

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

Witness Statement of Robert K. Horton

1. I, Robert Keith Horton of 7 Spring Benny Drive, Sandys SB03, served from December 2007 through April 2011 as Permanent Secretary, Ministry of Works and Engineering, Bermuda. I make this witness statement in response to the request of the Commission of Inquiry ["the Commission"] established on 24th February, 2016 by the Hon. Michael Dunkley, JP, MP, Premier of Bermuda, in accordance with provisions of the Commissions of Inquiry Act 1935 to inquire into the findings of the Auditor General's Report on the Consolidated Fund of the Government of Bermuda ["The Report"] for the Financial Years 2010, 2011 and 2012. The Commission's request in this regard is set out in the letter of 25th July, 2016 that I received from its Chairman, Sir Anthony H. M. Evans.

Processing of Payments

2. I shall limit my response to contracts of \$50,000 or above, including the payments process for such contracts, as those Ministry of Works and Engineering contracts and agreements that warrant the Auditor General's concern/criticism in the Report are in that category.
3. As Accounting Officer of the Ministry of Works and Engineering, I understood that in accordance with applicable provisions of Financial Instructions, all contracts or agreements of \$50,000 or above required Cabinet approval before they were signed. Following the tendering process, as set out in Management Policy and Procedure P.F.A. 2002, a Contract Award Recommendation would be prepared setting out, inter alia, details of the work to be carried out, the tendering process, the names of the companies/individuals that submitted tenders, the amount of each bid, the technical officers' assessment of the bids and the technical officers' recommendation regarding the successful bidder. The Minister would present the Contract Award Recommendation to Cabinet for approval. A Cabinet Conclusion would then be sent to the Ministry indicating whether or not the Contract Award Recommendation had been approved.
4. In terms of the payments process, all requests for payments, having been prepared by the Project Manager [a Ministry of Works and Engineering technical officer] would be forwarded to the Finance and Administration Department of the Ministry of Works and Engineering where they would be vetted by a management accountant before being processed. The Project Manager would include with his payment request a Payment Certificate and relevant supporting documentation, including a copy of the contract, proof of work completed to date, original invoices, etc. The management accountant would ensure that the invoices matched the Payment Certificate prepared by the Project Manager, that the Payment Certificate reflected the correct signing authority and that the invoice was in accordance with the applicable contract or agreement.

5. The Department of Finance and Administration would then forward the request to the Accountant General's Department for payment to the vendor. Staff of the Accountant General's Department were required to ensure that the supporting documentation that accompanied each payment request was in order before effecting payment.
6. Given the findings set out in the Report, it is apparent that in some instances there was a failure to adhere to Financial Instructions with respect to the payments process.
7. I recall discussions with the Chief Financial Officer regarding concerns that had been raised by the Audit Department about the payments process, particularly with respect to the approval of payments in excess of \$50,000. I seem to recall also the Chief Financial Officer organizing training for the members of her team specifically with respect to procedures for approving payments in excess of \$50,000.
8. I offer these observations with respect to aspects of Section 3 of the Report: With respect to paragraph 3.1.1 and Table 3: 2010 Contracts not approved by Cabinet - I note reference to a contract in the amount of \$1,421,400 for the purchase of sand and rock. As my witness bundle contained no papers relating to this expenditure, I am unable to offer an informed comment. I shall, however, comment upon the contracts for the Commercial Courts/Ministry of Finance renovations, Maintenance and Stores Building, Renovations of Department of Human Resources and the Central Laboratory project later in my statement.

Specific Contracts relating to the Ministry of Tourism and Transport (MoTT)

9. With respect to the Commission's questions in connection with the Port Royal Golf Course remediation works, Heritage Wharf and Bermuda Emissions Control Ltd., I am not able to provide answers as I had no direct knowledge or any involvement with the matters raised by the Commission regarding said projects. For the sake of clarity, I shall explain separately my lack of direct knowledge and involvement with the matters raised by the Commission in relation to the above projects.
10. I was assigned to the post of Permanent Secretary, Ministry of Works and Engineering, with effect from 21st December, 2007. It is important for me to explain the process whereby a Permanent Secretary familiarizes himself/herself upon his/her assignment to a particular Ministry. Immediately upon his assignment, a Permanent Secretary meets with the responsible Government Minister. Also upon assignment, the Permanent Secretary is provided with a written brief of the current status of each Department within the Ministry, including an update on major Departmental initiatives/projects. In my case, I was provided with briefs on the Department of Architectural Design and Construction [Head of Department: Mr. Lawrence Brady, Chief Architect], the Department of Finance and Administration [Head of Department: Ms. Thomasina Hassell, Financial Controller and later Chief Financial Officer], the Department of Lands, Buildings and Surveys [Head of Department: Mr. David Brown, Chief Surveyor] and the Department of Operations and Engineering [Head of Department: Ms. Lee Sylvester, Chief Engineer].
11. I was already familiar with the Hon. Derrick V. Burgess, JP, MP, newly appointed Minister of Works and Engineering, as I was assigned to the post of Permanent Secretary, Ministry of Works and Engineering, concurrent with his transfer from the Ministry of Labour and Immigration where we both served until December 2007. However, the Minister and I soon met with the four Heads of Department and senior members of their teams in order to discuss the briefs with which I had been provided. [The Minister would

not have been present at most of the subsequent briefing meetings, although he may have attended a few].

12. During the briefing meetings, it would be incumbent upon each Head of Department to raise any issues that he/she thinks are problematic or otherwise require the urgent attention of the Permanent Secretary. Such matters would normally be included in the introductory brief or brought to the Permanent Secretary's attention verbally. The briefing provided to a Permanent Secretary forms the starting point for his/her duties and responsibilities within the Ministry.

Port Royal Golf Course remediation works

13. Decisions with respect to the delegation of responsibility for the Port Royal Golf Course remediation project to the Port Royal Golf Course Board of Trustees and/or the Ministry of Tourism and Transport were taken before December 2007 and I cannot speak from direct knowledge.
14. Additionally, since this project was the responsibility of the Ministry of Tourism and Transport, its details would not have been part of my briefing when I commenced my duties at the Ministry of Works and Engineering.

Heritage Wharf

15. Decisions with respect to the delegation of responsibility for the Heritage Wharf project to the Ministry of Tourism and Transport were taken before December 2007 and I cannot speak from direct knowledge.
16. Additionally, since this project was the responsibility of the Ministry of Tourism and Transport, its details would not have been part of my briefing when I commenced my duties at the Ministry of Works and Engineering.

Bermuda Emissions Control Ltd.

17. Decisions with respect to the delegation of responsibility for the Bermuda Emissions Control Ltd. project to the Ministry of Tourism and Transport were taken before December 2007 and I cannot speak from direct knowledge.
18. Additionally, since this project was the responsibility of the Ministry of Tourism and Transport, its details would not have been part of my briefing when I commenced my duties at the Ministry of Works and Engineering.

Specific Contracts relating to W&E

The Dame Lois Browne-Evans Building project

- (i) Are you aware of the circumstances in which the Ministry decided not to follow the technical specialists' recommendation and instead selected LLC? If so, please explain why this was so.
19. It is to be noted that the decision to award the contract for the construction of the new Magistrates' Court/Hamilton Police Station Building [now the Dame Lois Browne-Evans Building] was taken before 21st December, 2007 when I was assigned to the post of Permanent Secretary, Ministry of Works and Engineering. However, as the construction of the new Magistrates' Court/Hamilton Police Station Building was by far the largest capital project within the Department of Architectural Design and Construction at the

- time of my assignment to the Ministry of Works and Engineering, it was included in the briefing notes provided for me by the Chief Architect and I am able to offer an informed response to the Commission's questions.
20. Three firms, Apex Construction Management Limited ["Apex"], Bermuda Building Services Company Limited/Hill International and Landmark Construction Limited/Lisgar Construction Company Limited ["LLC"] met the Ministry's deadline for the submission of bids for the construction of a new Magistrates' Court/Hamilton Police Station Building on the corner of Court and Victoria Streets and an adjoining office building on the corner of Church and Court Streets. The evaluators of the bids, the Ministry's technical specialists, found the Bermuda Building Services Company Limited/Hill International to be incomplete and disqualified the company from further consideration.
 21. It is my understanding that the Ministry's technical specialists deemed the Apex bid to be stronger than the LLC bid in a number of areas and recommended the award of the contract to Apex. That recommendation was set out in the Contract Award Recommendation that was forwarded for the Minister's consideration [pages 10-27 to 10-31 of my witness bundle].
 22. It is my understanding that the Government recognized that Apex was a large and established firm with a successful building record in Bermuda. It is my understanding also that the Government took particular note of the following aspects of the LLC bid:
 - expertise that would be brought to the table by Canada based Lisgar Construction Limited;
 - it was about \$1,000,000 less than the Apex bid; and
 - many small Bermuda businesses would be offered sub-contracts, thereby expanding economic opportunities for a wider range of local companies, an outcome that was consistent with the Government's overall mandate.
 23. In these circumstances, I believe, the Government approved the award of the construction project to Landmark Construction Limited/Lisgar Construction Company Limited rather than Apex Construction Management Limited.
 24. Work on the construction project commenced in November 2007 and concluded upon the opening of the Dame Lois-Browne-Evans Building in June 2011.

Renovations Department of Human Resources

25. The Commission is advised that the witness bundle that I initially received contained woefully little background information with respect to the renovations project that was carried out at the Third Floor, Ingham & Wilkinson Building, 129 Front Street in order to accommodate the Department of Human Resources which at the time was located in Global House, Church Street. That renovations project also included preparation of the Ingham & Wilkinson site for the much smaller Office of the Head of the Civil Service and the Department of Management Services which also were then located in Global House. Additional documents were included in the witness bundle that I received on 14th September, 2016 and I am now able to state my belief that the Commission's understanding as set out in the first sentence of the opening paragraph is accurate. However, I am unable to confirm that the Head of the Head of the Civil Service instructed the Ministry to negotiate the contract directly with Greymane Contracting Ltd.

26. Normally, as Permanent Secretary, I would have very little involvement in the tendering process. It would be agreed a project would go out to tender and thereafter the tendering process would be managed by the technical officers.
- (i) Why does it appear that the Head of the Civil Service had authority rather than yourself as Permanent Secretary of W&E?
27. I recall that in accordance with established practice, the Buildings Section, Ministry of Works and Engineering, was charged with the responsibility of locating alternative accommodation for the Department of Human Resources, the Office of the Head of the Civil Service and the Department of Management Services, all of which fell within the administrative ambit of the Cabinet Office. Government Departments already occupied the Second Floor, Ingham & Wilkinson Building, and upon learning of the availability of the Third Floor, the Buildings Section recommended that it be leased for the Department of Human Resources, the Office of the Head of the Civil Service and the Department of Management Services. Subsequently, the Department of Architectural Design and Construction would have been charged with the responsibility of preparing the space for the client Departments. In this regard, I recall that the Third Floor had been vacated recently by a local bank which had agreed to leave a significant amount of furnishings that might be used by the next tenant. That fact, I seem to recall, enhanced the attractiveness of the Third Floor location, with the suggestion that the use of existing furnishings would lead to significant cost savings for Government. The landlord also offered a favourable three-year lease, I seem to recall.
28. It is to be noted that there was an earlier recommendation that the Attorney-General's Chambers be relocated from Global House to the Third Floor, Ingham & Wilkinson Building. However, upon the realization that there was no funding available to cover the cost of the relocation of the Attorney-General's Chambers, that recommendation was not pursued. It was then agreed that the Department of Human Resources, the Office of the Head of the Civil Service and the Department of Management Services would be relocated to the Ingham & Wilkinson Building, with renovation and relocation costs to be shared between the client Departments and the Ministry of Works and Engineering.
29. I do not recall the exact circumstances of the Head of the Civil Service assuming overall responsibility for the renovations project, but can confirm that he soon assumed authority for it, communicating directly with and issuing instructions to officers of the Department of Architectural Design and Construction, Mrs. Lucy Chung, Architect, in particular, regarding the renovations project. I recall that the Head of the Civil Service communicated directly with the Minister of Works and Engineering regarding the project.
30. An e-mail dated 21st July, 2010, enclosed in my witness bundle at page 04-02, contains the notation that I, along with Mrs. Chung, approved Change Orders for the project, adding that the Change Orders can be found in file 13/254/52/06/C. I would require sight of the Change Orders in file 13/254/52/06/C. before confirming whether or not I had the cited involvement in the project.

(ii) What was the justification for negotiating directly with the contractor and not following the tendering process?

31. I am unaware of any justification in this instance for negotiating directly with the contractor and not following the tendering process, except perhaps to expedite the process given the urgency that accompanied the need to relocate the Department of Human Resources. It is to be noted here that the Attorney-General's Chambers, at the time located on the Fourth Floor, Global House, was eager to expand into the Third Floor, Global House space occupied by the Department of Human Resources.

(iii) Were the requirements of PFA 2002 met? If yes, explain your views.

32. Having reviewed PFA 2002 in preparation for this Commission of Inquiry and witness statement, I can say in hindsight that certain requirements with respect to tendering were not met.

(iv) Why was Cabinet approval not obtained?

33. I am unable to explain why Cabinet approval for the renovations project was not obtained. Under normal circumstances, Ministry of Works and Engineering technical officers would have prepared a Contract Award Recommendation which, following my review, would have been forwarded to the Minister who in turn would have presented it to his Cabinet colleagues for approval. Because the Head of the Civil Service assumed direct responsibility for the project, I was not positioned to provide the required oversight.

(v) Please comment generally on why payments were made on this contract if PFA 2002/Financial Instructions had not been followed.

34. I can only surmise that payments had been made because work had been completed, services had been delivered and the Authorizing Officers believed that all necessary due diligence that I have stated in my previous paragraph 4 had been carried out.

The Commercial Court/Ministry of Finance Renovations

35. I believe that the Commission's understanding as set out in the opening paragraph is essentially correct.

36. With respect to the Commission's specific concern about apparent interference in the tendering process in favour of Bermuda Drywall and Ceiling Ltd., I offer the words of the Hon. Derrick V. Burgess, JP, MP, Minister of Works and Engineering at the time that the contract to Bermuda Drywall and Ceiling Ltd. was awarded. Former Minister Burgess's response to the December 2014 Report of the Auditor General on the Consolidated Fund of the Government of Bermuda for the Financial Years March 31, 2010, March 31, 2011 and March 31, 2012 refers [pages 1 – 2 of my Annex I]: *"Upon receiving a Contract Award Recommendation that the construction of the new Commercial Courts and the renovation and expansion of Ministry of Finance and Economic Development Headquarters be approved for \$2,334,000, I did 'interfere'. I believed that the 'Rolls Royce' refurbishment proposed was too elaborate and directed that the tender documents*

be modified and the job re-tendered. I did not wish to see unwarranted spending of Government funds. As a result of my 'interference', Cabinet approved a Contract Award Recommendation in the amount of \$1,696,553.18, thereby effecting a savings of some \$637,446.82 to the Bermuda taxpayer. As Minister of Works and Engineering I was committed to a reduction in spending, given the existing economic environment."

(i) The reasons (if known to yourself) why W&E's views about the invalidity of BDCL's tender were rejected.

37. The Contract Award Recommendation that was prepared by technical officers within the Department of Architectural Design and Construction and taken to Cabinet for the Commercial Court/Ministry of Finance Renovations project recommended that the work be carried out by DeCosta Construction, not BDCL [pages 1-5 to 1-8 of my witness bundle refer]. In this regard, it is noted that the technical officers deemed BDCL's original bid to be invalid, citing its failure to submit five required addenda, to complete all sections of the Form of Tender and to submit Projects Information and Schedule of Values. The technical officers deemed BDCL's second bid invalid also, again citing its failure to include the five addenda and its failure to complete all sections of the Form of Tender. Additionally, the technical officers were of the view that BDCL had performed unsatisfactorily on two earlier projects that it carried out for Government. However, I believe that the Minister of Works and Engineering's wish for the construction project to be carried out as inexpensively as possible, his wish to provide construction opportunities for smaller construction companies, thereby expanding the economic pie, and his view that the technical officers were merely nitpicking in their criticism of BDCL led to his decision to recommend BDCL over DeCosta Construction. It is to be remembered here that a Minister has no obligation to accept his technical officers' recommendation, although normally he would so.

(ii) Whether the Minister did award the contract to BDCL before W&E issued its formal recommendation? If so, please explain the circumstances.

38. I recall that the Minister of Works and Engineering was anxious for the construction work to begin as soon as possible and his advising BDCL that it could commence work on the site during the first working day in 2009. I would agree, therefore, that such instruction was tantamount to advising BDCL that it had been awarded the contract. Certainly that instruction was issued before 12th January, 2009, the date of the technical officers' formal recommendation. Further, in my e-mail of 7th January, 2009 [page 3 of my Annex I] to Mr. Lawrence Brady, Chief Architect, Department of Architectural Design and Construction, I advised that the Minister of Works and Engineering had approved the award of the contract to Bermuda Drywall & Ceilings Ltd. in the amount of \$1,695,553.18.

(iii) Whether the Minister did award the contract before Cabinet had given its approval? If so, please explain the circumstance.

39. In my e-mail of 4th January, 2009 to Mr. Brady [included in my witness bundle at page 1-13], I wrote: "*You are right. The award of this tender to Bermuda Dry Walling has not yet been approved by Cabinet. It is the Minister's expectation that it will be approved retroactively.*"

40. Pursuant to the direction of the Minister of Works and Engineering, on 8th January, 2009 [page 4 of my Annex I], I wrote to Mr. Devree Hollis of Bermuda Drywall & Ceilings Ltd. as follows: *"We are pleased to inform you that your submitted tender for the sum of One Million, Six Hundred and Ninety Six Thousand, Five Hundred and Fifty Three Dollars and Eighteen Cents [\$1,696,553.18] for the captioned work has been accepted.....Please be advised that a formal agreement will be drawn up in due course. However, until such time that the formal agreement is executed, your tender and this acceptance shall constitute a binding contract between us.....Kindly provide copies of your insurance as per Clause 18 of the proposed FIDIC Conditions of Contract for Construction, For Building and Engineering Works Designed by the Employer, First Edition 1999."*
41. Further, Cabinet Conclusion 05(09)9(ii) of 10th February, 2009, provided in my witness bundle at page 1-11 to 1-12, refers. The Cabinet Conclusion notes that the Minister was seeking *retroactive* approval for the award of the contract to BDCL. Retroactive approval was required as BDCL had already commenced the construction of the two Commercial Courts and the Ministry of Finance Headquarters renovations project.
42. It was the Minister of Works and Engineering's wish that the work commence expeditiously.
- (iv) Did the Minister or you allow/request BDCL to submit additional information to improve its bid after the deadline? If so, please explain the circumstances and if you were instructed to do so.
43. The Minister of Works and Engineering did allow BDCL after the deadline to submit additional information that was likely to enhance its bid. In this regard, the Commission's attention is drawn to the following extract from the Contract Award Recommendation dated 12th January, 2009 [pages 1-5 to 1-8 in my witness bundle] which was prepared for the consideration of the Minister of Works and Engineering:

10. Re-Tender Evaluation

Bermuda Drywall & Ceiling's re-bid did not include the five addenda, nor were all sections of the Form of Tender completed as required. As instructed by the Minister, the Department went back to Bermuda Drywall & Ceiling to ask if all the addenda were included and to fill in the Company Information Sheet – this was eventually confirmed and provided.

44. It is to be noted that pursuant to the Minister's request, I instructed that *all* original bidders, not only Bermuda Drywall & Ceiling Ltd., were to be allowed to make corrections to irregularities that may have disqualified their bids.
- (v) Do you agree that the process followed did not comply with PFA 2002 / Financial Instructions? If not, please explain your view.
45. It is correct that Cabinet approval was not received before the contract was awarded. My concerns were expressed in an email to technical officers [pages 1-13 to 1-14 of my witness bundle refers].

The Maintenance and Store Building

- (i) Please explain your involvement in awarding the contract to CCL.
46. The decision to award the contract for the construction of the Department of Public Transportation's Maintenance and Stores Building to CCL was taken before 21st December, 2007 when I was assigned to the post of Permanent Secretary, Ministry of Works and Engineering, and I therefore had no involvement in its award. Additionally, I do not recall its details being part of my briefing when I commenced my duties at the Ministry of Works and Engineering.
- (ii) Please explain your understanding of the decision not to award the contract to GEM Construction.
47. I repeat my statements at paragraph 46 above.
- (iii) Please explain why CCL was awarded the contract without Cabinet approval.
48. Again, as I was not involved with this project, I cannot speak to whether Cabinet approval was obtained in respect of the contract awarded to CCL.
- (iv) Please explain how payments were authorized, when the requirements as per Financial Instructions (evidence of Cabinet approval) were not provided.
49. I have not had sight of any payment certificates relating to this project and therefore it is difficult for me to remember at this stage details including which Authorized Officer may have signed them, which documents were presented in support of the request for payment or when invoices were presented in support of payments. Having acknowledged this, I can only repeat my statements at paragraph 34 above.

Central Laboratory Building Project

50. The Ministry of Health identified a need for an alternative location for its Environmental Health Section, as the premises that it currently occupied at the Old Hospital Building on Point Finger Road was deemed to be most unsuitable. Further, the Bermuda Hospitals Board had indicated that the building was slated for demolition to make way for an addition to King Edward VII Memorial Hospital.
51. In mid-2007, some six months before I was assigned to the post of Permanent Secretary, Ministry of Works and Engineering, the Department of Lands, Buildings and Surveys ["the Buildings Section"], charged with the responsibility of locating alternative accommodation for the Environmental Health Section, commenced its search. Initially, the Buildings Section, working collaboratively with the Department of Architectural Design and Construction, proposed the former Woodlands School site at Mount Hill, Pembroke West as the new location of the Environmental Health Section. Entasis Architecture was engaged to provide architectural services for the Woodlands School conversion project. However, the plan to locate the Environmental Health Section at the Woodlands School site was abandoned because of the Ministry of Education's expressed wish to retain use of facility as a preschool and because relocation of the laboratory to a

purpose-built site would be more cost-effective and lead to a shortened timeline for the overall project.

52. In early 2008, it was proposed that a new state-of-the-art facility be built at the Marsh Folly Road site of the former solid waste disposal facility which ceased operation upon the opening of Tynes Bay Waste-to-Energy Facility on Palmetto Road, Devonshire in 1994. Thereafter, the Marsh Folly site was partially used for the accommodation of staff and as a depot for Ministry of Works and Engineering garbage trucks. The Hon. Derrick V. Burgess, JP, MP, then Minister of Works and Engineering, gave his full support for the proposed new facility which was intended to provide accommodation for Ministry of Works and Engineering Headquarters, the Department of Health laboratories, Ministry of Works and Engineering Waste Management staff and a new depot for garbage trucks. Later the proposal was expanded to include accommodation for Ministry of Health Headquarters, the Ministry of Health's Vector Control and the Bermuda Police Service's Forensic Laboratory. The Minister gave his support for the expanded proposal also. The Department of Architectural Design and Construction engaged the services of CS&P Architects Ltd. ["CS&P"] of Toronto to provide a range of architectural and design services for the new facility. In her e-mail to me dated 26th September, 2008, Mrs. Lucy Chung, Architect, Department of Architectural Design and Construction writes: "*CS&P are going full steam on the (Marsh Folly) project – they have two people working full time on it.*" [page 139LB of my additional documents refers].
53. On 10th September, 2009, the Development Applications Board approved the plans for the new facility at Point Finger Road.

(i) Why was the contract not tendered and/or signed without Cabinet approval?

54. In his letter of 26th May, 2008 to Mr. Lawrence Brady, Chief Architect, Department of Architectural Design and Construction, Ministry of Works and Engineering, CS&P Principal Mr. Craig Goodman makes a fee proposal of \$46,000 for the provision of pre-design consulting services for the new facility at Marsh Folly [page 116LB of my additional documents]. That proposal was accepted by Mr. Brady, the work was carried out and payment in the amount of \$46,000 was approved [page 136LB of my additional documents refers]. In a further letter dated 3rd June, 2008 to Mr. Brady, Mr. Goodman makes a proposal of \$1,095,000 for consultant scope and fees for the next phases of the new facility at Marsh Folly [pages 118LB to 119LB of my additional documents refer]. I believe that Mr. Brady gave his written approval for that proposal, although I have no specific recollection of his consulting me before signing it.
55. In his document *Marsh Folly Timeline Report covering Planning, Building Permit and Tender Period*, dated 8th November, 2010, Mr. Charlie Bowman of the Department of Architectural Design and Construction writes: "*3rd June. Special form of Agreement between Architect – Chief Architect, and Design Consultant – CS&P Architects, 2345 Yonge Street, Toronto, Canada is signed* [page 213LB of my additional documents refers]. I do not recall seeing the document to which Mr. Bowman refers, but assume that it was signed by Mr. Brady.
56. CS&P is a leading Toronto architectural firm with a proven record of excellence, well known to the Department of Architectural Design and Construction for its design of the new Hamilton Magistrates' Court/Hamilton Police Station building [now the Dame Lois

Browne-Evans Building]. As CS&P worked on that project, its principals resourced as required a range of professionals with vast experience and expertise in the design of judicial and law enforcement buildings. Recognizing the need to call upon architects with experience and expertise in the design of commercial laboratories in particular, the Department of Architectural Design and Construction was confident that CS&P Architects Ltd. would marshal the required resources and acquit itself superbly in the design of the new facility at Marsh Folly.

57. Management Policy and Procedure P.F.A. 2002 6.3.2 requires that in the case of contract services with an estimated value of more than \$50,000, "*the method of procurement shall generally be by Open Tender*". However, Management Policy and Procedure P.F.A. 2002 6.11.4 allows for the tendering process to be waived in "*special circumstances such as economic climate or market conditions (including the unavailability of specialized services)....*" I was satisfied that the Department of Architectural Design and Construction's familiarity with CS&P Partners Ltd., the firm's proven ability to access specialized services that would be required in the design of a multi-purpose facility of the kind proposed and the need to move forward as expeditiously as possible, given the Environmental Health Department's urgent need for relocation from the Old Hospital site, justified the absence of the open tender process.

58. I am unable to explain why Cabinet approval for the award of the contract to CS&P Partners Ltd. was not obtained. Under normal circumstances, Ministry of Works and Engineering technical officers would have prepared a Contract Award Recommendation which, following my review, would have been forwarded to the Minister who in turn would have presented it to his Cabinet colleagues for approval.

(ii) On what basis and for what reason(s) was CS&P selected.

59. My response in this regard is at paragraph 56 above.

(iii) How were payments authorized when the requirements in Financial Instructions (evidence of Cabinet approval) could not have been provided?

60. I can only surmise that payments had been made because work had been completed, services had been delivered and the Authorizing Officers believed that all necessary due diligence that I have stated in my previous paragraph 4 had been carried out.

The Laboratory contract in Southside

61. With respect to the Commission's current understanding as set out in the opening paragraph, I confirm that that the tender process changed from a tender to fit out a building in Lolly's Well, Smith's to a tender to fit out a building in Southside, St. David's. I confirm that the Minister of Works and Engineering expressed concern about the tendering process at an early stage, specifically regarding the wisdom of spending public funds to improve a privately owned building. He later expressed support for the award of the contract to Concorde Construction. I confirm that during a site meeting with Concorde and technical staff of the Ministry of Works and Engineering at Southside, the Minister of Works and Engineering agreed to reduce the tender requirements for Concorde. I also confirm that the Contract Award Recommendation originally prepared

by Ministry of Works and Engineering technical specialists was amended to remove some details.

- (i) Was the Minister involved in the evaluation of the tenders? If so, please explain why he was involved and the extent of his involvement.
62. With the announced redevelopment of King Edward VII Memorial Hospital and the required demolition of the Old Hospital Building on Point Finger Road, the Buildings Section within the Ministry of Works and Engineering was asked to identify alternative accommodation for the Environmental Health Laboratory which at the time was located in the Old Hospital Building. Initially, there was a plan to house the Environmental Health Laboratory at the Mount Hill site of the former Woodlands School; this plan was abandoned when the Ministry of Education opted to retain use of the building as a preschool. There followed a plan to house the Environmental Health Laboratory in a multi-use, four storey facility to be constructed on the former Marsh Folly site of the Solid Waste Section of the Ministry of Works and Engineering. Because funding for the new building was not approved and because of the imminent demolition of the Old Hospital Building, Ministry of Works and Engineering technical staff identified what they believed to be a suitable alternative location for the Environmental Health Laboratory, an existing privately-owned warehouse at Lolly's Well, Smith's. Subsequently, there was a public invitation to tender for the interior fit-out of the Lolly's Well building and the relocation of existing millwork and equipment from the Point Finger Road site to the Lolly's Well site. Ministry of Works and Engineering technical staff prepared for the Minister of Works and Engineering's consideration a Contract Award Recommendation for the work at the Lolly's Well site.
63. At that juncture, the Minister of Works and Engineering, charged with the responsibility of seeking Cabinet approval for the award of the contract, expressed the view that it would be fiscally irresponsible to spend public funds for the fit out of a privately-owned building [the Ministry of Works and Engineering estimate was \$1,374,925.43] and to pay the required rent for the building on a multi-year lease when a publicly-owned building might be available instead. As Minister with responsibility for the Bermuda Land Development Company Ltd. [BLDC] and following discussion with the BLDC chairman, the Minister of Works and Engineering proposed Building 322 at Southside as an alternative location for the Environmental Health Laboratory. He was adamant that the funds originally allocated for the fit out of the facility at Lolly's Well should be used for fit out of the building at Southside instead.
64. In his e-mail of 6th March, 2010, Mr. Bryan Walker, Estates Surveyor, Department of Lands, Buildings and Surveys, Ministry of Works and Engineering, wrote [page 225LB of my additional documents refers]: *"The one good thing about building 322 is that we would be renovating a Government building, albeit for a specialist purpose. However, there is the issue of timing and although Architects have not specifically noted anything below."* Mr. Walker is referring here to the e-mail of 5th March, 2010 from Mrs. Lucy Chung, Architect, Department of Architectural Design and Construction, Ministry of Works and Engineering [pages 225LB to 226LB of my additional documents refer]: *I am assuming as there is a lot of work to be done at building 322 by way of preparatory works it would take a lot longer to bring on line than Lolly's Well."*

(ii) Did you redraft W&E's recommendation and produce the further version dated 12th April, 2010? If so, please explain why you decided to do so.

65. As stated in response to (i) at paragraph 62 above, Ministry of Works and Engineering technical staff prepared for the Minister of Works and Engineering's consideration a Contract Award Recommendation for the work at the Lolly's Well site. The Commission will be aware that that Contract Award Recommendation was not included in the witness bundle that I received.
66. I am confirming that Ministry of Works and Engineering technical staff brought to me for the Minister's consideration the referenced Contract Award Recommendation dated 5th April, 2010. I am confirming also that pursuant to the request of the Minister, I made some modifications to the Contract Award Recommendation of 5th April, 2010, such modifications reflected in the Contract Award Recommendation dated 12th April, 2016 [pages 5-2 to 5-8 of my witness bundle refer].
67. The Commission's attention is drawn to Paragraph 7. Recommendation in the Contract Award Recommendation of 5th April, 2010:

"We would recommend awarding the contract for the scope of work set out in this Contract Award Memorandum to Concorde Construction. The Minister is of the opinion that Concorde Construction has the experience and expertise that will enable the company to carry out the scope of works to a satisfactory standard.

"As such, it is recommended that the contract for the Relocation of the Environmental Health Laboratory and the interior fit-out of the new Environmental Health Laboratory for the Ministry of Health be awarded to Concorde Construction for the tender price of \$974,500 (Nine hundred and seventy four thousand five hundred Dollars and Nil Cents."

68. The Minister of Works and Engineering, upon reviewing the Contract Award Recommendation of 5th April, 2010 and noting in particular the above quoted Paragraph 7. Recommendation, questioned the relevance of some information set out earlier in the document, arguing that it was included merely to cast aspersions upon Concorde Construction's suitability for the project and the Minister's involvement in the tendering process. The Minister of Works and Engineering was particularly critical of inclusion of the information at Paragraph 3. Tender Response that the cost of pre-fit works can be excessive of \$700,000, noting that inclusion of such information was irrelevant as it would be borne by the BLDC and used to effect improvements to a public-owned building. He also argued that he had made clear that during the site meeting of 11th March, 2010, costs associated with asbestos abatement, roof repairs, mold cleanup, etc. would be borne by the BLDC and not by the Ministry of Works and Engineering.
69. Although I challenged the Minister of Works and Engineering's view that the information was included to disparage Concorde Construction and as a criticism of his involvement in the process, arguing instead that its inclusion was intended to give his colleagues a complete picture of the circumstances of the contract awards, I accepted his view that that the information that concerned him did not alter in any substantial way the technical officers' ultimate recommendation that the contract be awarded to Concorde

Construction. I subsequently adhered to his request to amend the Contract Award Recommendation of 5th April, 2010 accordingly.

(iii) Why was Concorde awarded the contract without Cabinet approval?

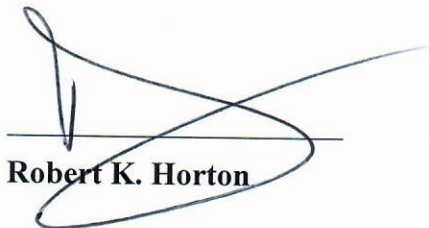
70. The Contract Award Recommendation of 12th April, 2010 [a Monday] would have been given to the Minister for presentation at the next day's Cabinet Meeting. However, I cannot account for the reported absence of a Cabinet Conclusion that would have confirmed Cabinet approval in the case of this particular project.

71. Normally during my tenure as Permanent Secretary, Ministry of Works and Engineering, the Minister, upon returning to the Ministry from that day's Cabinet Meeting, would apprise me of the Cabinet's response to the various Memoranda emanating from the Ministry of Works and Engineering, whether the Memorandum, Contract Award Recommendation had been approved, refused or carried over for further consideration. In the particular case, I cannot recall the Minister's report following the Cabinet Meeting. However, given the urgency associated with this Contract Award Recommendation [the imminent demolition of the Old Hospital Building where the Environmental Health Laboratory was housed and the urgent need to prepare Building 322 at Southside to accommodate the Environmental Health Laboratory], I can only assume that the Minister indicated that Cabinet approval had been gained for the Ministry of Works and Engineering to move ahead with the project. Here, the point is made that it was not unusual to proceed with a capital project upon the Minister of Works and Engineering's instruction following a Cabinet Meeting and before receipt of the actual Cabinet Conclusion indicating approval. It is to be noted that Cabinet Conclusions were not always sent promptly.

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

72. Following preparation of the Contract Award Recommendation, I had no direct involvement in the management of the contract for the fit out of Building 322 at Southside or oversight of the work itself, although I am aware that the Minister of Works and Engineering followed the project closely. However, as Accounting Officer for the Ministry of Works and Engineering I was aware that in accordance with provisions of Financial Instructions, 8.3.1, Agreements for Goods and Services in Excess of \$50,000, Documentation, contracts totalling over \$50,000 (including those with multiple payments) must be approved by Cabinet before the agreement or contract is assigned. Having said this, repeat my comments made at paragraphs 34 and 60 above.

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


Robert K. Horton

23rd September 2016
Date