5 bidder would have done is put in his tender of payment schedule,
6 and that payment schedule would have likely be, as from seen
7 over the time and what we've seen as the years go by, a
8 month-to-month.

9 COMMISSIONER HICKINBOTTOM: X dollars a month.

10 THE WITNESS: Correct.

11 BY MR RAWAT:

12 Q. And obviously because it's for two years, it takes us
13 through to 2010, and you say at your paragraph 7.1 there was no
14 tender process in 2010. But Mr. Smith's recollection was that
15 there was to be a tender but the process was stalled.

16 Did you find out any more about why the process was
17 stalled?

18 A. I did not. Suffice us to this is what happened.

19 I mean, as mentioned up earlier in the
20 Affidavit--well, all of the files at the procurement unit were
21 lost, and I think it was also mentioned when I spoke to the
22 Permanent Secretary, the current Permanent Secretary was--who
23 made inquiry into these before, that particular file was lost.

24 I mean, it's no secret, the admin complex which housed
25 that Department, it was totally trashed, for lack of a better

1 word.

2 So, I don't imagine that there was a file for him to
3 say, okay, a tender process whereas the status prepared the
4 Tender Documents and somebody said to stall it or it just never
5 promulgated to the next stage. I don't see any documentation
6 within the procurement unit on the records, on the electronic
7 files. I have not seen any to suggest that one tender was
8 actually drafted. So, that's why it's written in that way.

9 COMMISSIONER HICKINBOTTOM: So, after 2010, the
10 contract, the two-year contract, just rolled over on a
11 month-to-month basis?

12 THE WITNESS: Yes.

13 COMMISSIONER HICKINBOTTOM: Yes.

14 BY MR RAWAT:

15 Q. And it seemed to be that it wasn't until we get to
16 2013--and that's your paragraph 8.1 that there is a return to a
17 tender process?

18 A. Correct.

19 Q. And so, given what you say at 7.1, does it follow
20 that, between the end of that two-year contract in 2010 and
21 2013, there was no compliance with the Procurement Regulations
22 because the contract--there was no return to or an attempt to go
23 through the tender process again. Rather, we have defaulted
24 back to the situation we saw before 2008, where it was people
25 being paid on a monthly basis?

1 A. Yeah. I mean, it's--one can infer that, but I can't
2 say that for sure because knowing the Public Service, knowing
3 persons want to ensure that they do what's correct. I can hear
4 Mr Smith, I can hear the Permanent Secretary just whispering in
5 someone's ears, shouldn't we be doing a tender process? And
6 there may have been Tender Documents prepared because I know the
7 Procurement Unit would also question it, but according to what I
8 have seen in the records, the next tender was produced in 2013.
9 That's just what I have seen.

10 Q. If we look at 8.1 through to 8.24, then, Dr Glasgow,
11 what you say is that tenders were invited in early 2019, and
12 you've exhibited a press release--which Commissioner if you want
13 to know, it's at page 359--you say that tender documentation was
14 prepared in draft for intended publication in February, and it
15 was later decided and we see that from the press notice, that
16 the documents would be available from the 10th to the 22nd of
17 March. But you continue that, having investigated the matter
18 with the Procurement Unit, there are no records on file that
19 suggest the 2013 tender was ever published. And you say,
20 despite the loss of files in 2017, the 2013 tender had been
21 published. I would expect to see some record of that on the
22 electronic files. If it was not published, the reasons for that
23 are unclear.

24 So that I can just understand that, when you say that
25 it wasn't published, are you referring to the Public Tender

1 Notice or the actual Tender Documents?

2 A. Okay, so what happens is the Procurement Unit would
3 prepare a Tender Notice. They would draft the Tender Notice,
4 and they would forward this to Government Information Systems,
5 who would then publish the Tender Notice which includes access
6 to the Tender Document.

7 So, what I've said in 8.4, you would have seen some
8 record noting that it was published, GIS (Government Information
9 System) would copy the procurement unit on whatever was
10 published.

11 Also--I didn't write it here, but just to explain a
12 little bit here--what has been seen on the files, on the
13 electronic files, are preparation of what's noted as a
14 checklist, and in some of my documents I mentioned a checklist,
15 as basically to say these are the persons submitting the bid, do
16 they have these particular documents, they just check it off.
17 That would be something that would be stored on file
18 electronically, and so I did not see that. What I saw was
19 checklists that was blank. It didn't have any persons, so the
20 Procurement Unit clearly prepared for tenders coming in. They
21 had the draft evaluation criteria that was put in place. They
22 even went as far as noting the date that the tenders would be
23 in. And again noting as the checklist, what the checklist
24 information would include. Those files were on the system,
25 however, they were not filled in, which suggests to me that

1 tenders did not come in, to suggest that perhaps tenders were
2 not published, so that's why I would conclude that.

3 COMMISSIONER HICKINBOTTOM: So, similar to 2010, there
4 were steps taken towards the tender process.

5 THE WITNESS: Correct.

6 COMMISSIONER HICKINBOTTOM: But for some reason, it
7 did not--it failed.

8 THE WITNESS: Yes.

9 COMMISSIONER HICKINBOTTOM: It was not completed.

10 THE WITNESS: Yes.

11 COMMISSIONER HICKINBOTTOM: Thank you.

12 BY MR RAWAT:

13 Q. So, if we, then, turn to the circumstances of 2014,
14 which you covered, Dr Glasgow, in your 9.1 and 9.4, what you
15 identify and your research has shown is that, in April 2014, the
16 Ministry of Education submitted draft Tender Documents to the
17 Procurement Unit in relation to the supply of security services
18 to ESHS. You note that the Central Tenders Board recommended
19 that your Request for Proposal be used to initiate the process.

20 Could you just explain what a Request for Proposal
21 means.

22 A. Sure.

23 And so, typically what I would have sent in 9.1 from
24 the Ministry of Education to the Procurement Unit as a draft,
25 typically at that time they would have used a Tender Document

1 that has conditions, that's catered to works, so construction
2 works, in terms of the terms and conditions. Of course, the
3 scope of the services would have been correct, but when you get
4 into the terms and conditions of the Tender Document, it was not
5 akin to services, so I can actually speak to this because this
6 is when I came on the scene and when I started working at the
7 Ministry of Finance.

8 So, we know from dealing with projects recently and
9 services, you can't really have the same conditions on a
10 services-type contract or a services-type tender as you would
11 have on a works, so a Request for Proposal is geared towards a
12 company producing a service, and so the structure of--and the
13 dialogue and the language in the Tender Document had to be
14 changed to what is referred to as a Request for Proposal.

15 So, the proposal, of course, there would be a
16 technical side to it, and there would be a financial side. The
17 technical is going to tell me how you--how you plan to deliver
18 the services and of course the financial bit.

19 So, a Request for Proposal, that form of a Tender
20 Document would have been more appropriate to use instead of what
21 would have been provided by the Ministry of Education at that
22 time.

23 Q. What you also add in your Affidavit is that on the
24 27th of August 2014, the Financial Secretary wrote to the
25 Permanent Secretary of the Ministry of Education reminding the

1 Permanent Secretary that your Request for Proposal was required
2 before the Project could move forward?

3 A. Sorry, Commissioner?

4 Q. Sorry.

5 I will rephrase that.

6 So, April 2014 we've got the submission of draft
7 Tender Documents to the Procurement Unit. Central Tender Board
8 recommends that a Request for Proposal be used to initiate that
9 process. If you go to 384 in the bundle?

10 A. Page 384?

11 Q. 384, yes.

12 A. Okay.

13 Q. What we see there, this is the 27th of August 2014, so
14 we have the Permanent Secretary being written to by the
15 Financial Secretary in relation to the supply of security
16 service, and what it says is you're reminded that the Request
17 for Proposal is required before the Project can move forward.
18 The Ministry of Finance would appreciate if this information
19 could be forwarded as soon as possible. So, at least until
20 August 2014 seems to have held up the process being taken
21 forward, and nothing else seems to happen in 2014 until the 21st
22 of January 2015, which you referred to in your Affidavit, and
23 that's when the Central Tenders Board Chairman sought an update.

24 A. Right.

25 Q. Now, you explain--and this is at--so, sorry, if we

1 look at 9.1, you refer to that 27th of August 2014 memorandum
2 that we just looked at. The updated sort from the Central
3 Tender Board Chairman, and then at 9.2 you explain that a Tender
4 Document was drafted in September 2015 covering a two-year
5 period, and the public tender was issued in November 2014, and
6 there were two responsive bids, one from Top Priority and one
7 from Virgin Gorda. And Top Priority was ranked--their bid was
8 ranked more highly than Virgin Gorda's; right?

9 A. Correct.

10 Q. And that went through the process, did it not, of a
11 Technical Subcommittee applying evaluation criteria and a
12 scoring system?

13 A. Correct.

14 Q. And one of the concerns over Virgin Gorda was that
15 they were a relatively new company and might lack the resources
16 and experience to perform the service.

17 A. Correct.

18 Q. And the effect was that the Central Tender Board
19 agreed with the view of the Technical Subcommittee, and the
20 recommendation that Top Priority be awarded a contract was put
21 into a paper for the purpose of Cabinet's approval. But it
22 seems, as you say in your Affidavit, that no such--it doesn't
23 appear to have gone in front of Cabinet; is that right?

24 A. Correct.

25 Q. Now, if I take you to 9.11, please, Dr Glasgow. At

1 9.10 you mentioned that the paper which was drafted on the 19th
2 of January 2016 doesn't appear to have been advanced to Cabinet.
3 But then at 9.11, which probably where you become directly
4 involved in the process, you say that "a re-evaluation of the
5 bid was requested and undertaken by a new re-evaluation team, of
6 which I was a part", and you've made as a team a number of
7 recommendations which was essentially that you found
8 deficiencies--and tell me if it's not a fair summary--but you
9 found deficiencies in the process and that the Tender Document
10 was inadequate and the process had to be terminated.

11 A. I wouldn't say it like that. So, specifically, we
12 were asked to re-evaluate the tenders. I could not remember
13 why, I just remember--I'm not sure if it was--because if you
14 looked at the prices, the price being the one to be selected--it
15 was on the high side, the higher side because if you remember,
16 the contract in 2010 was about 455,000. 30 months, divide that
17 by two, we're at about 900,000. And of course, you can see from
18 the monthly payments that were demonstrated in a later table,
19 the payments actually dropped. So, you would have been about
20 \$900,000, and the bid came in for the very same thing for about
21 1.2.

22 So, naturally, there may have been some concern, I
23 don't know. But we were asked to re-evaluate the bid.

24 And so once I got involved here in bidding, a
25 particular team was put together to evaluate, not that there

1 were--that the Tender Document was insufficient--I wouldn't say
2 that--but what we realized from the bids coming in--and I
3 alluded to this earlier, is you have one bidder that's saying
4 that I need to have six or seven persons there, I need to have
5 this in place, that in place, to ensure nobody gets over that
6 gate to man this particular block that remains, et cetera, et
7 cetera. And then you have one person, the other bidder, says
8 well, I can take care of this with just two persons--two--I
9 think it was two persons had in his--two guards. Clearly,
10 we--it may have been that the Tender Document was not clear
11 enough.

12 COMMISSIONER HICKINBOTTOM: That Tender Documents as
13 opposed to the earlier one in 2003, whenever it was, which I
14 think specified the number of people.

15 THE WITNESS: Correct.

16 COMMISSIONER HICKINBOTTOM: This didn't?

17 THE WITNESS: This did not. And so, as mentioned here
18 in part (e) of 9.11.

19 BY MR RAWAT:

20 Q. If you want to look at your Report, it's at 456 in
21 the bundle.

22 A. Okay.

23 So, what was noted here in the Affidavit is, with the
24 benefit of hindsight, of course, you know not necessarily that
25 this number of security guards would have been put in and say,

1 make--give me a proposal to have six security guards.
2 Government should not take that kind of liability. Generally
3 what happens in a procurement process, where you have a Request
4 for Proposal, you would say--you would give the requirements, we
5 need the school, and I think I pointed it out here
6 someplace--the specific requirements were to, you know, we need
7 the school to be safe, we need security at the various points.
8 You tell me how you provide that without me telling you how many
9 persons to use. You just don't do that. And do, what we
10 realized, and it was part of the recommendation in this
11 particular evaluation, is a Feasibility Study was never
12 undertaken, so we did not know what the ratio of security guards
13 to school students should be. We did not know exactly how many
14 guards you need to be able to get this school properly secured.
15 This was not known.

16 And so, this was pointed out in the re-evaluation
17 report as those kind of--you need to have some type of
18 Feasibility Study to tell us this information so now we can put
19 this information within the scope of the Tender Document where
20 all bidders would know exactly what they're responding to.

21 Q. I mean, if you look at 456 in the bundle, when we go
22 to--that's the first page of your re-evaluation report, and we
23 can see at 2.1 you appear as part of the team. When you go to
24 459 and your recommendations, what you say at 4.1 as a team is
25 that it's recommended that the tender process be terminated as a

1 result of inconsistencies in the bids submitted, which may have
2 been as a result of an inadequate Tender Document.

3 A. The operative word is "may".

4 Q. May. Yes.

5 A. That could have been a reason.

6 Q. So, the proposal inviting bids may have been
7 insufficiently clear to allow the bidders to fully set out what
8 they could provide?

9 A. Correct. I would say that, yes.

10 Q. And, therefore, the recommendation of your team was
11 you've just got to stop this process and start again?

12 A. Correct.

13 Q. And one of the ways or one of the conditions you put
14 or proposed--and in your Affidavit you say that your team and I
15 also--or my team and I also took some preparatory steps towards
16 a Feasibility Study, and this is an abridged--you were
17 recommending an abridged Feasibility Study to, as you've
18 explained, determine the specific requirements in the number of
19 ways. Again, you've used numbers of guards, having regard to
20 size, student size, and the demographics of the school, and the
21 size of the school. You identified that as one of the starting
22 points.

23 Now, the effect of that is, firstly, that in 2016,
24 there is another attempt to get a tender process off the ground,
25 but those efforts come to nothing.

1 A. Correct.

2 Q. The next step for the consequences that Top Priority
3 continue providing services on a rolling basis month-to-month
4 under the existing arrangement, but there is then no tender
5 process or no new tender process until we get into--in fact,
6 until we get sort of much later on in time, into 2020; is that
7 right?

8 A. There was not one in 2020, but the discussion started
9 in 2020.

10 Q. Yes. And at any time--I'm taking that from 2016 when
11 your team gets involved to those discussions in 2020--was a
12 Feasibility Study done at all?

13 A. I do not know that there was. I have not seen, and me
14 recollecting, I had--I don't believe one was actually done that
15 was passed on to the Ministry of Finance. The Feasibility Study
16 would have been completed by the Ministry of Education. I have
17 included in some ways some assessment to assist them, and also
18 some draft questions that they can use to start the process of
19 the Feasibility Study.

20 But based on the records, and what I have seen, I'm
21 not--I can't be certain that it was done. Of course, you would
22 have had Irma happened after that, and in some ways things would
23 have just been lost in the process, and we would have been
24 moving, we would have gone to, as noted later on to two
25 different locations, et cetera.

1 So, I mean, in all fairness to the process, I haven't
2 seen a Feasibility Study, so to say we know what those
3 requirements were, I'm not sure that they were there. There are
4 Minutes, so it's on the record as well of the Procurement
5 Coordinator through the Central Tenders Board meeting, making
6 follow-ups, just to ensure that, you know, we are still thinking
7 about tendering for the security because it remained on the
8 agenda for--from that time.

9 But as I mentioned in 2017, I can't speak to what
10 happened between 2016 and just before the storms, but at that
11 time a lot of the focus on what we're doing and trying to get
12 back up, I would say that put a damper on the process going
13 forward because, of course, you had the splitting of the two
14 schools, and I'm sure that there were talks about let's go
15 through a tender process, but just the mechanics of doing it,
16 and just after Irma with so many different focuses, I can't
17 imagine at that time they would have urged forward to
18 necessarily get this together.

19 Q. But would a fair summary of it be that we can break
20 events up into time periods. So taking 2005 first, so 2005 to
21 2008 is consideration of the need to tender. 2008 to 2010 you
22 have a tender in place. Then 2010 through to 2016, again there
23 is consideration and there is--of the need or the desire or
24 desirability--in fact--

25 A. And attempts.

1 Q. --and attempts to put a tender in place, but for
2 different reasons those don't come to fruition?

3 A. Correct.

4 Q. And then, as you say, either the storms bring a
5 different dimension to those efforts and what Public Officers
6 can do in those circumstances with the resources they have at
7 those times would obviously be affected. But could I ask you
8 just to look at, I think it's page 185. This I think reflects
9 where we got to now. We're in March 2018, and it's a request
10 from the Permanent Secretary of the Ministry of Education to the
11 Acting Accountant General requesting special permission to have
12 Top Priority invoices accepted for payment until information
13 with regards to tendering processes is sent from the Ministry of
14 Finance. At this time, the tendering process has ceased.
15 However, the current company, Top Priority, continues to provide
16 security services, hence our request for special permission to
17 have the company be compensated while the decision is being made
18 to commence the tendering process, and this will continue until
19 the finalisation of such process.

20 So--can you just assist the Commissioner with the
21 circumstances in which--why would the Ministry have to go and
22 ask for special permission?

23 A. To be very honest, when I saw this, I had never seen a
24 correspondence like this before, and so it appear--and clearly,
25 as I would have said in the payment section of this Affidavit,

1 the Accountant General, the position the Accountant General
2 takes, if you do not have certain things in place, persons will
3 not get paid. It has been--the entire Treasury Department--I
4 mean, it can be very--for me, as a project officer who assists
5 with payments, you know, you have to have certain things in
6 place to get paid. And of course, rightly so because they do
7 have the Financial Instructions that they follow.

8 And so, I can imagine payments would not have been
9 made unless some special arrangement occurred. I'm not sure to
10 what extent the Financial Secretary at the time was involved,
11 but I'm sure there may have been some conversation. And, of
12 course, the Accountant General would have said, well, I will not
13 make a payment unless I have something on file to see requesting
14 whatever special permission to allow for the tender process to
15 finish unless I have something on file to, for lack of better
16 words, to cover myself should this thing come into question.

17 So, I can see the Accountant General saying something
18 like that to the Minister of Education, and also the discussion
19 what it would have been with the Ministry of Finance, the
20 Financial Secretary, that this is exactly what needed to be done
21 to assist with payments. What was clear is--a few things that
22 are clear. One, as we mentioned, no tender process was
23 concluded at this particular time.

24 Payments continued to be made. At some point, you
25 know, the persons would have felt uncomfortable, not with the

1 arrangement as was seen in 2020, but what the Accountant General
2 did to assist with this, the providers were providing the
3 service. He had to be paid. And I would say that it's one of
4 the focuses of government, that is the Ministry of Finance, once
5 somebody performs work for the Government of the Virgin Islands,
6 it's good practice to pay them. It's only fair to pay them.
7 So, you would hear the Financial Secretary say, somebody is
8 working, they have to be paid. And that's not just this
9 Financial Secretary. I've heard it at least two Financial
10 Secretaries have been under since my tenure with the Ministry of
11 Finance.

12 So, of course, this represents a mechanism that allow
13 for that to happen. And so, that's why, in my opinion, this
14 letter was written because I can imagine the Accountant General
15 that say no, we cannot--we just cannot do this anymore.

16 COMMISSIONER HICKINBOTTOM: Mechanically, the monthly
17 payments have been made over 10 years or many years.
18 Mechanically, how would that have been done? Would that have
19 been done on the basis of Purchase Orders? What would be sent
20 to the Treasury, to the Accountant General, to trigger the
21 payment?

22 THE WITNESS: Okay. So, the provider would have
23 submitted an invoice.

24 COMMISSIONER HICKINBOTTOM: To the school or--

25 THE WITNESS: Prior to the school, the Ministry of

1 Education. I think at this point it was being paid under the
2 Ministry of Education. So, it would have been one or the other.

3 COMMISSIONER HICKINBOTTOM: Yes.

4 THE WITNESS: The Ministry of Education, of course,
5 they would have--and there was a budgeted amount for this. This
6 particular services was budgeted every year.

7 COMMISSIONER HICKINBOTTOM: Yes, yes.

8 THE WITNESS: And so, they would have made an
9 application--I said "application", but they would have made a
10 recommendation for a Purchase Order, and so that Purchase Order
11 would have been released if they had sufficient funds, if not,
12 it would have gone on budgetary hold, they would have called the
13 Ministry of Finance Budget Unit, the Budget Unit would have
14 released it, so a Purchase Order would have been done.

15 Now, that Purchase Order triggers the ability to
16 produce a voucher, so the Accountant General needs to see a
17 voucher with the invoices, so that voucher would not be created
18 unless a Purchase Order--

19 COMMISSIONER HICKINBOTTOM: And the Purchase Order
20 comes from the Ministry?

21 THE WITNESS: Correct.

22 COMMISSIONER HICKINBOTTOM: From the Accounting
23 Officer.

24 THE WITNESS: Correct.

25 COMMISSIONER HICKINBOTTOM: The Permanent Secretary.

1 And then who produces the voucher?

2 THE WITNESS: That Permanent Secretary.

3 COMMISSIONER HICKINBOTTOM: I see.

4 So, the invoice would come in to the Permanent
5 Secretary. The Permanent Secretary would produce a Purchase
6 Order and a voucher, send it off to the Treasury, and the check
7 would be sent.

8 THE WITNESS: Payment would be made, yes.

9 COMMISSIONER HICKINBOTTOM: And that would happen
10 every month?

11 THE WITNESS: Yes. That's--it's very thinkable that
12 that would have happened.

13 COMMISSIONER HICKINBOTTOM: I see. Thank you very
14 much.

15 BY MR RAWAT:

16 Q. What you say in your Affidavit, Dr Glasgow, is that
17 there is no--there was no tender process in 2020, and that's at
18 10.1 in your Affidavit, page 23. But you then take us back, and
19 this relates to the questions that the Commissioner has just
20 been asking you, but you take us back to paragraphs 4.3--well,
21 4.1 through to 4.4 of your Affidavit, where you set out how
22 the--how the contracts or the payments have been budgeted for.

23 So, in effect, what has been happening since--well,
24 since the end of 2010 and the move over to monthly payments to
25 Top Priority, they have just been paid out of an allocated

1 element of the budget for the Ministry of Education?

2 A. Correct.

3 Q. But this is where it takes us back to 2020, because in
4 March 2020, concerns were raised over--and this was by the
5 Minister of Finance--over the amounts being charged; is that
6 right?

7 A. Correct.

8 Well, not the amounts being charged, but the ability
9 to make payment based on the amounts being charged.

10 Q. I see. If we look at 4.3 and 4.4, please. You say
11 that I have been told by the Financial Secretary that in March
12 2020, the Ministry of Finance raised concerns about the amount
13 being charged for the security of students at ESHS.

14 A. Yes.

15 Q. And then the Ministry of Finance had suggested that
16 funding was not available to accommodate Purchase Orders in
17 respect of payments for the services for months January and
18 February 2020.

19 A. Correct.

20 Q. And the concern was that they would--those payments
21 would exceed the Petty Contract threshold because, then you
22 quote, then, from an e-mail, based on the amounts of the first
23 invoices, the minimum amount to be paid by the end of the year
24 is \$600,000.

25 A. Correct.

1 Q. And so, the effect is that, it was a query about the
2 total amount that would end up being paid for the year based on
3 the first two months' invoices in 2020?

4 A. Correct.

5 Q. Because it would be way in excess of the Petty
6 Contract threshold?

7 A. That's correct.

8 COMMISSIONER HICKINBOTTOM: So, there was--the money
9 was budgeted, so the money is in the budget. The Accounting
10 Officer, the Permanent Secretary, would produce the Purchase
11 Orders. But given the amount each month which was whatever it
12 was, \$50,000, was it, who would have to sign that off? Just the
13 Accounting Officer?

14 THE WITNESS: Yeah.

15 Once they--so, the Ministry of Finance would, of
16 course, allocate monthly allotments to the Ministry of Education
17 to make payments.

18 COMMISSIONER HICKINBOTTOM: Yes.

19 THE WITNESS: What the Purchase Orders are saying--
20 (Overlapping speakers.)

21 THE WITNESS: --the voucher as well.

22 COMMISSIONER HICKINBOTTOM: Yes. So nobody else would
23 sign those off? The Accounting Officer would sign those off and
24 they'd go to the Treasury.

25 THE WITNESS: Yes, or their designated person.

1 COMMISSIONER HICKINBOTTOM: Yes.

2 And just because the Purchase Orders obviously reflect
3 the amount in the budget but then don't really reflect the
4 contract, a document--I mean, not--

5 THE WITNESS: Well, you know, one of the things I've
6 always said to people--I always say to people in my discussions,
7 you have several types of contracts.

8 COMMISSIONER HICKINBOTTOM: Yes, yes.

9 THE WITNESS: The courses that I've taught to
10 contractors, Government has what we call a Major Contract. You
11 have a Petty Contract, and you have in my opinion, the very
12 basic form of a contract, which is a Purchase Order.

13 COMMISSIONER HICKINBOTTOM: Yes.

14 THE WITNESS: I tell you to do this, you agree to do
15 this for me.

16 COMMISSIONER HICKINBOTTOM: Yes.

17 THE WITNESS: So, once a Purchase Order is produced,
18 it's produced in line that a particular vendor has agreed to do
19 it for this. And usually, by agreement, it's by them sending
20 invoice, it's triggered by that. And so, a Purchase Order is
21 prepared in triplicate. Make sure I get this mechanic right.
22 Triplicate, one copy goes to the vendor, and I believe that's
23 the original. That's the main copy because it's an agreement
24 between the Government and the vendor. This is what we want you
25 to do, by you accepting it, it tells us that you are going to do

1 it.

2 So, I call Purchase Orders contracts.

3 COMMISSIONER HICKINBOTTOM: I absolutely understand
4 that and I agree with that, because there must be a contract to
5 get the works done.

6 But in terms of these services, what could have
7 happened, perhaps what should have happened is that, there would
8 have been a contract for \$600,000 or whatever it is for the
9 year, and that would either have gone through the tender process
10 or it would have been waived, but there would have been a
11 contract. And that \$600,000 would have been approved by Cabinet
12 in one form or another because they could have waived it. So
13 that's that. And who would have signed that contract then? It
14 wouldn't have mattered as long as Cabinet had approved it, who
15 would have signed the contract?

16 THE WITNESS: The contract itself, I mean, the
17 Legislation notes that the Minister of Finance signs contracts
18 or if he designates.

19 COMMISSIONER HICKINBOTTOM: Right.

20 All contracts under the Regulation, so he probably
21 would sign them?

22 THE WITNESS: He would sign.

23 COMMISSIONER HICKINBOTTOM: --the contract.

24 THE WITNESS: I know there's some years, of course,
25 and he would actually do--give a--draft a--do an instrument and

1 assign perhaps other Ministers or Accounting Officers to sign
2 contracts.

3 COMMISSIONER HICKINBOTTOM: I understand that.

4 So, that's fine if there is a document headed
5 "contract", and that's that. But in terms of what was happening
6 here, there was no such document.

7 THE WITNESS: Right.

8 COMMISSIONER HICKINBOTTOM: It was a sort of rolling
9 payment and there were Purchase Orders. But what sort of was
10 behind the Purchase Orders, the Purchase Order of \$50,000 signed
11 by the Accounting Officer?

12 THE WITNESS: Accounting Officer.

13 COMMISSIONER HICKINBOTTOM: And so, there is something
14 missing--isn't there?--there's a contract missing. So far as
15 the Auditor--the Treasury is concerned.

16 THE WITNESS: Yes, Treasury would have picked up that.

17 COMMISSIONER HICKINBOTTOM: Exactly. At some point.

18 THE WITNESS: And it would not have been a secret that
19 this is--was ongoing, and tender processes was started, just
20 never completed.

21 COMMISSIONER HICKINBOTTOM: Yes.

22 THE WITNESS: So, we know that there is not a
23 contract, and so what we picked up in 2020 and the Ministry of
24 Finance identifying it, at least they have identified and
25 decided to--to really make sure that something happens.

1 And what we can see from the chain of e-mails is, it
2 was identified, of course, because of the natural mechanism, if
3 you try to enter a Purchase Order and you don't have the
4 allocation, the system would put it on hold, and so the system
5 put it on hold, which we--which therefore made it necessary for
6 the Accounts Officer to call to the Ministry of Finance or the
7 Budget Unit to release the Purchase Order, so that's where the
8 e-mails pick up, and so--

9 COMMISSIONER HICKINBOTTOM: Yeah, I see.

10 THE WITNESS: Minister of Finance said no, we can't do
11 that because it would be a Major Contract. Let's get an
12 approval from Cabinet.

13 COMMISSIONER HICKINBOTTOM: Yes. Thank you very much.

14 BY MR RAWAT:

15 Q. We can see the e-mails, they start at--

16 COMMISSIONER HICKINBOTTOM: Mr Rawat, I note the time.
17 We have been going quite a long while. How close, though, are
18 you to finishing? We're up to 2020 but...

19 MR RAWAT: A little bit more, so I think we should
20 give Mr. Kasdan and everyone a break.

21 COMMISSIONER HICKINBOTTOM: Dr Glasgow, we have a
22 Stenographer, and he just needs a break every now and then.
23 We've been going on quite a long time for him. So, we will just
24 have a five-minute break and then we'll come back and finish
25 your evidence. Thank you very much.

1 THE WITNESS: Thank you.

2 (Recess.)

3 COMMISSIONER HICKINBOTTOM: I think we're ready to
4 proceed, Mr Rawat.

5 MR RAWAT: Thank you, Commissioner.

6 BY MR RAWAT:

7 Q. Dr Glasgow, we are jumping between paragraphs 10.3 and
8 4.3 of your Affidavit, but essentially if I go back to 10.3--and
9 this picks up the point you were discussing before we had the
10 short break--there reached a point in 2020 where the--and this
11 is in March 2020, essentially the Ministry of Finance were
12 raising queries over the payments being made because it boils
13 down to that Purchase Orders were being made to pay what
14 appeared to be a Major Contract.

15 A. Correct.

16 MR RAWAT: And again, Minister--Commissioner, for your
17 note, you have the chain of e-mails that Dr Glasgow refers at
18 10.3 at Pages 189 to 193.

19 And I don't need to turn it up, but 189, the Permanent
20 Secretary in the Ministry of Education responding to a Public
21 Officer in the Ministry of Finance writes of the situation that
22 "regressively one of the matters I have inherited, and I must
23 say it should not have been allowed to continue in this matter
24 over the several years that it has been going on. It's my
25 understanding that years ago a Tender Document was issued for

1 security services but the matter was not finalised, and this is
2 the process that the Ministry has been following. Why it was
3 not flagged before I'm not sure, but I do agree cannot continue
4 indefinitely as this is a violation of the Public Finance
5 Management Act".

6 BY MR RAWAT:

7 Q. And I assume, Dr Glasgow, that's something that you
8 would agree with, that firstly it couldn't be allowed to
9 continue indefinitely?

10 A. Correct.

11 Q. And that it was--what had been allowed to continue was
12 in violation of you have been calling the "Procurement
13 Regulation"?

14 A. I would say so, yes.

15 Q. If we focus on 10.7 of your Affidavit, please, what
16 you've done--and this is very helpful, but at 10.6 you set out
17 some more details of some of the correspondence that was
18 ongoing, as I think there were sort of two parallel processes
19 going on dealing with the instant situation that had been
20 flagged up by the Ministry of Finance and then beginning of the
21 step or perhaps remedying the situation by having a tender
22 process in place.

23 So, we have at 10.7 reference to Cabinet Memo 7th of
24 July 2020, which, if we turn that up, is at page 441 in the
25 bundle. It's a Ministry of Finance memoranda dated the 7th of

1 July 2020, but gives us helpful background which we have already
2 covered; firstly, makes reference in paragraph 1 to the tender
3 process that did--that was completed in 2008 and led to an award
4 of a contract. It then refers to events in 2015, when there was
5 an attempt to again go through a tender process but--which did
6 not go as far as Cabinet, for reasons you've explained. And the
7 fact that monthly payments have been continued.

8 The point at paragraph 4--so that's Pete Smith, who
9 does business as Top Priority Services, had not actually
10 increased his rate over the years, but what had happened was
11 that, in September 2019, there had been a separation of the
12 junior and senior sections of the school, and so that led to an
13 increase in the number of security officers in any event. And
14 the purpose of this paper was for Cabinet to ratify a contract
15 between Top Priority Security Services and the Government of the
16 Virgin Islands to provide security services for Elmore Stoutt.

17 Now, as I understand the purpose of this, it was
18 essentially to, because of the need to have security at the
19 school, because Top Priority had been providing its services in
20 2020 but hadn't been paid, but--and was in effect the
21 circumstances pointed to a Major Contract, what needed--what
22 Cabinet needed to do was to waive the tender requirements and
23 ratify a Major Contract in 2020.

24 A. That's correct.

25 You've rightfully noted that--and from the e-mail

1 chain--payments were not made after February--I think February
2 was the time, so to complete the payments--the complete
3 payments, as the Budget Unit flagged, they needed a Cabinet
4 Decision, and so all papers and waivers were done by the
5 Ministry of Finance--well, the Minister of Finance carries
6 papers--waivers to Cabinet, so there you have the Ministry of
7 Finance preparing that paper.

8 So (1), of course, as you mentioned, have the--give
9 the ability for the vendor to be paid; and (2) allowing for a
10 tender process--allowing time for a tender process to be done,
11 which you would note that the Cabinet Decision or the request
12 for the Cabinet Decision know the payments throughout the entire
13 year of 2020.

14 Q. And to be fair to Top Priority Services, Security
15 Services, they had done two things: Firstly, they continued to
16 provide the service, even though they hadn't been paid.

17 A. Right.

18 Q. And then, secondly, because there was a move because
19 of the pandemic to on-line education, they had also reduced the
20 number of services that they were providing on-site. But
21 nonetheless--and it goes back to your point about the Financial
22 Secretary saying the Government must pay its bill--a bill had
23 been incurred and that had to be paid.

24 A. And rightfully so. The bill--I would say, if you
25 would ask me; you didn't really ask, but if you were to ask

1 me--the bill was a necessary bill, and I say that because
2 security of the schools had to be done, and especially during
3 this time.

4 Q. Yes.

5 A. It's something that had to be done, so I think that
6 part--that was a major part of the Cabinet paper, so to justify
7 why we should do what we had done.

8 COMMISSIONER HICKINBOTTOM: Mr Rawat, is there a
9 current decision in here?

10 MR RAWAT: Yes.

11 COMMISSIONER HICKINBOTTOM: We probably don't need to
12 go to it.

13 MR RAWAT: If you give me a moment, I will find it. I
14 had it in my notes, but now, of course, I cannot find it in my
15 notes, but I will check that.

16 COMMISSIONER HICKINBOTTOM: Yes. It's here somewhere,
17 anyway.

18 MR RAWAT: Yes.

19 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

20 BY MR RAWAT:

21 Q. So, what we see, the evolution in terms of events in
22 2020, Dr Glasgow, is the intention of the Ministry of Finance
23 brings to an end the month-to-month payment process; and, as
24 we've seen, two things are happening:

25 Firstly, Cabinet approves that Major Contract between

1 Top Priority and the Government; and, as you've said, it's--it
2 was justified on the basis of the need for a continued security
3 presence.

4 There was the recognition that, under the Public
5 Finance Management Regulations, Cabinet can waive a tender
6 process.

7 There was the recognition that a service had been
8 provided and costs had been incurred.

9 And also that the Ministry of Education had accepted
10 that, moving forward, it would need to comply with the tender
11 process and the Public Management Regulations when seeking
12 security contracts for secondary schools.

13 A. Correct.

14 Q. And as we've said, and as you said at your 10.5,
15 parallel to this, a tender process was initiated in 2020.
16 That's, as I understand it from your affidavit, could not be
17 completed as a process before 2021.

18 A. Based on what transpired, it did not initiate--not
19 "initiate", but it was not published until 2021. But, in fact,
20 what the idea was is for that tender process to be completed
21 before 2021 to allow now payment after December 31, 2020,
22 because Cabinet's ratification of the contract that's for
23 payments to be made through December 31st, so the idea was to
24 have a tender process to effect payments that will begin on
25 January 1st, 2021.

1 So, if you would--

2 COMMISSIONER HICKINBOTTOM: But, in your paragraph
3 17.3--

4 THE WITNESS: 17.3?

5 COMMISSIONER HICKINBOTTOM: Yeah.

6 --it seems to say, which makes sense, there is a
7 contract up until the end of--well, there was a contract up
8 until the end of June 2021 to allow the tender process to run
9 its course.

10 THE WITNESS: Yes.

11 So, this was before. This--it's a very good point
12 that you make because this now picks it up at January 1st.

13 COMMISSIONER HICKINBOTTOM: Yes. 2021, yes.

14 THE WITNESS: But the Cabinet Decision--Cabinet
15 paper--I'm trying to find the decision myself, here--it was to
16 ratify that contract through the end of December.

17 COMMISSIONER HICKINBOTTOM: '21?

18 THE WITNESS: 2020.

19 COMMISSIONER HICKINBOTTOM: Right.

20 THE WITNESS: 2020.

21 So, that would have allowed that parallel process of a
22 tender process being done to be completed so you can have
23 somebody in place by January 1st so no payment can be made in
24 accordance with the Procurement Regulation. But, of course,
25 that was--that did not happen; hence now where, Commissioner,

1 your 17.3 note comes into play.

2 COMMISSIONER HICKINBOTTOM: So, that sort of fills
3 in--

4 THE WITNESS: So we now need another contract at
5 January to get us to June.

6 COMMISSIONER HICKINBOTTOM: Yes. And that, more or
7 less, allows the successful tenderer to take up the contract
8 from more or less the beginning of the school year.

9 THE WITNESS: Correct.

10 COMMISSIONER HICKINBOTTOM: That sort of time.

11 THE WITNESS: Yes.

12 COMMISSIONER HICKINBOTTOM: Got it.

13 BY MR RAWAT:

14 Q. Can you just clarify the paragraph for me, Dr Glasgow.
15 If you look at page 730.

16 A. 730.

17 Q. So, the contract--the Cabinet Memo that we were
18 looking at earlier puts in place a Major Contract to cover until
19 the end of December 2020.

20 A. Correct.

21 Q. And if we look at 730, that is an expedited extract
22 dated 7th of April 2021 and sets out Cabinet's decision to
23 ratify a new Major Contract for an additional period of six
24 months or until the completion of the tender process, whichever
25 comes first.

1 So, was--in effect, was that decision so it would
2 ratify contract which would cover the period 1st of January 2021
3 until the end of June?

4 A. Correct.

5 So, that's what we just discussed on 17.3.

6 Q. Right. Okay.

7 And in terms of the tendering process, if we look at
8 705, please, that sort of sets out firstly under "Background
9 Information" it serves as a way of bringing us up to date as to
10 where we are now, so where we've reached in effect is that,
11 after 2010 and the end of that completed tender, there is no
12 successful tender process as yet, but there is one that began in
13 2020, and will be concluded in 2021.

14 So, that helps us again because it does explain as a
15 document the fact that Government has extended for a period of
16 one year to December 31, 2020, the contract of Top Priority; and
17 then it explains just the details of the tender process that
18 you've engaged in. So, Tender Documents were available for
19 Monday the 25th of January 2021, with the submission date of the
20 23rd of March 2021. There has been a--there was a pre-tender
21 meeting on the 16th of February 2021. Seven bids were received
22 from a variety of security companies, and they were opened
23 during a Central Tenders Board meeting held on the 23rd of
24 March 2021.

25 And I don't need to go into the details of this,

1 Dr Glasgow, but two questions, really: Firstly, have those bids
2 or are those bids going through the process that you've
3 summarized earlier for us, which was to the Central Tenders
4 Board possibly allocated to an evaluation subcommittee? Once
5 they've gone through that, they will then go to Cabinet with a
6 recommendation and Cabinet can accept or reject the
7 recommendation?

8 A. That's correct.

9 Q. So, as a process--and it may be a process that you're
10 directly involved in, but as a process--and as part of the work
11 that you've done for the--for your Affidavit, are you satisfied
12 that at least that process, from 2020 until now, is in
13 compliance with the Regulation?

14 A. Yes.

15 Q. And in terms of--I mean, it's a salutary tale, I
16 suppose, of the perhaps the positive of the tender process but
17 also the difficulties that might be associated with the tender
18 process, but do you think that as a result of the work you've
19 done and the people you've spoken to, are there any lessons
20 you've learned about how Ministers can respond better to the
21 need to engage with the Procurement Regulations?

22 A. Yes. I think this is definitely one for the lesson
23 book, and quite a bit of lessons to be learned here.

24 One of the very first things that I speak to my team
25 about is the need to ensure that Tender Documents or whichever

1 form you choose to use, whether it's a Request for Proposal or
2 Tender Document, it has to be specific enough, and it has to be
3 concise enough, to allow all bidders to fairly respond to that
4 tender in a way that it's understood.

5 One of the short-falls of not doing an appropriate
6 tender is exactly what happened in 2015, where you have bidders
7 submitting bids; and when you go through the bids, it's not
8 clear that we see the same information or interpreted it the
9 correct way.

10 So, one lesson learned, of course, is be sure your
11 Tender Document is structured in a way, prepared in a way, that
12 everyone understands the requirement, and it has to be the same
13 requirement.

14 Another very important lesson--and I think it's as a
15 success story for all of this--is the fact that we have
16 mechanisms in place to trigger--to trigger when something is not
17 correct, so the chain of e-mail that you--that we went through
18 between the Budget Unit and the Permanent Secretary, it shows,
19 of course, that there was a flag. As the Permanent Secretary
20 actually mentioned, she was not sure why that wasn't flagged
21 before. I can't say, I don't know, I haven't seen the records,
22 but I'm sure somebody probably asked the question already.

23 But, clearly you have (1) an automatic system that
24 flags it because the Accounting Officer or Accounts Officer
25 trying to raise a Purchase Order against a particular vote, it

1 was placed on hold (1) because the budget allocations were not
2 there, and then (2), with that place on hold, I remember how the
3 system works, a big zero will be noted at that particular line
4 item on the system.

5 And, of course, now the Budget Unit picks up on that
6 and says, well, there may be an issue, and they go through, and
7 they would see, of course, that if we were to continue this, we
8 would have a problem at the end of the year because we would be
9 in contravention of the Regulation.

10 And so, it's one of those fail-safe methods. It's
11 definitely a lesson learned for us and, as I mentioned, a
12 success story because there are triggers there. There are
13 certain things in place that triggers if something goes wrong
14 like this.

15 COMMISSIONER HICKINBOTTOM: That's true in that
16 somebody eventually put a flag up, and payments were stopped,
17 and the mechanism began to sort all this out and to put it on a
18 proper procurement basis.

19 THE WITNESS: Yes.

20 COMMISSIONER HICKINBOTTOM: But when you say there was
21 an automatic trigger, it took--there was a period of what? 10,
22 15 years when it was not triggered--sorry, that's not fair
23 because every now and then there was an attempt at a tender
24 process which, for one reason or another, did not come to
25 fruition, but it took a while for this to be sorted out, to put

1 it broadly.

2 THE WITNESS: Yeah, that's correct to say.

3 And where the automatic trigger, as I called it, came
4 into play, was again, of course, an Accounts Officer trying to
5 raise a Purchase Order, and this is just on the system in the
6 Purchase Order, oh, my goodness, I do not have any money because
7 our budgetary whole goes. So, of course, I now have to go to
8 the Budget Unit to ask for permission to release the whole, so
9 that's the trigger.

10 Maybe that was not--that had not happened before
11 because they would have already had the monthly allocations that
12 were allocated in the budgetary. But because that particular
13 month represent--it's not that it didn't have the money; it was
14 just that it wasn't allocated in that month. So, by that not
15 happening, that triggered that, yes.

16 COMMISSIONER HICKINBOTTOM: Thank you.

17 BY MR RAWAT:

18 Q. And to just sort of pick up on the Commissioner's
19 point, I mean, if we take the end of 2010--and this is if we
20 look at your paragraph 15, the table that's at paragraph 15 on
21 page 27--once 2010 starts and through the next 10 years to,
22 let's say, the beginning of 2020, the payment that is being made
23 by the Ministry of Education is on Purchase Orders. And if we
24 look between January 2011 and December 2012, \$714,447 are paid
25 out. Between January 2014 and December 2019, \$2,995,100.45 is

1 paid out. After January 2020--and so that's--I mean, those are
2 substantial sums paid out on Purchase Orders, aren't they,
3 Dr Glasgow?

4 A. Yeah, and--individual Purchase Order, yes.

5 Q. Yes.

6 And they are sums that really are well in the realm of
7 the Major Contract.

8 A. Well, I--I don't believe that the record shows this
9 for me, but, of course, this would have been cumulatively, yes,
10 it would have been well over the Major Contract threshold.

11 Q. Okay.

12 A. But the individual Purchase Orders, remember the
13 payments are were done monthly.

14 Q. Yes.

15 A. It would have been, like--

16 Q. I accept--I accept that, absolutely, but across a
17 year--

18 A. Yes.

19 Q. --you are--I mean, we could look at that--if you look
20 at 153 in the bundle. I won't read these figures into the
21 record unless you require me to do so, Commissioner, but what
22 these are are payment schedules, and so they show what was paid.
23 If we go from 153 onwards each year, starting with
24 December--with 2013 through to 2014, 2015, we've got 2016, 2017,
25 and 2018, and then you have 2019 through to 2020.

1 Now, 2013 through to 2016 is over \$300,000 paid out
2 each year. When we get to 2017, it's closer to \$500,000. The
3 same in 2018. It's the same in 2019, essentially over \$500,000.

4 COMMISSIONER HICKINBOTTOM: It's 1.2.

5 MR RAWAT: Yes. I will leave out 2020 because that's
6 when the contract was in place.

7 BY MR RAWAT:

8 Q. But it is a significant time over which there was a
9 failure--and I appreciate you won't know all the reasons for it
10 or the circumstances in which it occurred because, despite all
11 your hard efforts, there are some documents missing.

12 But it is sort of--it is a serious failure not to have
13 complied with the Procurement Regulations over a significant
14 period of time; would you agree with that?

15 A. I would agree, yes.

16 Q. And obviously, as you've explained, steps have now
17 been taken since the beginning of 2020 to remedy it, firstly by
18 using the tender waiver process to put in place Major Contracts
19 and then to have a tender process, which is--at some point it
20 will be concluded?

21 A. Correct. But I would interject that steps were--as we
22 discussed, steps were taken back in 2013, so effectively.

23 Q. It's quite clear that in the period that I have
24 identified your work as such, is that it must have at least been
25 contemplated in Public Officers that there was a need for a

1 tender process?

2 A. Yes.

3 MR RAWAT: Commissioner, I have reached the end of my
4 questions.

5 COMMISSIONER HICKINBOTTOM: Yes.

6 MR RAWAT: Can I conclude by thanking Dr Glasgow not
7 only for the work that has gone into his Affidavit and the care
8 that has been taken in collating the documents as well but also
9 for coming to give evidence today and the way he has assisted
10 the Commission.

11 COMMISSIONER HICKINBOTTOM: And can I also thank you,
12 Dr Glasgow, for the clear and helpful way you have given your
13 evidence. It's been very helpful to try to explain what has
14 gone on with these particular services over the last 10 or 15
15 years. Thank you.

16 THE WITNESS: Thank you.

17 COMMISSIONER HICKINBOTTOM: Good.

18 Mr Rawat.

19 MR RAWAT: Dr Glasgow is our only witness today, but
20 we will be resuming on Monday with further witnesses.

21 COMMISSIONER HICKINBOTTOM: Good. Thank you very
22 much.

23 Thank you, Dr Glasgow.

24 THE WITNESS: Thank you.

25 (Witness steps down.)

1

(End at 12:22 p.m.)

CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

A handwritten signature in cursive script, appearing to read "David A. Kasdan", is written above a solid horizontal line.

DAVID A. KASDAN