

CAYMAN ISLANDS

2019/2020 Session of the

LEGISLATIVE ASSEMBLY

REPORT

of the

STANDING

PUBLIC ACCOUNTS COMMITTEE

on the Report of the
Office of the Auditor General on Government's Use of Outsourced Services – June 2019

Laid on the Table of Legislative Assembly on this day of 2020

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REPORT OF THE STANDING PUBLIC ACCOUNTS COMMITTEE ON THE REPORT OF THE OFFICE OF THE AUDITOR GENERAL ON GOVERNMENT'S USE OF OUTSOURCED SERVICES – JUNE 2019

1. REFERENCE

The Standing Public Accounts Committee of the Cayman Islands Legislative Assembly, established under Standing Order 77(1), met to consider the following Report prepared and submitted by the Auditor General:

Government's Use of Outsourced Services – June 2019

2. DOCUMENT CONSIDERED

In accordance with the provision of Standing Order 77(3), the Committee considered the following Auditor General Report which was referred in the House of the Legislative Assembly:

- Report of the Office of the Auditor General on *Government's Use of Outsourced Services – June 2019*

3. CHAIRMAN AND MEMBERS OF THE COMMITTEE

The following Members of the Legislative Assembly are the present Members of the Standing Public Accounts Committee:

Mr. D Ezzard Miller, MLA - Chairman

Mr. Christopher S. Saunders, MLA - Member

Mr. Austin O. Harris, Jr, MLA - Member

Mr. Bernie A. Bush, MLA - Member

Hon. Barbara E. Conolly, MLA - Member

4. MEETINGS OF THE COMMITTEE

The Committee held two (2) meetings to consider the Report:

(i) Thursday, 5th September 2019 (*Administrative Meeting)*
(ii) Thursday, 3rd October 2019 (*Hearing)*
(iii) Thursday, 13th February 2020 (*Administrative Meeting)*

5. ATTENDANCE OF MEMBERS

The attendance of Members at the meetings is recorded in the Minutes of Proceedings which are attached to and form part of this Report.

6. PERSONS IN ATTENDANCE

In accordance with Standing Order 77(8), the following persons were in attendance at the meeting held with witnesses on **Thursday, 3rd October 2019**:

- Mrs. Sue Winspear - Auditor General, Office of the Auditor General
- Ms. Angela Cullen - Director of Performance Audit, Office of the Auditor General
- Mr. Julius Aurelio - Audit Manager, Office of the Auditor General
- Mr. Gabriel Ncube - Audit Project Leader, Office of the Auditor General
- Mr. Kenneth Jefferson - Financial Secretary & Chief Officer, Ministry of Finance and Economic Development
- Mr. Matthew Tibbetts - Accountant General, Ministry of Finance and Economic Development

7. WITNESSES CALLED BEFORE THE COMMITTEE

In accordance with the provisions of Standing Order 77(4), the Committee invited public officers to give information and explanation to assist the Committee in the performance of its duties.

The following persons appeared before the Committee to give evidence on **Thursday, 3rd October 2019:**

- Kenneth Jefferson - Financial Secretary & Chief Officer, Ministry of Finance & Economic Development
- Mr. Taraq Bashir - Director, Cayman Islands Procurement Office
- Ms. Cetonya Cacho - Chief Officer, Ministry of Education, Youth, Sports, Agriculture & Lands

8. PRACTICE AND PROCEDURE OF THE COMMITTEE (S.O 77(6))

The Committee agreed that in accordance with the provisions of Standing Order 77(6), all meetings at which witnesses were invited to provide information should be held in an open forum. This decision was taken to promote openness and accountability in Government.

9. PAC RECOMMENDATIONS

The Cayman Islands Government outsources some of its services to private sector contractors. It is essential that the Government receives value for money from these outsourced services. The Government remains responsible for the services that it outsources and therefore needs to have appropriate accountability arrangements in place. The objective of the Office of the Auditor General's (OAG) audit was to determine how effectively the Government uses outsourced services and ensures that it is obtaining value for money.

9.01 The PAC endorses the 15 recommendations made by the Auditor General as set out in Appendix 3 in the OAG report and encourages the Government to implement these as soon as possible.

9.02 The Committee is concerned that it took two years for the Procurement Regulations to support the *Procurement Law 2016* to be developed, potentially delaying the improvement of procurement practices in the Government and wider public sector. The Committee recommends that civil servants provide a clear timeline for the development of all supporting documents and activities needed to bring legislation fully into force when it presents draft legislation to the Legislative Assembly.

9.03 The Government should ensure that it achieves value for money from the delivery of services. It also has a crucial role to play in providing jobs for Caymanians. The Committee recommends that the Government should routinely assess those services that it has outsourced to determine whether it would be better to deliver these services in-house.

10. GOVERNMENT MINUTE

The Public Accounts Committee wishes to draw Government's attention to Standing Order 77 sub-order 7 which reads:

> *"The Government Minute shall be laid on the Table of the House within three months of the laying of the report of the Committee and of the report of the Auditor General to which it relates."*

The PAC expects the Government to honour the requirements of this Standing Order.

ACKNOWLEDGEMENT
The Committee is most appreciative of the efforts of the Auditor General and her staff in presenting very fair, comprehensive and informative Report and for the support, assistance and constructive advice given throughout its deliberations.

The Committee also thanks the staff of the Legislative Assembly for the assistance provided.

REPORT OF THE COMMITTEE TO THE HOUSE
The Committee agrees that this Report be the Report of the Standing Public Accounts Committee to the House on the following Report of the Office of the Auditor General: *Government's Use of Outsourced Services – June 2019*

Mr. D. Ezzard Miller, MLA – Chairman

Mr.. Bernie A. Bush, MLA – Member

Mr. Christopher S. Saunders, MLA – Member

Hon. Barbara E. Conolly, MLA – Member

Mr. Austin O. Harris, Jr, MLA – Member

Legislative Assembly of the Cayman Islands

PUBLIC ACCOUNTS COMMITTEE

MINUTES
Meeting held
Thursday, 5th September 2019 at 10:17 am

Present:
Mr D Ezzard Miller, MLA - Chairman
Mr Christopher S. Saunders, MLA - Member
Ms Barbara E. Conolly, MLA - Member
Mr Austin O. Harris, Jr., MLA – Member
Hon Bernie A. Bush, MLA - Member

In Attendance:
Mrs Sue Winspear - Auditor General
Mr Julius Aurelio - Audit Manager
Ms Manesa Webb - Committee Clerk

1. Meeting to Order

There being a quorum present, the Chair called the meeting to order at 10:17 am.
Mr Austin O. Harris, Jr. arrived at 10:23 am.

2. Apologies:

None.

3. Approval of PAC Minutes

- Tuesday, May 7th 2019 (Administrative Meeting) subject to the following:

(1) Item 6, **Office of the Auditor General's (OAG) Report:**
by deleting the words " as well as 2018".

(2) Item 6, **Office of the Auditor General's (OAG) Report:**
by deleting the 4th paragraph which states "The Committee agreed that the AG would submit an update on the 2016 Audits for 5 CIG entities: Cayman Islands Airports Authority, Ministry of Education, Ministry of Health, Cayman Islands Port Authority and the Cayman Islands Turtle Farm by the 30 June 2019."

(3) Item 6, **Office of the Auditor General's (OAG) Report:**
by deleting the paragraph from Item 7, and insert the paragraph in Item 6: "Overall, the AG opinion embodied the assumption that the CIG and its Statutory Authorities and Companies (SAGCs), had presented improvements over the years."

(4) Item 6, **Office of the Auditor General's (OAG) Report:**
by inserting the following paragraph which states "This improvement was demonstrated with the low amount of qualified opinions issued to date. Of the 39 audits completed, there were only 4 qualified opinions and 35 unqualified opinions issued."

(5) Item 6, **Office of the Auditor General's (OAG) Report:**
by deleting the section from Item 7, and insert the section under Item 6:

The 4 qualified opinions identified were:

- Health Services Authority – its inability to present controls for recording revenue, and consequently the account receivables and accumulated deficit were competed.

- Cayman National Cultural Foundation - its contingent liability of being named as a defendant in a personal injury claim and paid by CIG.

- Ministry of Community Affairs and the Ministry of Human Resources and Immigration- were both held to be found in breach of the International Public Sector Accounting Standards of transparency and with management integrity. For example, both ministries had material terminations benefits included in their expenses for the fiscal period but opted to not disclose these amounts separately in the notes to the financial statements.

(6) Item 6, **Office of the Auditor General's (OAG) Report:**
by deleting the paragraph from Item 7, and insert the paragraph under Item 6: "A discussion amongst the Committee pursued about whether a Hearing should be scheduled and which entities should be called. Mr Christopher Saunders noted that when selecting entities to be called, a distinction should be made between those who were meeting their outputs from those who were meeting their finance obligations. This is because despite meeting financial obligations, a department can fall foul of achieving value for money. This is of grave concern; particularly, when the CIG operates under a 2 year budget cycle."

(7) Item 6, **Office of the Auditor General's (OAG) Report:**
by deleting the paragraph from Item 7, and insert the paragraph under Item 6: "The Committee agreed to undertake Hearings. However, the date and the election of persons to be called as witnesses are to be determined at the next Public Accounts Administrative Meeting."

(8) Item 7, **Auditor General's Update**:
by inserting the words under the Quarterly Report section:
"The Auditor General presented the report for information and highlighted the main items of interest which included the updated position on the 2018 financial audits."

(9) Item 7, **Update on the renewal of the OAG Audit Contract**:
by inserting the words "the contract for financial audit of the OAG" before the word "need" and delete the word " renewed " and insert the word "retendered".

(10) Item 7, **Update on the renewal of the OAG Audit Contract**:
by deleting the words "enter into negotiations with Baker Tilly (Cayman) Ltd on renewing its audit contract" and replacing it with the words "Move to retender the contract for the financial audit of the OAG's financial statements for a three year period 2019 to 2021 inclusive on behalf of the PAC recognizing that the PAC".

by deleting the words "The committee granted the AG permission to liaise directly with the Procurement Office on the tendering of the audit contract. However the Committee resolved that its body is" and replacing it with the word "has".

The Committee **agreed** to incorporate the suggestions above made by the Auditor General.

The Minutes was **approved as corrected** on a motion moved by Mr Christopher S. Saunders and seconded by Ms. Barbara E. Conolly.

4. Matters arising from Minutes

None.

5. Approval of the Office of the Auditor General's Invoice

Invoice# 207256 dated 31 May 2019 in the amount of $53,508.33 was discussed and unanimously **approved** on a motion moved by Mr Christopher S. Saunders and seconded by Ms. Barbara E. Conolly.

Invoice#207295 dated 30 June 2019 in the amount of $29,133.66 was discussed and unanimously **approved** on a motion moved by Mr Christopher S. Saunders and seconded by Ms. Barbara E. Conolly.

Invoice#207297 dated 31 July 2019 in the amount of $50,686.60 was discussed and unanimously **approved** on a motion moved by Ms. Barbara E. Conolly and seconded by Hon Bernie A. Bush.

The Chair acknowledged the Committee's approval, by returning a signed copy of the three invoices to the Auditor General.

6. Consideration of the OAG Reports

Customs in the Cayman Islands - May 2019

The Auditor General introduced the Customs in the Cayman Islands report, May 2019 and provided a summary of the Report with an emphasis on "revenue collection." The audit covered the old customs department, as well as customs in the sister islands when it was under district administration and subsequent to the audit Cayman now has a combined customs and border control department.

The Auditor General highlighted concerns relating to the three main areas: strategic and business planning, revenue collection, and border protection. On the strategic and business planning, there were things being put in place with the new customs and border control operation. The Auditor General also highlighted concerns with the IT systems and poor management in phase one.

On the revenue collection side, which was with the Ministry of Finance previously and now more under the focus of the new customs, and border control department. Many of the revenue collection issues were things that the OAG made previous recommendations about such as concessions and revenue waivers and the inability to know what the tax gap was.

The Committee reviewed the report and expressed concerns regarding leakage issues around the revenue and questioned if there were any recommendations on how to deal with leakage.

The Auditor General answered the Committee's questions relating to the leakage, in that they were unable to estimate revenues foregone (the tax gap) because there was no systematic recording and monitoring of the value of tax concessions granted. When the auditors asked through this report for a list of all the concessions and waivers only partial information was available. So the recommendations

are that the information should be captured, because it is not always and there is currently no monitoring or follow-up process either to see whether the benefit for which the concession was granted was actually delivered.

The Committee determined to have a public hearing on the report and invite the following witnesses:

PAC Hearings Date : October 2nd, 2019	
Witness	**Government Entity**
Mr. Kenneth Jefferson - Financial Secretary	Ministry of Finance & Economic Development
Mr. Charles Clifford – Director	Department of Customs & Border Control
Mr .Wesley Howell – Chief Officer	Ministry of Employment & Border Control

It was suggested that the new CFO should be invited to attend to support the latter two witnesses and better understand what changes needed to be put in place under the new CBC operation.

Financial Reporting of the Cayman Islands Government – 2016-17 General Report

The Auditor General introduced the Financial Reporting of the Cayman Islands Government (CIG), General Report on the results of the 2016-17 Financial Audits, May 2019. She reminded the Committee that the report was first discussed in May 2019. However, at the time it was determined not to do anything and now given the statutory period for the 2018 financial audit had passed, this report was less relevant. She provided a brief summary of the Report with an emphasis on the "qualifications" which took place during the periods of 2016-2017.

The Committee **agreed** with the Auditor General suggestion to combine the awarding of PAC certificates to entities with unqualified opinions for 2016-17 with those for 2018 given the timeframes.

Auditor General also noted that the aim is to present the General Report 2018 to the Committee before the end of the year.

Government's use of Outsourced Services - June 2019

The Auditor General introduced the Government's use of Outsourced Services-June 2019. The report was laid in the Legislative Assembly on 7th June 2019 and relates to the government's use of outsources services. It covered the core government and not SAGCs, and focused on seven ministries. The report covered the five years between July 2012–2017.

The Auditor General highlighted Appendix 2 on page 43 where it recommended that the government should use its combined buying power to get best value for the contracts let rather than continue to let similar contracts separately. Since the procurement function came in there is now a better opportunity to make the most of government collective buying power and do a lot more to have standard specifications and contract terms.

The Committee determined to have a public hearing on the report and invite the following witnesses:

PAC Hearings Date : October 3rd , 2019	
Witness	**Government Entity**
Mr. Kenneth Jefferson - Financial Secretary	Ministry of Finance & Economic Development
Mr. Taraq Bashir - Director	Procurement Office, Ministry of Finance & Economic Development
Ms. Cetonya Cacho - Acting Chief Officer	Ministry of Education, Youth, Sports, Agriculture & Lands

OAG Annual Report – 31 December 2018 (asked to be tabled)

The Auditor General introduced the final version of the OAG Annual Report – 31 December 2018. She noted that this is the final bound copy of the report and the contents remained the same as that discussed in May 2019 but that the report still needed laying in the Legislative Assembly .

The Committee **agreed** that the report should be prepared to be laid at the next sitting of the Legislative Assembly.

7. Auditor General's Update

Quarterly Report

The Auditor General highlighted the position on the 2018 financial audits and that at the end of June; the Ministries of Education and Health had not yet started their audits.

The Auditor General highlighted that Education is picking up speed, and pleased with the progress that's happening within that ministry but is concerned about the rate of movement in Health. However, the positive thing to report is that the 2018 entity audits completed to the date have resulted in no qualifications being given at this time.

The Auditor General updated the Committee on the upcoming performance audits and said that education is now in clearance, and will be presented to the Committee possibly early next month. She also stated that the budgeting and financial reporting and the court efficiency reports are close to going into clearance and both would come before the Committee before the end of the year.

A discussion amongst the Committee pursued in terms of the overtime within the Royal Cayman Islands Police Service (RCIPS) and Cayman Islands Fire Service (CIFS). The AG enlightened the Committee that the management letters (ISA260 reports) issued through the financial audit in 2018 dealt with these matters amongst other things.

The Committee **agreed** that Auditor General should provide them with the 2018 ISA260 as they become available.

8. Review of reports tabled in the Legislative Assembly since January 2019

The Committee **deferred** until the next meeting.

9. Any Other Business

A discussion amongst the Committee ensued about having a hearing on the Owen Roberts International Airport (ORIA) Terminal Redevelopment Project Report. The Committee **agreed** to have the hearing and invite the following witnesses:

PAC Hearing Date : October 4th , 2019	
Witness	**Government Entity**
Mr. Albert Anderson - Chief Executive Officer	Cayman Islands Airport Authority
Mr. Tom Guyton - Chairman	Cayman Islands Airports Authority
Mr .Stran Bodden - Chief Officer	Ministry of Tourism

10. Scheduling of Next Meetings:

The next administration meeting was confirmed for Tuesday, 17th September, 2019 at 10:00 am.

The public hearings were confirmed for the following dates:

- Wednesday, 2nd October, 2019 at 10:00 am
- Thursday, 3rd October, 2019 at 10:00 am
- Friday, 4th October , 2019 at 10:00 am

11. Adjournment

There being no further business, the Chair adjourned the meeting at 11:30 am.

Legislative Assembly
of the Cayman Islands

THE STANDING PUBLIC ACCOUNTS COMMITTEE

MINUTES of Meeting with Witnesses
Thursday, 3rd October 2019 at 10:19 am

GOVERNMENT'S USE OF OUTSOURCED SERVICES - JUNE 2019

Present:

Hon. D. Ezzard Miller, MLA - Chairman
Mr. Christopher S. Saunders, MLA - Member
Mr. Austin O. Harris, Jr., MLA - Member
Hon. Bernie Bush, MLA - Member

Attendees:

Ms. Manesa Webb - Committee Clerk

Mrs. Sue Winspear - Auditor General, Office of the Auditor General

Ms. Angela Cullen - Director of Performance Audit, Office of the Auditor General

Mr. Julius Aurelio - Audit Manager, Office of the Auditor General

Mr. Gabriel Ncube - Audit Project Leader, Office of the Auditor General

Mr. Kenneth Jefferson - Financial Secretary & Chief Officer, Ministry of Finance and Economic Development

Mr. Matthew Tibbetts - Accountant General, Ministry of Finance and Economic Development

Apologies Ms. Barbara E. Conolly, MLA - Member

Witnesses:

Mr. Kenneth Jefferson - Financial Secretary & Chief Officer, Ministry of Finance & Economic Development

Mr. Taraq Bashir - Director, Cayman Islands Procurement Office

Ms. Cetonya Cacho - Chief Officer, Ministry of Education, Youth, Sports, Agriculture & Lands.

1. Meeting to Order

There being a quorum present (Standing Orders 77(2) refers), the Chairman called the Public Accounts Committee Meeting to order at 10:19 am.

2. Apologies

An apology was received from Ms. Barbara E. Conolly.

3. Welcome

The Chairman gave a brief welcome to Members of the Committee and thanked them for attending the Public Accounts Committee ("PAC") Hearing. He also welcomed and thanked Mrs. Sue Winspear and the OAG Team, along with Mr. Kenneth Jefferson and Mr. Matthew Tibbetts.

The Committee was advised that they would be dealing with the Auditor General's Report entitled, *Government's Use Of Outsourced Services - June 2019*

Review of *Government's Use Of Outsourced Services - June 2019*

- *Government's Use Of Outsourced Services - June 2019*

The Chairman invited the witnesses, Mr. Kenneth Jefferson and Mr. Taraq Bashir, to the Chamber. Administration of oath was administered, and thereafter, Mr. Kenneth Jefferson and Mr. Taraq Bashir were welcomed and thanked by the Chair for attending the meeting and told to state their name and title for the record.

Discussion ensued with questions being asked to Mr. Kenneth Jefferson and Mr. Taraq Bashir by the PAC members. Before departing the Chamber, Mr. Kenneth Jefferson and Mr. Taraq Bashir were again thanked by the Chair.

The Chairman invited the witness, Ms. Cetonya Cacho, and her support Mr. Mark Ray to the Chamber. Administration of oath was administered, and thereafter, Ms. Cetonya Cacho and her team were welcomed and thanked by the Chair for attending the meeting and told to state their name and title for the record.

Discussion ensued with questions being asked to Ms. Cetonya Cacho by the PAC members. Before departing the Chamber, Ms. Cetonya Cacho and Mr. Mark Ray were again thanked by the Chairman.

4. Any Other Business

There was no other business on the agenda.

5. Scheduling of Next Meeting

The next public hearing was confirmed for:

- Tuesday, December 3rd, 2019 at 10:00 am

6. Adjournment

There being no further business, the meeting was adjourned at 2:21 pm.

CAYMAN ISLANDS LEGISLATIVE ASSEMBLY
COMMITTEE OF PUBLIC ACCOUNTS

Government's Use of Outsourced Services
~June 2019~

Official verbatim transcript relating to the Official Report of the Standing Public Accounts Committee Meeting—03 October 2019

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PAC Members Present:

Hon. D. Ezzard Miller, MLA, Chairman
Hon. Bernie A. Bush, MLA, Member
Mr. Austin O. Harris, Jr., MLA, Member
Mr. Christopher S. Saunders, MLA, Member
Ms. Barbara E. Connolly, MLA, Member

In attendance: **Ms. Manesa Webb (PAC Clerk)**
Mr. Matthew Tibbetts, Accountant General, Ministry of Finance and Economic Development

Audit Office: Mrs. Sue Winspear, Auditor General, Office of the Auditor General
Ms. Angela Cullen, Director of Performance Audit, Office of the Auditor General
Mr. Julius Aurelio, Audit Manager, Office of the Auditor General
Mr. Gabriel Ncube, Audit Project Leader, Office of the Auditor General

Witnesses: Mr. Kenneth Jefferson, Financial Secretary & Chief Officer, Ministry of Finance & Economic Development
Mr. Taraq Bashir, Director, Central Procurement Office
Ms. Cetonya Cacho, Chief Officer, Ministry of Education, Youth, Sports, Agriculture & Lands
Mr. Mark Ray, Head of Business Services, Department of Education Services

OFFICIAL VERBATIM REPORT
STANDING PUBLIC ACCOUNTS COMMITTEE
THURSDAY
3 OCTOBER 2019
10:18 AM

Meeting with witnesses

"GOVERNMENT'S USE OF OUTSOURCED SERVICES—JUNE 2019"

Verbatim transcript of the Standing Public Accounts Committee Meeting held 3 October 2019, at 10:18 am, in the Chamber of the Legislative Assembly Building, George Town, Grand Cayman.

[Hon. D. Ezzard Miller, Chairman, presiding]

The Chairman: Good morning everyone.

Let the record show that we have a quorum of the Public Accounts Committee present. I would like to call the meeting to order.

This morning we will be dealing with the Auditor General's Report: "Government's Use of Outsourced Services—June 2019", and we are going to combine the witnesses, Mr. Kenneth Jefferson and Mr. Taraq Bashir. We will have them from 10 am to 12 o'clock.

The first order of business is to swear them in.

MINISTRY OF FINANCE AND ECONOMIC DEVELOPMENT

Mr. Kenneth Jefferson, Financial Secretary/Chief Officer, Ministry of Finance and Economic Development: Good morning, Mr. Chairman, and Committee Members.

ADMINISTRATION OF OATH OR AFFIRMATION

Mr. Kenneth Jefferson, Financial Secretary/Chief Officer, Ministry of Finance and Economic Development: I, Kenneth Jefferson, swear by Almighty God that the evidence I shall give to this honourable Legislative Assembly, shall be the truth, the whole truth, and nothing but the truth.

CENTRAL PROCUREMENT OFFICE

Mr. Taraq Bashir, Director, Central Procurement Office: Good morning, Mr. Chairman and Committee Members.

ADMINISTRATION OF OATH OR AFFIRMATION

Mr. Taraq Bashir, Director, Central Procurement Office: I, Taraq Bashir, do solemnly, sincerely and truly declare and affirm that the evidence I shall give to this honourable Legislative Assembly, shall be the truth, the whole truth, and nothing but the truth.

[Pause]

The Chairman: Let me take the opportunity to welcome Mr. Jefferson and Mr. Bashir, and to thank you all for accepting our invitation to come.

At this time, I would invite the Auditor General to give her opening remarks.

Mrs. Sue Winspear, Auditor General, Office of the Auditor General: Thank you, Mr. Chairman and good morning to you, Members of the Public Accounts Committee, Financial Secretary, officials from the Ministry of Finance and colleagues.

Thank you for the opportunity to make some opening remarks.

The report we are considering today is "Government's Use of Outsourced Services" that my office published in July. This performance audit assesses how effectively the Government uses outsourced services and how it ensures that it is obtaining value for money. I wrote that it focused on the Government's approach to planning, procuring and managing outsourced services and covered core government only.

The audit covers the same period—1st July, 2012 to 30th June, 2017—as our previous report on the "Government's Use of Consultants and Temporary Staff" that we published in February, 2018. We therefore found many of the same weaknesses in the procurement process. However, we also found a number of other areas where government can improve its approach to outsourcing services. For example, many ministries are outsourcing the same service and often from the same suppliers. This means that government is not making better use of its collective buying power and is duplicating effort in the procurement service.

We found insufficient marking, testing and pre-tender estimates. There was very limited competi-

tion, if any, for many of the procurements, although we recognise there is an issue in a small jurisdiction and few ministries had estimated how much it might cost to buy the service before procurement. There is very little contract management done once suppliers are in place, and the contracts awarded, limit the Government to do this, as they do not clearly specify succession measure.

Our report draws attention to the Ministry of Education which spends around $27.7 million outsourcing a number of services for schools. We found that the Ministry's approach to outsourcing services was one of the most advanced across government, as it had attempted to increase competition and estimate cost prior to procurement. Government has accepted the 15 recommendations set out in Appendix 2 of my report and plans to implement these by 2020.

I have with me here today, Mr. Gabriel Ncube, who undertook the audit, along with the Director and Manager of Performance Audit, Angela Cullen and Julius Aurelio.

Thank you very much.

The Chairman: I think, Mr. Austin, you wanted to lead?

Mr. Austin O. Harris, Jr.: Thank you, Mr. Chairman, and certainly, I thank the Auditor General for those opening remarks.

Likewise, let me also extend a very good morning to our two witnesses this morning. Thank you for being here with us. We are looking forward to what we anticipate will be a productive conversation this morning. Good morning to my colleagues in the Public Accounts Committee.

If we can jump right into it, I would like to direct your attention to page 17 of the Auditor General's report, "Government's Use of Outsourced Services", and specifically to paragraph 33, which I will paraphrase for expediency: According to the Auditor General's report, only one of the selected 23 contracts awarded by various government departments completed a business case. However, according to the Procurement Law [Regulations] 2018, it says, that all projects in excess of $100,000 are required to be appraised and the results documented in an approved business case.

I wonder, therefore, if the witnesses might be able to inform this Committee, why the Law was not followed consistently, if at all, in the case of the 22 contracts awarded from seven government entities with a value of approximately $32 million dollars. And, what assurances can you give this Committee that the Law will be followed in the future, with respect to the required completion of business cases prior to procurement?

Mr. Kenneth Jefferson, Financial Secretary/Chief Officer, Ministry of Finance and Economic Development: Thank you, Mr. Chairman and good morning to everyone. I omitted earlier, to say good morning to the Audit Office and staff, so good morning.

Mr. Chairman, as is normal, I will start by stating my name and title: Mr. Kenneth Jefferson, Financial Secretary and Chief Officer in the Ministry of Finance and Economic Development.

Mr. Chairman, I want to thank Member Harris for his question.

I will start by stating the obvious, in that the Auditor General's report covers the period 1st July 2012 to 30th June, 2017.

In no way negating the spirit of the Member's question, the Procurement Law was passed by the Government in late 2016. It was quite a period of time when the procurement regulations were developed and those came into effect in May, 2018. So, at the time of the Auditor General's report ending June 2017, the Procurement Law and the Procurement Regulations were not yet in effect. It is that Law and those regulations which require the production of a business case. And so, the strict legal answer would be business cases were not required at the time by the financial regulations, under the Public Management and Finance Law [PMFL] that were in legal existence at the time. But, the sensibility of the Member's question is beyond doubt.

Mr. Chairman and Members, the purpose of a business case, is to actually cause the acquiring agency to make the best decision, in terms of the acquisition of services or goods. That is what a business case is meant to lead us to. Whether it was legally required or not, there should have been some consideration by the relevant agencies that there were making the right decision.

I can say that from May 2018 onwards, it is a legal requirement for business cases to be followed in the acquisition of goods and services by the Government.

The Procurement Office, which was established in 2015, has done quite a lot of work when it comes to the procurement and I would certainly invite honourable Members to visit their website. A lot of information is there: templates, guidance on procurement, requests for proposals, business case templates, et cetera, are specified there. So, a lot of information is on the Central Procurement Office's website. Also to say, that a considerable number of public servants—probably in the region of 400 to 500 public servants—have been trained on the requirements of the Procurement Law and Regulations since they came into effect. Therefore, there should be no reason, going forward, beyond May 2018, for there to be any wholesale omission of the preparation of business cases.

Mr. Chairman, I would end for now by saying that business cases under the Procurement Law and Regulations are required for goods and services that are being acquired from $100,000 and upwards. If the

services and goods being acquired are less than $100,000, then there is nothing stopping a chief officer from still pursuing a business-case-type approach and coming to the conclusion; but they are actually legally required for $100,000 and upwards.

Mr. Chairman, with your permission, I would ask the Director of the Central Procurement Office (CPO), Mr. Bashir, if he can add to what I just said.

Mr. Taraq Bashir, Director, Central Procurement Office: Good morning, Mr. Chairman and Committee Members.

Thank you, Mr. Jefferson and thank you to the Audit Committee for the audit as presented.

[Inaudible interjection]

Mr. Taraq Bashir, Director, Central Procurement Office: My name is Taraq Bashir and I am the Director of the Central Procurement Office.

The Central Procurement Office, as the Financial Secretary said, was formed in 2015 and I have been in the post just over a year now; I joined in August last year [2018] so, I have been in the post for about 14 months.

Through you, Mr. Chair, I am happy to talk about the content of the business cases and the requirements. What I would like to add, with regards to evidence regarding business cases, is that, newer procurement is approved. We now have a Public Procurement Committee established, which reviews procurements above $250,000 and we have entity procurement committees established in the Ministries.

I support the Public Procurement Committee and have attended every single meeting except for one. I can give assurances that the Public Procurement Committee looks for evidence that a business case has been produced and looks for evidence that that business case has been approved by the chief officer as a first step in its review of those procurement processes that are $250,000 and more. The requirement for the approval for procurements between $100,000 and $250,000 rests with the Entity Procurement Committee; and they have the same requirement, which is to ensure that a business case, duly approved and signed, exists before they confirm their recommendation for awarding contract for those procurements as well.

The Chairman: Since you volunteered, can you take the Committee through an actual hypothetical procurement process from the time that the entity decides they need to procure a service; what are the processes and what happens at the final outcome?

Mr. Taraq Bashir, Director, Central Procurement Office: Mr. Chairman, yes, I am very happy to do that.

The process of procurement should start before we go to tender. So, there is a lot of work that has to be done with regards to planning, as part of the business case process, determining a need for that procurement and for the services or goods that are being procured. There can be quite a lot of pre-preparatory work that is done during the production of the business case before we go through to generating the tender documents and publishing those tender documents, making them publicly available for suppliers to consider and submit responses to those tenders.

As part of the business case, each entity has to:

- They have to demonstrate that there is an economic need for the project.
- They have to include a fully argued, costed, risk and impact assessment, taking into consideration the broader socio-economic impact of those procurements on the Cayman Islands
- They should be looking to provide a breakdown of all anticipated procurement projects within a larger project. So, the business case does not just consider that particular procurement, but the business case should consider the whole project. At that stage, when a business case is produced, they should start thinking about the procurement method that is being utilised. This may change as they become more aware and more informed about the project that they are going to procure.
- They should be specifying in the business case, the benefits that project is designed to deliver
- They should be looking at options for incorporation and solicitation to promote positive economic development to the Cayman Islands. (So, these should all be included in the business case.)
- They should be looking to ensure that an informed decision can be made on whether or not to proceed to procurement stage.

Mr. Chairman, these are all items that are included in the business case.

We have already touched on the fact that up to $100,000 there is no formal requirements, according to the Law and regulations, that a business case be produced. However, if a chief officer or entity wishes that should take place, then they can still request it.

As far as the business case templates are concerned, my office has approved these and we have developed those business case templates in conjunction with the Strategic Reform Implementation Unit (SRIU). Those templates are available on the website for everybody to use and certainly, when those templates come to the PPC [Public Procurement Committee], they are looking for confirmation that the correct template has been used and it considers all the elements that a business case should have.

Following the approval of the business case, what will happen is that tender documents are developed. So, a part of the tender development process, we have supported the Cayman Islands Government, by having a software system called Orbidder. This will take them through a step-by-step process that, at the end, will produce some tender documents; depending on the type of procurement being carried out.

The Chairman: Not to interrupt your flow, but who prepares the tender documents? Is it your office or the entity?

Mr. Taraq Bashir, Director, Central Procurement Office: The tender documents are prepared by the entity. Normally, it should be the project manager that is responsible for that procurement because—

The Chairman: The project manager in the entity or the project manager in your office?

Mr. Taraq Bashir, Director, Central Procurement Office: In the entity, Mr. Chairman.

The Chairman: Okay.

Mr. Taraq Bashir, Director, Central Procurement Office: My office is quite small, so the role of my office is to ensure that there is guidance available so that entities can fulfil the requirements of the Law and regulations. We have a lot of material on our website; and we deliver a lot of training to facilitate and ensure that they are in compliance with producing good quality procurement documentation.

A key element of this tender documentation is the production of a specification. So, when you go into procurement, it is very important that you clearly understand what it is that you need and the definition of that requirement sits with the entity, because they are best placed to decide what the requirements are. Once the requirements are completed, the role of the person producing those tender documents is to then put together the evaluation criteria.

Normally, in simple terms, we split the evaluation criteria into three segments, so that they are mandatory requirements that we are seeking from the suppliers. These might be confirmation that they have a Trade and Business Licence. There might be confirmation, if they have some statutory obligations, that they satisfy those statutory obligations. The mandatory evaluation criteria are set out so that if the bidding supplier does not comply with any of those mandatory requirements, they should not proceed any further with that procurement.

Normally, we have some qualitative criteria. So, there will be some qualitative assessments with the procurement in terms of the bid submissions, and then there will be pricing evaluation criteria. This is all set out in the tender documents so that it is very clear to the bidders what they are bidding for and how their bids will be evaluated.

The key tenets in the Procurement Law hinge around openness, fairness, transparency, competitive supply and those things should lead to delivery of value for money.

Following the receipt of the bid submissions from the suppliers, one of the things we do try to encourage entities to do, is to understand the market place, either by going out for request for information or we can facilitate the production of some market information and some market data. This is because what we are trying to do is to ensure that appropriate people bid and that we get a good outcome from the procurement. Obviously, if we put a tender out and we get no bids that is not a very good outcome. Therefore, we are trying to ensure that people are aware of that tender—all the suppliers that are qualified to bid have an awareness and we are trying to facilitate a response to a tender.

Following receipt of those tenders, we will set up a small evaluation team. They should have the appropriate skills to carry out the evaluation and the guideline is that there should be a minimum of three people evaluating most tenders.

Just to step back a little bit; the Law talks about any procurement above the value of $100,000 that they have to be publicly advertised. So, this satisfies the fairness agenda and also ensures competition because you are trying to encourage as many responses as possible. The evaluation team will evaluate those tenders and they should evaluate those tenders in line with what is set out in the tender documents.

The Chairman: Is the opening of the tenders a public event or is that a private event?

Mr. Taraq Bashir, Director, Central Procurement Office: If I can just step out of that process for a minute. A part of what we have implemented at Central Procurement is to have an electronic procurement portal. So, as far as public servants are concerned, any involvement from public servants in that tender process is done through the electronic procurement portal. So, the electronic procurement portal will open those tenders electronically and date-stamp them, so for any tender above the value of $250,000 the Central Procurement Office—

The Chairman: Do all the tenders for that particular project have access to that information, or only when their tender is open?

Mr. Taraq Bashir, Director, Central Procurement Office: The entities managing the tenders only have access to their tenders, Mr. Chairman.

The Chairman: So, I could not tell from the electronic portal that other people who tendered were opened at the same time as mine?

Mr. Taraq Bashir, Director, Central Procurement Office: No, you could not.

The Chairman: How can you say you got openness, fairness and transparency then?

Mr. Taraq Bashir, Director, Central Procurement Office: Because there is a date stamp.

Effectively, if you can think of a post box that is locked, it cannot be opened until the closing date and time of that tender and, when it is electronically opened, those documents are all accessible at the same time. So, we have an electronic date stamp that can confirm and verify there were no tenders opened before the closing date and time.

The Chairman: So, no one is allowed to submit tenders in hard copy; it all has to be done electronically?

Mr. Taraq Bashir, Director, Central Procurement Office: At the moment, the Law and Regulations say that people can submit tenders through hard copy as well. During my time here, we had one tender where we requested specifically hard copy tenders. And then, we have the old-fashioned method of those tenders being received into a locked box and they were opened by the Public Procurement Committee in that instance. So, they were opened in line with the law and the regulations by the Committee and they were opened altogether. It is just a locked box, Mr. Chairman.

The electronic procurement portal is designed to ensure that there is no interference in any of those tenders throughout the tender process. Any action that takes place on those is logged and available to see after the event and the tenders can only be opened after the closing date and time.

The Chairman: Is the opening by the Procurement Committee public?

Mr. Taraq Bashir, Director, Central Procurement Office: No, it is not a public event.

The Chairman: Not even the tenders are allowed? Is each individual tender allowed to attend the opening ceremony?

Mr. Taraq Bashir, Director, Central Procurement Office: No. The Law does not require that the tenders are a public event.

The Chairman: Oh.

So, the public has no way of knowing what each tender bid on a particular thing. The only thing you publicise is the successful tender several months later, right?

Mr. Taraq Bashir, Director, Central Procurement Office: Yes. Following the conclusion of the procurement process, the tender is published within 30 days for all tenders above the value of $100,000.

The Chairman: But only the successful tender?

Mr. Taraq Bashir, Director, Central Procurement Office: Yes. The Law and the regulations require the publication of the successful bidder. So, it is the publication of the contract award. According to the regulations, all the other bidders are entitled to feedback. The objective of the feedback is to ensure that they understand their positioning in the tender process. So they are allowed, Mr. Chairman, to have feedback.

The Chairman: What is included in the public announcement?

Mr. Taraq Bashir, Director, Central Procurement Office: We do include the contract value, the name of the contractor, the date of award and if it is a term contract, when that contract term finishes.

The Chairman: So, the public has no access to what the other unsuccessful bidders bid for that project?

Mr. Taraq Bashir, Director, Central Procurement Office: No, they don't. No.

Mr. Kenneth Jefferson, Financial Secretary/Chief Officer, Ministry of Finance and Economic Development: Mr. Chairman, sorry.

I am just trying to be helpful. What the Director has been speaking about is contained in Regulation 19. It does actually speak about the type of information, as you asked, to be published: the name of the entity, description of the goods, name of the successful bidder, date of the contract award and the total value of the contract.

So obviously, if you are a competitor and you were unsuccessful—

The Chairman: Yeah. I am not worried about the competitors, though. I am worrying about John Public whose money we are spending. And, if you recall the debate on that same Bill, we were not allowed to debate the regulations.

Mr. Taraq Bashir, Director, Central Procurement Office: Mr. Chairman, the public can see all those awards.

The Chairman: They can see the awards but they cannot see the people who were not awarded. Therefore, they have no way of comparing what was done

or making a judgment on the accuracy of your Procurement Committee. Because somebody could under-bid substantially, providing the exact same qualifications. You pre-qualify them, so you know that they could deliver the service, otherwise they should not have been pre-qualified. But, you could have somebody that bid for the same service 30 or 40 per cent less, which you have certified as capable of delivering the service; but the public does not know that the Procurement Committee picked a bidder that was 30 per cent higher because they do not have the information that somebody did bid 30 per cent lower.

[Inaudible interjection]

Mr. Taraq Bashir, Director, Central Procurement Office: That is correct, Mr. Chairman.

We do not publish the information regarding the unsuccessful bidders. Only the successful bidder's contract award is published.

The process does allow, because you have a quality assessment and a price evaluation criteria and all the tender documents will clearly say and the Law and regulations state that the winning bidder does not have to be the lowest-priced bidder.

The Chairman: No. The Law says it must be the best bidder, but the issue I have is: your office, or the entity, has certified each entity from which they accepted a bid on that particular project, of being capable of delivering the service; otherwise, you should not qualify them. So, the only thing you are evaluating at the point of receiving the bid is the price, because you should not be getting a price from a company that cannot deliver the service.

Mr. Taraq Bashir, Director, Central Procurement Office: You are correct.

The mandatory criteria are effectively stating that they have the capacity, the capability and the legal ability to be able to deliver those services, but it is part of the process. If I can make a correction, Mr. Chairman, it is not just the price that is the determining factor at that point.

The Chairman: Well, I was trying to be generous. I did not want to include knowledge of who the person or entity was. I would prefer at this stage, if we stick to price because if we get into these other areas, this could go down the wrong hill.

Mr. Taraq Bashir, Director, Central Procurement Office: There are other areas and the Law and regulations allow for qualitative evaluation criteria.

The Chairman: All of that should have been determined at the point of pre-certification.

Mr. Taraq Bashir, Director, Central Procurement Office: Mr. Chairman, the mandatory requirements will determine whether a bidder is allowed to proceed to the next stage or not. The next stage includes qualitative evaluation criteria. These are evaluated on the risk returns of the tenders; and maybe if you got specifications that have a range of possible outcomes, you might score somebody a number of points if they satisfy that criteria to the maximum and you might score someone with a lesser mark if they scored a minimum level to that.

Those are then put together following the evaluation of the quality criteria, the pricing is then opened—it is opened after that stage.

In simple terms, you may have a tender where 50 per cent of the evaluation is on price and 50 per cent is on quality. So, you may have a bidder that scores very high on quality but if they scored very low on price, this is combined in a formula to determine who the highest scoring bidder is, and that sorts it out in the process before the tenders are published. So, it is not always the lowest-priced bidder that will be awarded the contract. It depends on their ability, may depend on their qualifications, it may depend on other factors as well.

The Chairman: Okay.

Is it possible for the Procurement Committee to pre-qualify tenders, accept tenders from certain entities and after they have accepted the tenders, stop the process, and not select a bidder from those that were presented and then allow some kind of consortium to be established amongst the three tenders, and then switch to a single-pier procurement system under the Law or direct procurement?

Mr. Taraq Bashir, Director, Central Procurement Office: You have put together a really complicated scenario there. If the tender process does not allow for that, then it is not allowed for in the Law.

The Chairman: But normally, the Law envisages that if you pre-qualify tenders, you get a number of people who submit tenders, all of whom meet the criteria; the law envisages a decision being made as to which of those tenders received is a successful tender. Am I right?

Mr. Taraq Bashir, Director, Central Procurement Office: That is correct, yes.

The Chairman: Okay.

My question is: is it possible then, for the Procurement Committee to not select one of those three tenders, but to allow the tenders to create some kind of consortium and be awarded and then there is a negotiated price or settlement, as opposed to an award based on the submission?

Mr. Taraq Bashir, Director, Central Procurement Office: The scenario that you have described there; the responsibility of the Procurement Committees- both the Entity Procurement Committee and the Public Committee Committees - are to ensure that that process is being carried out in accordance with the Law. So, it doesn't make the final award. The committees make a recommendation to the chief officer. Therefore, they cannot start pre-determined alternative solutions. So, their conclusion is that, yes, this procurement is sound, it complies with the Law and regulations and we support this recommendation.

The scenario you outlined means that it is effectively a different and new procurement. According to the Law and regulations, we do have the right. Normally, it is in the tender documents that you can cancel that procurement but you should effectively start a new procurement because it would be—

The Chairman: I accept that that is what the Law intends, but in that scenario, where the Procurement Committee could not come to a decision between the 3, 4 or 5 people who submitted a bid, that procurement process would be cancelled and another process would take place.

Mr. Taraq Bashir, Director, Central Procurement Office: That is correct, yes, but the normal scenario—

The Chairman: You are saying that there is no possibility that the Procurement Committee and the legislation would allow for those four or five entities who bid to form some kind of consortium among themselves and maybe one or two people withdraw their bid and then they work together to negotiate a price with the entity?

Mr. Taraq Bashir, Director, Central Procurement Office: Not according to the scenario they set in accordance with the Law and regulations. There are alternate procurements that you could start off. There are other procurements where you can encourage—

The Chairman: Okay. The second question is: What about a hypothetical situation where you had (let's just pick some numbers) nine people pre-qualified to tender - seven tendered, five of the seven tenders were accepted by the Procurement Committee and they checked all the boxes that you laid out a while ago. Does the Law allow for a number of those five people to withdraw and you take the last one standing, or does the Law not envisage that in that scenario, there should be a re-tendering by the entity?

Mr. Taraq Bashir, Director, Central Procurement Office: Again, Mr. Chairman, it's a scenario.

So, entities or suppliers that are bidding are entitled to withdraw their bids at any stage in the process. If they choose to withdraw their bid or choose not to take part in that process—it depends on how long that process is and what the steps are in that process—then effectively, they have taken themselves out of the running.

Again, according to the Law and the regulations and the way that you set out your tenders, once the date and time of the tender is closed, it is unfair to accept any new tenders after the closing date and time; the Law is very clear on this. If you want to start re-configuring your procurement services or your goods in terms of what you are doing, you should, and the Law states that you should start again. So, effectively that procurement is closed and you have to start the process again because you have changed your requirements fundamentally and it becomes a new thing.

The Chairman: And normally, you would expect that a person who invested hundreds of thousands of dollars to prepare a bid and made it to the final bar, that there must have been some fundamental change which would indicate to them that they would be better off withdrawing their tender. Because, if everything were the same and you have spent all this money, why withdraw?

Mr. Taraq Bashir, Director, Central Procurement Office: It is difficult to assess why tenders may or may not choose to withdraw and there may be many reasons or many scenarios.

The Chairman: Again, the intent and the principles of the procurement is that the Procurement Committee must have something to compare, to make sure that they are making the best possible decision. In a situation where the Procurement Committee is left with only one bid, should it not rely on the intent of the law and tell the entity to re-tender the process, because they cannot possibly make an evaluation of this bid with nothing to compare it to?

Mr. Taraq Bashir, Director, Central Procurement Office: In that particular scenario, maybe going back to your numbers of nine, seven, five, if you have gone through a procurement process that complies with all the basic tenets around openness, fairness and transparency, and you have encouraged those bidders throughout that process, and there is only bidder left, there is no reason why you should cancel that procurement and start again. There is no reason in the Law.

As long as you have been fair, and you are not changing your rules mid-game, if other people have either been disqualified for whatever reason or they have chosen not to bid, and you followed the fair process, if there is only one person standing at the end, there is no reason why you should not proceed to a contract award with that one bidder. You still have the right normally, in the tender documents, to make a decision as to whether you do or not.

One of the things you have to try to understand, that I talked about, is a good outcome in the end. The Law does talk, and is very right, when you just cancel a procurement you have to have a very good reason for cancelling it because you do not want to be unfair on the bidders that actually bid. And, normally, the reasons for cancelling are that you have substantially or materially changed that procurement in some way or you have learned some information.

If the process you followed is an open and fair process, and you got one bidder left, there is no reason according to the Law and regulations, that you cannot award a contract to that bidder.

The Chairman: Is there a scenario where the Law allows (because I have not found it) getting bids by people who pre-qualified, et cetera, but based on price alone, you cancel the bid without having told the bidders what the price even was and start over?

I cannot find it anyway in the Law. The expectation is if I bid, a decision is going to be made.

Mr. Taraq Bashir, Director, Central Procurement Office: Mr. Chairman, yes, you are absolutely right. The expectation is normally that, because you have to be fair to the bidders, but, there is a scenario where it can happen. For example: if you have a scenario where you have a budget to spend on a particular process or project that limits you to $100,000 and if all your bids are (just to continue on this scenario theme) $200,000 or above, in this instance, you just cannot afford to enter into a contract because you do not have the funding available to deliver on your obligations on the contract. In that circumstance, my advice to that entity would be, *Yes, you should cancel this procurement and you should give a good reason.* And the good reason is that the outcome of the procurement shows that we do not have sufficient budget funding to be able to enter into a contract.

The next step that you can do, Mr. Chairman, is to review and relook at your specification to see if you can change the envelope of your requirement. You can engage with the market place also; you can talk to them and say, *"Look, is this something that maybe we can do for $100,000?* It will likely lead to a change in specification and then you could go back out to tender with a change of specification.

The Chairman: Would that not make your business case look like a waste of time? If you are that bad off in the market place, on a business case that you prepared, then something is wrong.

Mr. Taraq Bashir, Director, Central Procurement Office: Yes, there may be some—

The Chairman:—I know that people here like profit, but I don't think most bidders look for 100 per cent and greater profit.

Mr. Taraq Bashir, Director, Central Procurement Office: Yes, you are absolutely correct, Mr. Chairman. One of the things you would revisit as part of that re-procurement process is your business case because you are absolutely right.

The Chairman: That revisiting of the business case would not normally be simply a breaking up of what you tendered for into four, five, six or seven parts.

Mr. Taraq Bashir, Director, Central Procurement Office: If you are going back to the business case and it states that this project only has funding of $100,000, you would have to revisit what that project is; because if the tenders are bidding $200,000, you are absolutely right, there is something fundamentally wrong.

If you break it up and you still end up with $200,000 bids and you have a budget of $100,000 you have achieved nothing. Therefore, you have to question and go back and revisit your specifications, your requirements and understand what you really need before you go back out to tender.

The Chairman: Again—

Mr. Taraq Bashir, Director, Central Procurement Office: Sorry, Mr. Chairman.

There may be a scenario—if you feel that that tender process does give you good value for money, you could change the funding envelope that you have. You could look to see if you can find where it is increasing your budget and so, you can attack the issue from either side. You can either think about reducing the cost envelope or about increasing your budget envelope. Within an entity, they have the freedom, maybe to transfer some budget from an underspent area to an overspent area.

So, there are many things that they can do as part of that review process because the scenario that you have described is an unsuccessful outcome. And, with unsuccessful outcomes, we all have a duty to try to understand what the problems were to avoid them in the future.

The Chairman: Is there a timeframe for when bids are received; the Procurement Committee takes a decision, an actual contract with the bidding entity?

Mr. Taraq Bashir, Director, Central Procurement Office: There are a number of things that can be done with that. Within the tender documents, one of the things you can put in there is to say that the suppliers' bids have to be honoured by a certain number of days. So, you might say that you were expecting us to honour your bid for 90 days. If that is the case, then really, within your internal processes, you should be setting your store out to complete the process in 90 days.

Mr. Chairman, as you know, these things are not always possible, something happens and if it goes beyond the 90 days, you have a duty to go back to that supplier to say, *We apologise, we are a bit late now; are you still able to honour your tender and your bid?* And if they are, then you may proceed.

The Chairman: The Law and the whole procurement committee process, does not envisage where you could select a tender or not select a tender, but then you entertain substantial increases to the cost of the item that is being procured and negotiations can drag on for a year or 18 months with no decision being made. I do not read the law as making any allowance for that kind of stuff.

Mr. Taraq Bashir, Director, Central Procurement Office: Yes, you are right. The law does not specifically set out an end date by which the procurement process should be completed; but as public servants, we have a duty to make sure that we are doing the right thing in spending public money.

So, just taking your scenario a little bit further: If you have a procurement, let's say it has dragged on for two years, you have to try to make sure that you understand what the market place is doing; because the market place may have changed considerably and you have to understand why you cannot get that procurement process to a conclusion for a such long period of time. I always talk about learning experience as to why or what are the reasons causing those long delays and try to avoid them.

The Chairman: That reason should not be confined to price increase, for the same service.

Mr. Taraq Bashir, Director, Central Procurement Office: No, it should not be.

If the tenderer has committed to honour their prices and their tender for 90 days, they have a right after 90 days to say, *We cannot honour this, anymore;* and from a fairness point of view, you have to respect that right and re-tender.

The Chairman: My reading of the Law envisages, in that scenario, a re-tendering. Not extensive negotiations that could involve $30 million or $40 million in additional costs, because if you are doing that, you must be increasing the scope, I would hope. And if you are increasing the scope, then it is not in terms of the business plan or the procurement that was advertised.

Mr. Taraq Bashir, Director, Central Procurement Office: Yes, you are absolutely right, Mr. Chairman. The contract negotiations should not significantly increase the scope of your requirements. If you are significantly changing the scope, then you should really be re-tendering.

The Chairman: I guess the other question I have for you is that the Law provides for you, as the Director of Procurement Office, to offer advice to the Government in changing regulations and improving the laws. Have you made any such recommendations along the lines of what we are discussing, to tighten up the process?

Mr. Taraq Bashir, Director, Central Procurement Office: Yes, Mr. Chairman. We are just going through a process at the moment of reviewing both the Law and the regulations and the financial regulations as well.

One of the recommendations that came out in this audit report was to ensure that we iron out any inconsistencies between the financial and procurement regulations. We have a working group set up, they are on that task and I am part of that working group. We also have a draft available at the moment and that draft is going to be reviewed by the steering committee; and then we will go through the process of formally presenting that to the Legislative Assembly.

The Chairman: The Law is very specific in Schedule 6: role of Cabinet, role of the Ministry of Finance, role of the Chief Officer in the Ministry or Portfolio, role of the Chief Executive Officer and role of the entity procurement committees. Nevertheless, I cannot find any consequences in the Law or the regulations where those roles are transgressed. Is that something that needs to be added?

Mr. Taraq Bashir, Director, Central Procurement Office: The Law also talks about a procurement code of conduct, which is also available.

The Chairman: But the code of conduct cannot contravene what is in the Law.

Mr. Taraq Bashir, Director, Central Procurement Office: No, it can't contravene but it does talk about, against public servants, about possible disciplinary reaction if those codes are contravened, and it does talk about sanctions against the buyers.

The Chairman: Are you comfortable that none of those roles are currently being contravened or muddied?

Mr. Taraq Bashir, Director, Central Procurement Office: Yes, Mr. Chairman. All the processes and procedures that we put into place are designed to avoid those contraventions through the Law and the regulations.

Clearly, I am not in a position to guarantee those things and we have many processes. My office provides guidance; we have visibility on Bonfire to understand what is going on throughout that process. There are numerous points during that procurement process that outlines where people have to declare

any conflicts of interest that they might have. We have checks and balances around the signatures and approval processes, around the entity procurement committees and around the public committee committees. Clearly, we have our internal audit process as well and we have the Auditor General's Office. They are there and we monitor as well, the Central Procurement Office.

The Chairman: And you are comfortable that, particularly in government entities like authorities, where the law identifies the chief executive officer enabled by the board, to implement many of this procurement stuff, that that is being adhered to and is not being done, in my view, in contravention by either the chief officer or the minister?

Mr. Taraq Bashir, Director, Central Procurement Office: Sorry, Mr. Chairman. I was trying to understand what the question was; apologies—my apologies.

The Chairman: I understand the difficulty that I am placing you in but—

Mr. Taraq Bashir, Director, Central Procurement Office: I am happy to be in a difficult—

The Chairman: -those are the kinds of things that I would expect the procurement officer and the procurement committee to raise red flags on. And, when there is cross-pollination, shall I say, of where a ministry may be managing a procurement process that the law requires be managed by the board of directors and the chief executive officer, not the chief officer in the ministry.

Mr. Taraq Bashir, Director, Central Procurement Office: Mr. Chairman, if I could just try to answer first of all the questions on a broad level and then, maybe I can try to understand what the specific question would be: On a broad level, I am happy that if I come across any issues—through our process of giving advice, through training, in our reviews of any tender documentation or evaluation processes, and also my support to the Public Procurement Committee—where there are any contraventions, using your language, to the laws or the regulations, I am confident that I will raise those with those people to ensure that they do not happen again and, that appropriate steps and balances are put in place to avoid them going forward.

I can give you a lot of confident assurance that I do that already and I will continue to do it. It is part of my role.

The Chairman: You have some homework.

Mr. Taraq Bashir, Director, Central Procurement Office: The question is: Have we had to do it? So, for example: as a simple level, if the wrong kind of templates arrive to the Public Procurement Committee or there are wrong signatures or the wrong kinds of things, the Law does say that I can advise chief officers, chief executives and other people in the public sector as I see appropriate, obviously, with a view and intention to improve our processes and procedures going forward. And I will write to people to say it and we have also produced a lot of guidance.

If I could just talk to my understanding: it is that you have got a specific question, which is around the relationship between a board and the chief executive. Some of those are covered at a very small level within the Procurement Law and Regulations. If people talk to me about advice around public authorities and their boards, I will generally guide and direct them towards the Public Authorities Law.

As far as the Procurement Law and Regulations concern, it does talks about the board members not being entitled to be part of an entity procurement committee. I think there are three exclusions for that without reading the Law: the board members are not allowed to be included on an entity procurement committee nor are elected Members, and I do not believe that the chief executive is allowed to be a member of the Entity Procurement Committee.

I am not sure if that answers your question. From my reading—

The Chairman: Let me quote the Law for you, under the role of the Chief Executive:

(2)(b) "ensuring the creation of and authorizing of a documented business case in the format prescribed in regulations for the procurement, prior to proceeding to market or soliciting bids;"

Are you confident that in the case of public authorities, that business case is being done by the Chief Executive Officer of the Authority and his staff and not by the Minister and the Chief Officer in the Ministry?

Mr. Taraq Bashir, Director, Central Procurement Office: I can only talk about the business cases that come in front of me and come in front of the Public Procurement Committee because they are the business cases that I am actively involved in. I can say that as far as those business cases are concerned, they are created. It doesn't mean that the Chief Executive should be writing those business cases themselves, it talks about him ensuring that they are created and that they are authorised.

The Chairman: But him ensuring it, that word "ensuring", only gives him the authority over the staff and that which he has employed.

Mr. Taraq Bashir, Director, Central Procurement Office: That is correct.

The Chairman: That does not give him authority over people who are above him in the feeding chain.

Mr. Taraq Bashir, Director, Central Procurement Office: And I would agree with that.

The Chairman: Okay.

Mr. Taraq Bashir, Director, Central Procurement Office: I had one small incident, a very low procurement, of some involvement in a particular case, where a board member of a statutory authority was involved. Clearly the guidance, according to law, is that they should not be, and this is the advice that I gave. It was a very low-value procurement.

When we do our training, Mr. Chairman, these kinds of things are covered in our training. So, we have a broad level of training. We have delivered this training—and apologies, the Financial Secretary said there are 400 or 500 people, but since his numbers we have increased that training—it is ongoing and we cover all the roles and responsibilities.

We have also delivered some training to board members of the public authorities to ensure that those responsibilities, as far as the Procurement Law and Regulations are concerned, are clearly understood, in terms of the difference of the responsibilities of the board members and the responsibilities of the chief executive and the full-time staff of the authority. In terms of guidance and support, we try to do early training session and when we see those business cases, we will guide those people appropriately.

The Chairman: Mr. Jefferson can tell you that as an advocate for a Procurement Law, I filed substantial amendments to the Bill that was presented and identifying those roles was one of the things that I specified. And, it seems that I have won the few skirmishes on the battlefield but lost the war, because nothing has changed and people are still operating, in my view, at the wrong levels and getting involved in the wrong things.

Mr. Taraq Bashir, Director, Central Procurement Office: As I said, I have only come across one instance for a very small amount of procurement where I saw a board member involved.

The Chairman: Well, if the media's reports are correct, I would invite you to look with an eye of scrutiny at the two largest procurements by government, under consideration at this time, to ensure that these rules are not being transgressed.

[Pause]

The Chairman: You wanted to say something?

Mrs. Sue Winspear, Auditor General, Office of the Auditor General: I was only going to add for clarification that as part of our financial audit we will always look at big procurements, and I know exactly the case in hand that Mr. Bashir is talking about.

The thing with the Law now, is that there are avenues people can go to, to support them if they are in transgression but I think most of it certainly does seem to be an education point.

The Chairman: I think that, unfortunately, we have a clause in here that says: *Anything that was being done before can continue to be done the way it was being done and this will have no effect on it.* Normally, when a law comes into effect, the law and decisions in that area should be in conformity with that law or, at least, with the spirit of the law.

Are there any other questions, Mr. Harris?

Mr. Austin O. Harris, Jr.: Yes, thank you, Mr. Chairman, but first thank you for those poignant and probing questions which, if I might add, were rather carefully crafted as well. I suspect we will be back here again, discussing similar matters in the not-too-distant future.

Mr. Chairman, if with your permission, I can get back to the Auditor General's report specifically, and the Procurement Law, by thanking the Financial Secretary for answering the first question, which is quite correct; the report itself did cover the period July 2012 to June, 2017. And, to your point, the Procurement Law, 2018, had not yet commenced.

The Procurement Law was in fact passed in 2016 by Members of the entire House but yet, it took some two years for the regulations to be completed and commenced, to your point, in 2018. I wonder if the witness can say if it usually takes so long to agree on regulations which underpin and give effect to any law which, as the Chairman has just remarked, once the law is passed it is the law. Well, that is not necessarily the case, certainly not here. The law was passed in 2016; the regulations did not come into effect until 2018 and therefore, the delay.

What takes so long? Is it usual for regulations to take so long?

Mr. Kenneth Jefferson, Financial Secretary/Chief Officer, Ministry of Finance and Economic Development: Thank you, Mr. Chairman and I thank Member Harris for his question.

It is certainly not desirable for such a long period of time to elapse between the passage of a law and regulations. As we all know, the main purpose of regulations is to essentially add the details to what is specified in a law and not to cause the law itself to be unnecessarily burdened with a lot of detail, which may require changing quickly. Hence, the detail is placed in regulations which can be approved by Cabinet as quickly as it is needed.

Mr. Chairman, I cannot recall the precise reasons for the long time it took to craft the regulations and bring them into effect. I know that there was a committee put together to develop the regulations. I know there was considerable amount of training, as well and that may have been a factor, in that there was considered to be a long period of training required in order to bring the regulations into effect. We did not want the situation of the regulations being brought into effect and then the training took place subsequently. I think that may have been a factor, but I do concede to what the member is explicitly stating: it is not desirable for such a long time to elapse, Mr. Chairman.

We unfortunately do have situations as well, where some laws are passed and they are subject to Orders in Cabinet, et cetera, and then they are not in effect, for whatever reason. Nevertheless, I take his point that it is certainly not desirable for that period of time to elapse. I can only suggest that the reason for such a long delay is the level of training that was needed.

I also remember, Mr. Chairman, that there was considerable consultation with the private sector in getting their feedback as to what the regulations should contain. For example, in the regulations, there is a specification about the public sector having to essentially give preference, where possible, always with the proviso that good value for money is obtained. There is the stipulation that the public sector should, where all other things being equal and good value for money being obtained, choose essentially Caymanian-owned vendors, as opposed to foreign-owned vendors.

I do recall as well, Mr. Chairman, that there was quite a bit of interaction with the private sector; with suppliers and contractors, in the private sector, to get their feedback as to what would be the workable set of regulations that the government could pass.

Obviously, Mr. Chairman, the regulations also speak to the need to publish requirements, as to successful tenderers and the details there. There was also a need to have a website established that would assist not only making such publications public, but also to assist government agencies themselves with guidance as to how best to achieve the law and the regulations.

I think all of those things took quite some time and the staff of the Central Procurement Office was quite meagre, so it was not a huge number of persons that could do that so quickly. Those are some of the reasons I think the regulations took a while to put into force; and we certainly would hope that in other laws, other regulations, that would not be repeated.

Mr. Austin O. Harris, Jr.: Mr. Chairman, through you, thank you Financial Secretary for that answer.

If I can go back to the initial question, which highlighted the fact outlined by the Auditor General, that only one of the 23 contracts totalling some $32 million in new procurement completed a business case which you, again, identified that the procurement law had not yet taken effect and therefore, the requirement for a business case was not written in stone.

I wonder if you can confirm to this Committee if procurement manuals were in fact with the respective ministries as to the passage of the Procurement Law, 2016. And if so, wouldn't it be fair to say that the ministries, in these 22 contracts, were aware, both of the changes forthcoming in the procurement policy and indeed had a road map, with regards to best-practice, which would include the requirement that prior to recruitment, the first step is to begin with a business case.

[Pause]

Mr. Taraq Bashir, Director, Central Procurement Office: Thank you.

Mr. Chairman, we have talked about the fact that the Procurement Law and Regulations came into effect in 2018 and most of these contracts go back to 2012 to 2017. I can give assurances that since the website was created in 2018, all the processes, procedures and requirements that are set out in the Procurement Law and the templates, are all available. It is a myriad of tools and tool lists.

I am aware that before we had done all the work around the current Law and regulations and around our website and the availability of the templates and tools. I am aware that some entities did have some manuals but I cannot comment on the content of those manuals at this time. We provide a lot of guidance and support centrally for people to access that information.

Mr. Austin O. Harris, Jr.: Mr. Chairman, I thank the witness for his response.

Yesterday, the Financial Secretary outlined the process of what is involved in a Cabinet note, in particular, decisions taken by Cabinet being followed and copied to Ministries via a Cabinet extract. That exercise would precede going to the House, debating and thereafter passing the Procurement Law. Therefore, it is safe to say that ministries were well aware of changes to the Procurement Law, far in advance of 2016, and should have been presented with, or at the very least, begun the work of drafting the requisite manuals that would reflect the new change in policy.

I am just curious as to whether or not the same process is followed—as we learned yesterday—with regards to the granting of concessions vis-à-vis a Cabinet extract and the compliance to ensure that connected ministries follow the expectations contained in those concessions. Likewise, when there is a policy change, ministries would be notified of that policy change vis-à-vis Cabinet extract, and therefore

begin the process of completing manuals and other requirements that deal with the administration of any respective law.

Mr. Kenneth Jefferson, Financial Secretary/Chief Officer, Ministry of Finance and Economic Development: Thank you, Mr. Chairman.

Mr. Chairman, I do understand the question that Member Harris is posing. What I would say is that factually, the Procurement Law itself was passed by the Legislative Assembly on the 24th October, 2016. It was then gazetted on the 2nd December, 2016.

It is a very difficult one to answer because the member is correct in that, ministries, portfolios and offices would be aware of the Government agreeing to the development of a new procurement regime; they would be aware of that. Unfortunately, for an individual ministry, portfolio and office having been made aware of a change coming, I think at that point in time they did not necessarily know what that change would entail and encompass and, therefore, there would have been considerable difficulty in deriving a set of manuals for something in the future.

Mr. Austin O. Harris, Jr.: Mr. Chairman, through you.

Thank you very much for the answers provided by both witnesses. If I can move away from the passage of the Procurement Law to what is my second question. If I can direct our witnesses' attention to pages 15 and 16 of the Office of the Auditor General's Report.

Specifically, paragraphs 28 to 32 state that, "the Government needs to continue to improve its procurement practices." The report highlights that the Auditor General found many of the same weaknesses, as were outlined in the previous report— "Government's Use of Consultants and Temporary Staff", February 2018. This audit covered the same period, which were the five years from 1st July 2012 to June 2017 and, as such, the Office of the Auditor General would not necessarily have expected improvements to have yet been made in these specific areas.

The Auditor General has highlighted however, in this report, some of the same issues which were identified in the February 2018 report, using the findings from this audit, and continues to encourage the Government to implement recommendations made in 2018 as soon as possible.

I wonder if the witnesses might be able to therefore explain to this Committee what progress the ministries have had in implementing the Office of the Auditor General's recommendations made in the 2018 report of similar subject: the "Government's Use of Consultants and Temporary Staff." In particular, because those same recommendations, Mr. Chairman, in that report were once again made in this most recent report which we are hearing today: the "Government's Use of Outsourced Services."

[Pause]

Mr. Kenneth Jefferson, Financial Secretary/Chief Officer, Ministry of Finance and Economic Development: Thank you, Mr. Chairman and member Harris for that question.

Mr. Chairman, he is quite right. The Auditor General, in the February 2018 report did actually make, I think, a total of 16 recommendations, and the Government has obviously received those recommendations and made fairly good progress in implementing them.

I think, rather than going through each of the 16 recommendations to say which ones have been met and which ones have not, if the Committee so chooses, I think we could outline which ones have not been met or partially met. I am open to going through each of the 16, to say their present status, if that is the way you want to go, or the other way.

[Crosstalk]

Mr. Kenneth Jefferson, Financial Secretary/Chief Officer, Ministry of Finance and Economic Development: Okay. So, we will comment on the ones that either partially complete or wholly incomplete.

Mr. Taraq Bashir, Director, Central Procurement Office: Thank you, Mr. Chairman.

Just going through the 16, the first recommendation is completed.

The second recommendation talks about updating the financial regulations to rectify inconsistencies between the laws and regulations, and the financial regulations. We touched on this earlier on and I did comment that the first draft is available and we do have a date there to complete that by March, 2020.

Mrs. Sue Winspear, Auditor General, Office of the Auditor General: Just for clarity: Are you going through the recommendations in this report or the recommendations in the 2018 report?

Mr. Taraq Bashir, Director, Central Procurement Office: Sorry. I am going through the recommendations in this report, if that is okay.

Mrs. Sue Winspear, Auditor General, Office of the Auditor General: Thank you.

Mr. Austin O. Harris, Jr.: Again, the question was if you could inform us what process was made to the 2018 report which had correlation to recommendations contained in this 2019 "Government's Use of Outsourced Services" report; because both identified similar gaps and the Auditor General's Office fundamentally found itself repeating itself.

Mr. Taraq Bashir, Director, Central Procurement Office: Mr. Chairman, I do not know if the Financial Secretary did, but I did not come prepared to comment on the previous report. I am only in the position to comment on the recommendations as set out in this current report.

Mr. Austin O. Harris, Jr.: That is fine.

Mr. Taraq Bashir, Director, Central Procurement Office: If they are similar, Mr. Chairman...

[Inaudible interjection]

Mr. Austin O. Harris, Jr.: Yes, just one final question and I think the member may have just answered it, in recommendation number two, as it relates to the inconsistencies between the new Procurement Law and other laws. Specifically, I want to draw to the member's attention, the inconsistencies between the Procurement Regulations, 2018 and the Financial Regulations contained under the Public Management and Finance Law, 2018.

Both of these regulations set, I think, to the Chairman's point in his earlier questions, different thresholds for when public procurement and approvals should take place. I think one is, if I can look more specifically, the section 16 of the Procurement Law states in the acceptance of bids, for example, contracts less than $100,000 or greater, but less than $250,000 should go to procurement. The financial regulations in the Public Management and Finance Law states that tendering is only required for projects that are greater than $250,000. Again, it shows some inconsistencies between one and the other and as we understand it, the Procurement Law should trump them all. Nevertheless, I accept his response that that will take place by March 2020, so we will be back at that.

Thank you, Mr. Chairman.

Mr. Taraq Bashir, Director, Central Procurement Office: Thank you.

Mr. Chairman, would you like me to go through the other recommendations?

[Crosstalk]

Mr. Taraq Bashir, Director, Central Procurement Office: Would you like an update on those as well? I am happy to do that. Yes.

The third recommendation refers to business cases and we have done quite a bit of discussion around business cases and I am classifying that recommendation as completed, but clearly, we have an ongoing action to monitor compliance with the completion of business cases.

The next recommendation is number four and speaks of ensuring that request for proposals and invitations to tender are prepared—

The Chairman: You do not need to repeat what the recommendation says. Just give us the update—completed, incomplete, have not done anything.

[Inaudible interjection]

Mr. Taraq Bashir, Director, Central Procurement Office: Thank you, Mr. Chairman. This one is classified. In my classification this one is complete.

Number five, I have said is completed as well and it refers to direct awards.

Number six, I have classified as ongoing. It is related to training and development and it is ongoing action.

Recommendation seven, I have not classified that as complete. I have a date of the end of December for this action and it is in progress.

Number eight is an ongoing action. It is about centralised procurements. So, every procurement we see at the moment, where there is an opportunity to make a procurement accessible to other entities, we are putting that provision in, but it is an ongoing action.

Number nine, I am certain is complete; Number 10, I have stated is complete; number 11, is complete; number 12 is an ongoing action but I have stated that as complete as well; and numbers 13 and 14 refer to contracts' expiry dates. I am doing a personal review with some of the chief executives to ensure that all those contracts have expiry dates. Going forward, the process has captured this; the guidance and the law and regulations clearly states that we should not have open-ended contracts.

Number 15 is about contract management. From my personal past experience, this is something I can implement so far, because the outsourced services amount to $10 million per year typically. And our spend in the public sector—what I have classified as procurement spend—is about $180 million dollars. I have not focused on this action yet but I will do some work on this towards the end of this year and the early part of next year. So, this is in line with all the guidance and templates and tools that we have on the website around the procurement process. I will do something similar and I will try to make it appropriate for the levels and sizes of contracts that we have in relation to this recommendation. Clearly we accept all the recommendations as submitted by the Auditor General's Office.

Mr. Christopher S. Saunders: Thank you, Mr. Chairman, through you to the witness.

What I am more concerned about is not when it gets to your office, but rather before it comes to your office to process. There is an old saying that goes:

"What starts bad in the morning, can't be any good in the evening." What I am trying to determine is the decision first or the decision tree that surrounds the idea of why we are going to procure a particular service because naturally, the Request for Proposal (RFP) would be based on what the business case would require.

I am more interested in the process before it gets to you. What is the decision tree? How is it determined, going to outsource something as opposed to doing it in-house and what case is being made? From listening to the Auditor General, that seems to be where the problem is.

If business cases are not being done, you do not have a strategic plan, you do not know what it is you want achieve, then, how do you in essence, expect to have a successful procurement process when the very RFP itself, as identified in our report, where there are challenges around that too?

What is the process before it gets to you? That is what I really want to know and what I am trying to understand.

Mr. Taraq Bashir, Director, Central Procurement Office: Thank you for your question, and Mr. Chairman, if I may, through yourself.

I do understand the question but the early part of my response to this is really about the fact that we are going through a learning and development process. We are in the early stages of that at the moment within the public sector of the Cayman Islands. If we can gauge where we are, in relation to the Caribbean region, we are very well advanced in relation to other Caribbean countries in all of our processes and procedures around the Procurement Law and regulations; but we are a long way behind with regard to other countries in the world.

What we are trying to do: there is an ongoing programme of training and development of as many people as possible. We want to create professional qualifications, we want people to study and work towards those professional qualifications. We want to try and identify some procurement champions; we want to champion procurement as a process in the Cayman Islands. They are general comments around what we are trying to do to move the Cayman Islands public sector along this learning curve.

Just to pick up on your very specific point, there are a number of things that we want to do. The whole process around procurement starts in the budgeting process, so I am not sure at the moment that we do that thinking at the same time. What we want to try to do is to encourage the procurement process to be thought through at the same time as the budgeting process.

There are a number of tools that we want to do. One of them is for every entity to have a procurement plan. This will start to identify and we would have visibility of this plan, exactly like you said, what happens before they kick-off of the procurement.

We would like every entity, so, this would take a little bit longer because I think I need to get to a position where the entities understand that, and are in a position that they can produce something appropriately, and they are planning a lot further ahead than they are planning at the moment. And we can get involved at an earlier stage in terms of the guidance and support to kick off first thing in the morning the process, in an appropriate way, as you say.

Mr. Christopher S. Saunders: Sorry, Mr. Chairman, through you, I do not accept that answer and I want to tell you why.

This month would have been 30 years since I first joined the public service. Having had the experience of working in the Auditor General's Office, internal audit, I am familiar with the financial regulations, and Mr. Miller would remember that from his time going back. Procurement is not something new to the Cayman Islands Government, and some of the mistakes that we are making now, compared to where we are coming from, in this day and age, is completely unacceptable. This is not a new process; this is a process that even pre-dates me. For the last number of years since the Government has been active, we have easily spent billions of dollars of public money procuring outside stuff.

What I am trying to get at is, this is where the technocrats within the public service really need to up their games, in the sense that, some of the things being procured, the reason by which it is being done—and unfortunately, this is not directed more at you, because you are catching it after a decision has been made. This is going to the general chief officers and people within the ministries who are supposed to be providing this technocratic support to the elected Government. They basically need to up their game because when you look at the calibre of RFPs that are going out, which you would have dealt with, which should have been driven by the business case, the business case is poorly done, if it is even completed at all.

So, you are basically starting a process where you really do not know what it is you really want to buy, you do not know what success looks like, and that is the issue that needs to be fixed first, before it even comes to your office. Your office is basically trying to now patch the different pieces or trying to make sense of what it is that they want to do. They need to fix that part first, before it comes to your office. That is really and truly the reason why we are here today. That process is broken and is the process that needs to be fixed. So yes, once we have made that decision, then there is a process to go through on the procurement side, but it is decision that starts with, and that is really where the problem is.

One of the things that I do want to ask of your office, though, is: How do you guys manage collusion? Now, from an auditing stand point, that is when the checks and the balances and everybody come together.

I think the Chairman touched on a situation before where bids went down from nine to seven and from seven to five. But, what happens when those bidders decide, *You know what, I am going to pull out and then I am going to join forces with another bidder,* which in essence then, bastardised the process? Where then, does the Government ensure that they can now have value for money? Because, if the bidders decides to come together and to put something together, then, how does the Government sit down and evaluate that? That is what I am more worried about in your office. But going back to my previous issue: that is what needs to be fixed. Business cases need to be fixed because that drives the RFPs.

For your question directly to you, is on the collusion side. How do you guys deal with that, when bidders decide they are going to come together and try to beat the process?

[Pause]

Mr. Taraq Bashir, Director, Central Procurement Office: Thank you, Mr. Chairman, for the question.

It is a very good question. Not very easy to answer, so I will try to maybe put some hypothetical situations in there to maybe attempt an answer.

The Procurement Law and the regulations talk about collusion. It does say if there are bidders that are colluding, they will be excluded from the process.

My understanding, sir, is that your question talks about potential collusion that we are not aware of. So, there are two things:

1. Is something happening that we are not aware of; and
2. Is something happening that we are aware of.

I am going to give you a scenario that I am aware of from my past experience; let's talk about five bidders, and they produce like a cartel and you only have those five bidders in your jurisdiction to bid. So, they are in a position of strength because you have nowhere else to go. They are setting your price and bidding against those prices. There are a number of things you can do in that scenario.

You have to try to develop and create a strategy where you have some leverage on your own side, because, in that situation, they have all the leverage and all the cards. Therefore, you have to try and create some competition to make sure that they are competing amongst themselves because it is competition that is going to give you an improved service and improved value for money. You have to avoid the situation where you are trying to award all five of those contracts. You now have to try to create some competition so that they are now competing with each other to win that business.

As far as what we are concerned about in the Cayman Islands, we are a relatively small country; therefore we have a relatively small number of suppliers in certain services and goods. We also have a little bit of a conflict in our own minds. That conflict is, we have a duty to protect our own businesses and our own economic situation, but we need to do that whilst at the same time making our suppliers more and more efficient, trying to get them to become more and more innovative, so that they, in the end, deliver better value for us in the long term.

Going back to my scenario of those five bidders, in that situation, we have to say we need to introduce some competition from outside the Islands just to break up that cosy situation. We have to try and understand what the real value is that we are trying to get from those tender submissions. At the moment, we have a situation where our construction sector is very, very buoyant, so we have to try to understand how we award those contracts to the construction centre. How do we develop smaller businesses that will create some competition? Maybe sometimes we have to split up those contracts. So, instead of always awarding to the biggest supplier—if it is only one big supplier—sometimes you have to think about how you break those contracts up into packages to encourage more competition to avoid the collusion situation.

So, these are two or three things that I have given you in terms of strategies that you can try to adopt to avoid the collusion in the first place, whether you aware of it or whether there are times that you are not aware of things. Does that answer your question, Mr. Chairman?

Mr. Austin O. Harris, Jr.: Mr. Chairman, through you. To the question raised by my colleague, the Member for Bodden Town West: the Auditor General's report on page 26 and the recommendation on page 27, paragraph 60, speaks specifically to the point the Member for Bodden Town West just raised. Paragraph 60 stated, and I quote: **"Overall, we found limited competition in bidding for government contracts for outsourced services, with most open competitions attracting single bidders only. Our review found only a small number of contracts that had attracted multiple bidders:"**

So, this notion of the CPO, through the Procurement Law, attracting competition to ensure fairness has not been achieved. And, recommendation number 11, through you, Mr. Chairman, states that: **"The Government should develop new approaches, such as more and better engagement with the market, to encourage more competition among potential suppliers of outsourced services."**

If we can add to that, Mr. Chairman, in looking specifically at pages 30 and 31—and there will be a question at the end of this—paragraph 67 speaks to

the issue of the quality of contracts and in particular the variation in the quality of contracts for outsourced services in terms of standard terms and conditions of contracts for consultants. I believe this was another area whereby the Auditor General's Office provided guidance as to how we cannot only make the process fair and open to competition but also to ensure that the same rules apply to everyone.

According to the Auditor General's report, the analysis shows that:

- **"Most contracts (19) specified [in detail] the services to be provided by the supplier. However, three contracts did not clearly specify the required quality of services . . .**
- **"Most of the contracts (18) included termination clauses; although four did not.**
- **"Just over half of the contracts (12) included clauses setting out consequences to the supplier for late or non-delivery of the main output; and**
- **"None of the 22 contracts reviewed, provided any success measures regarding the services being provided."**

I wonder therefore, if the witnesses might be able to inform this Committee as to what actions have since been taken, to improve the quality of contracts, including appropriate clauses and success measures to support their evaluation.

[Pause]

Mr. Kenneth Jefferson, Financial Secretary/Chief Officer, Ministry of Finance and Economic Development: Mr. Chairman, thank you and thank you to Member Harris again for his question. I am going to let the Director of the Procurement Office deal with it.

I do know that as recently as last month (September) we have been in contact with the Portfolio of Legal Affairs to get their input as to standard terms and clauses of contracts. The Legal Portfolio has, in fact, provided those standard inclusions, including non-performance, et cetera, to the Central Procurement Office for future contracts. However, it was in late September that such input was received, but I will let the Director elaborate.

Mr. Taraq Bashir, Director, Central Procurement Office: Thank you, Financial Secretary.

Mr. Chairman, from the honourable Member there seems to be a number of questions and points being made, I am going to try to address those.

As the FS says, we received some standard terms and conditions from the Solicitor General's Office and we are using those now as part of our tender process.

Just some of the points being picked up in the report, to answer the points raised by the honourable member: when you have a situation where you only have one supplier in the marketplace that can provide that service, you have a number of things that you can do. You can try to encourage other bidders to come into the marketplace so that you are creating some competition, so this is about engagement. For example, if it is a bus company you can try to encourage other transport providers to come into play in terms of delivering these services. You can do all these things before you start a procurement process.

You can do a request for information, you can engage with the marketplace so that you are trying to change the market. I talked earlier about being in a position where we have some leverage. Where you are in a situation in the market where there is only one supplier, it will result in one bidder or no bids. So, you have to do a lot of early work—a point raised by the honourable Member, earlier —to ensure that there are other players prepared to enter into that competition.

Failing that, there are other things that you can do. For that particular service, you could consider bringing it in-house. If you do not believe that that one bidder is going to give you value for money because they are the only bidder, you have to be a position to understand the service that you need, you have to understand what value you are getting, not just what you are paying. Paying a price is one thing but you have to understand what value you are getting for that. If you are not getting appropriate value, as a part of your business case, one of your options you should consider is to bring that services back in-house and then manage that service efficiently and effectively to ensure that you are getting value for money.

The other thing that you can do if you are not ready to bring the service back in-house and you know there is only one bidder and you know there is only supplier that is going to bid, you have to try to understand what their cost base is; so you have to do a bit of preparatory work and maybe you can talk to them. Maybe you can have a procurement process that is not just about a bid; that as part of that bid they need to give you a full-detail cost response so that you can critique and analyse it, and determine whether you are really getting value for money or whether it is a disproportional price.

There are a number of strategies which you can take to deal with that particular example that we talked about. If I can, move away from that point, Mr. Chairman, unless anybody has any questions.

The scenario we talked about, around the quality of the service delivery, this is all around how you put your specification together. I talked earlier about the specification in a tender exercise. That specification—and we are doing a lot of training at the moment, around developing very clear, very well defined specifications—should include accepted service levels. What is a service failure? What is a good level of service? How do you measure it? What are the thresholds and the points on which you decide that that service is unacceptable? What are the points at which you decide that a contract should be terminat-

ed? All those things should be thought about when you are putting together your specifications and they should be built into your contract so that your contract protects us, and as a government and public sector, from those suppliers.

Mr. Austin O. Harris, Jr.: Thank you, Mr. Chairman and through you. I want to thank the witness for their responses.

Just a final question, again, in terms of fostering competition which is the stated intent of the Central Procurement Office when submitting procurement bids or otherwise. If I could turn your attention to page 23, specifically paragraph 53, which states: **"We had previously reported that the Government does not have clear rationale for outsourcing services. We also find that it does not do sufficient market testing before procuring outsourced services."**
Paragraph 54 goes to highlight that **"The Central Procurement Office has published one market research paper May 2017 by United States-based firm that provides guidance for buyers of janitorial services. The report provides useful information on the purchasing process . . . However, the market research is based entirely on the market in the United States and the data is not relevant to the Cayman Islands."**

Now, respectfully to the witness, he may or may not know this, but we have a tendency in this country to cut and paste recommendations from other jurisdictions, and when they do not work here, we are left shrugging our shoulders wondering why that is.

Therefore, the question is: Can the witness inform this Committee as to what action has been taken to develop further market testing and to ensure that that market testing is in fact applicable and relevant to the Cayman Islands prior to engaging in this outsourcing exercise?

[Pause]

Mr. Kenneth Jefferson, Financial Secretary/Chief Officer, Ministry of Finance and Economic Development: Mr. Chairman, thank you for your indulgence.

Mr. Chairman, I was just discussing with the Director of the Procurement Office the fact that in the recent past, the office has requested from the Ministry of Finance itself, details of spend analysis within government. The Ministry has provided that information to the office and that has led to, for example, the situation where we now have office supplies for the government, essentially get sourced from two suppliers in the Cayman Islands. In very simple terms, what that entails is that, if you want a particular pen or paper of a certain quality, et cetera, you are recommended to go to supplier number one, as opposed to you wanting a different product, you then go to office supplier number two.

I will invite the Director to comment in a bit more detail about that type of work that we have undertaken. I know that his office has once again, in the last week or so, requested that the Ministry of Finance provide his office with a spend analysis of expenditures throughout the course of government, with a view of establishing common expenditure areas; obviously with the objective in mind, of the Government essentially using its collective purchasing power to obtain better pricing for the purchases that it does make.

Mr. Taraq Bashir, Director, Central Procurement Office: Thank you, Mr. Chairman. Through the Chair, I thank the FS.

This kind of data analysis is very normal for public and central organisations. For us, in the centre, we can understand the market place quite significantly from spending not so much time once they have good quality data. We can then start to develop strategies and to help the entities on how they should move forward. Specifically, to the honourable Member's point, I agree totally that the US marketplace is no representation of the Cayman Islands marketplace.

We actually have a very small contract with an organisation called ProcurementIQ. What they do is, they do not just provide you a market analysis in the US, they provide you a lot of other information. They give you a basic understanding of price points, and they give you a basic understanding of how those specifications are built for specific goods and services. The reason we access this information is to provide an early base point for the entities to understand what procurement they are going to be embarking on, not as an end-all solution for their marketplace.

We would always encourage—and we do have a small contract with a procurement support company—to actively understand our local marketplace first, because this is a very important decision point in our procurement process. If we have a well-developed market-place clearly, other than collusion, we would want to avoid those contracts within our own jurisdictions. And, if we find that there is only one supplier; we want to do all the things that we discussed earlier on around developing that market-place.

So, the ProcurementIQ reports that what we get from the US are not an answer to the Cayman Islands' market-place; they are just an initial stepping stone and a start.

The way we do market analysis, we do requests for information. So, when people come to us and say we are not quite sure what we want, we are not quite sure what is out there, we encourage them to do a formal request for information to the marketplace. We can do that through our electronic portal called 'Bonfire' or we can do it very informally by just sending e-mails. This encourages the project manager and the entity to start to get an interest in the market that they are going to procure from. So, this should

give them an indication of how many players are out there, what their capabilities and capacities are, what the qualifications of the suppliers are, and it helps them to start developing the strategy for their procurement that they should be putting into their business case.

Mr. Chairman, those are the kinds of things that we are doing to support market engagement. It is a good first step in the procurement process, as well as doing our own data analysis to guide all the different entities and also, encouraging the entities to develop their procurement plans so that we have visibility. The key thing about a procurement plan is that the entity has their own visibility, because until they put something on a piece of paper, I have no confidence in some of the things that we do in the centre. It is not just about us doing the job; it is about giving the entities the visibility to help them to do their own jobs.

Hon. Bernie A. Bush: Mr. Chairman, through you.

Member Harris already covered what was said in paragraphs 53 and 54, so, I will back-track to what Member Saunders brought up earlier.

My first question: for you to get that job, it was advertised. You got the job, which means you should be qualified to do your job; you are qualified in your field. You have seen the Law that is there for you to work with. When this [Bill] was here, the Chairman brought, I guess, easily over 20 amendments to that [Bill]. How many were taken? Very few. But in your expertise, have you said to the powers that be, to avoid things like collusion, to which Member Saunders said, you have three bidders, one or two back out and then they all come together as one—these types of instances? Have you sat with the powers that be in your professional capacity and advised them what to do for us to avoid these things?

[Pause]

Mr. Taraq Bashir, Director, Central Procurement Office: Mr. Chairman, we discussed the point earlier, that we are going through a full review of the Procurement Law and the Procurement Regulations and Financial Regulations. The objective first of all being: to identify any improvements and secondly to iron out any differences and inconsistencies between all those things.

Just going back, we already discussed collusion. I have worked in three different countries and probably four or five different public sectors in those countries and, from my point of view, as far as the collusion is concerned, the Law does set out that suppliers will be excluded if there is any evidence of collusion. So, I do not think there is much more. We discussed about all the strategies and the plans that you can do to avoid yourself being the victim of collusion. Those are things that we have to do, from my point of view, outside of the Law. The Law should say, *If those collusions happen, this is what you do as an effect or outcome from that.* But, the responsibility actually, is for us to do all the actions that we talked about earlier: How do you deal with those suppliers? How do you deal with those supply bases? How do you deal with a situation where you only have one supplier in the whole market place because this is not collusion, but you can be taken advantage of? All those things are about good processes and a good start. The Member talked about taking a very good first step so all those are the things that you can do.

I am working with an Authority at the moment where I have those exact discussions around their concerns, around potential collusion with a number of potential suppliers, and I have discussed all the strategies that they can do and they can take. Nevertheless, they have to be a little bit careful because if you only have one source of supply, what you need to do is to be careful that you do not kill off that source of supply. You have to find a way to managing your outcome, so that you are not killing your business of government in the process of dealing with them. These are all strategies that you have to take—in my view, good practice outside the law—to avoid us being the victims in the public sector and to make sure that we get good value for money.

Hon. Bernie A. Bush: Once again, in your expert field, when you see loopholes on these things that are possible, you will advise us—well, not me but the powers that be—in writing? You would advise us that, *This is a possibility; you all should go back and check your regulations or your laws.* You will do that?

Mr. Taraq Bashir, Director, Central Procurement Office: Yes, absolutely.

Hon. Bernie A. Bush: Thank you.

The Chairman: Mr. Jefferson, I guess we are pretty close to completing the budget process for year 2020/21. Is there a routine assessment done by the various entities or by the Ministry of Finance in looking at some of these things that are outsourced, as to bringing them in-house under one entity and maybe you can get a better service and it may even be cheaper? Is there any evaluation done?

Let me give you a specific example: we have a civic compound in my constituency which is made up of the school, the civic centre, the clinic and the library. You can stand in one and pelt an almond and hit the other one, but we have four different landscape companies that are looking after [buildings]. By my observation, what happens is that the guy that has the contract for the school blows the leaves in one direction, the guy that comes along from the library blows the leaves back in the other direction; the guy for the clinic blows the leaves towards the library and he

blows them back towards the clinic and the clinic blows it back to them.

At some point in time—and I have been saying this for seven or eight years—it has to be better for government to create two positions in the civil service and offer employment to two citizens in the district to do that whole compound and you will have much better capability of managing the results.

I am just wondering if there is any system in the budget preparatory process that demands that these entities evaluate what they are getting and what it is costing.

Mr. Kenneth Jefferson, Financial Secretary/Chief Officer, Ministry of Finance and Economic Development: Thank you, Mr. Chairman, and I understand the scenario that you painted and, just to make a light moment, it almost sounded like collusion.

[Laughter]

The Chairman: It is because what I believe is happening is that the landscape companies are agreeing that, *I will do North Side, you do Bodden Town, you do East End, you do George Town,* so there is not any advantage, price-wise, in outsourcing it.

Mr. Kenneth Jefferson, Financial Secretary/Chief Officer, Ministry of Finance and Economic Development: Mr. Chairman to answer your question though, normally, the scenario that you painted and the question you posed, there is not, to my knowledge, a formal standing mechanism by which that is considered.

As we lead up to the budget, the Government centrally sets allocations for each ministry, portfolio and office to abide by. Submissions are then made by the ministries, portfolios and offices in respect of those allocations and being honest, in the majority of cases, the submissions received exceed allocations. So, we then get into budget discussions as to how those submissions are to be trimmed and made in line with the allocations issued.

The most likely answer to your question is that in that process of bringing in chief officers, having discussions as to why their budget submission requests are X million, when your allocation is .75 of X, it is in that setting that we frequently get the considerations that you thought of, like, can we cut costs in this area or combine functions of government in order to save or reduce expenditure? It is in that setting that those sorts of considerations normally arise, but there isn't an established unit/area within government at the moment, that is charged with those types of considerations, but they do emerge. They do emerge.

The Chairman: There are no other questions, so we thank you for your time and your answers to the questions and we will take your advice under consideration on making our recommendations. The meeting is suspended until 2 o'clock.

Kenneth Jefferson, Financial Secretary/Chief Officer, Ministry of Finance and Economic Development: Mr. Chairman, if you would indulge me for less than a minute?

The Chairman: Sure.

Mr. Kenneth Jefferson, Financial Secretary/Chief Officer, Ministry of Finance and Economic Development: I just wanted to say that, obviously, the public would have received a considerable amount of information today. I wanted to try and summarise it very simply to speak about the procurement regime that is now in place.

The procurement regulations and law that are now in place requires the Government to publicly tender, to publicly make aware of their needs for goods and services that exceed $100,000 and more. We have to do that publicly. If it is less than $100,000, the chief officer of a ministry, portfolio or office, can actually make that decision. If it is $100,000 and more, it has to be made publicly available, then there is an entity procurement committee that is established ministry, portfolio and office in the government. That committee then makes recommendations based on bid submissions that it receives, makes a recommendation to the chief officer of the ministry, portfolio or office acquiring, and the chief officer then makes the ultimate decision.

If the value of services is greater than $250,000, then we step to another level, the Public Procurement Committee, which then looks at those bids. Actually, the Public Procurement Committee as well, will rely on, and will look for, the decision of the chief officer and the entity procurement committee, in this particular $250,000 and above. So, there is another level of scrutiny at the Public Procurement Committee level for $250,000 and more.

Details of the successful tenderer have to be publicly made available on government's Public Procurement Office's website so that the public can be aware of the successful tenderer.

Mr. Chairman, I would also say that when government's procurement portal called 'Bonfire' was established, there were approximately 1,900 vendors that were registered on Bonfire as making themselves available to do certain services. So, I would imagine that a lot of those 1,900 vendors are frequently visiting the site to see what opportunities there are available. I have been advised that some 180 or so procurement opportunities have been placed on Bonfire as to opportunities available for the public to essentially subscribe to and bid for.

I just wanted to leave the public with that sort of general information and we in government, being the Ministry of Finance, we do see that the present

regime, although not perfect, is an improvement from where we were before.

Mr. Christopher S. Saunders: Thank you very much for that, Mr. Jefferson.

Just one quick question from your statement: What is to stop an individual or individuals from breaking the project up into several small pieces to by-pass the safeguards that are in place?

[Pause]

Mr. Taraq Bashir, Director, Central Procurement Office: Mr. Chairman, we did touch on this subject earlier. The Law specifically says that you should not do that, but we also touched on the fact that sometimes it is in the better interest to do that. We talked about collusion, we talked about single suppliers, and the Law does say that, to protect the local companies, there are sometimes good reasons why you should do that. But to answer your question, the Law specifically says that this is not allowed.

Mr. Christopher S. Saunders: The Law says that I should not speed either, but at some time we all still do it.

The reason I asked is because we did have an example where a particular project was actually broken up and I do not think it was actually re-tendered after it was broken up. So, it went through the tendering process, it did not go a particular way and then it was broken up and distributed.

These are the real-world examples of what it is we are faced with as opposed to what the Law says in theory, but what goes on in practical is something different and that is what we are trying to understand in terms of the various safeguards.

Mr. Taraq Bashir, Director, Central Procurement Office: Just trying to maybe answer in a little bit more detail, if you can allow me, the first question is: How do we stop the laws being broken? I guess my answer to that is there are a lot of steps and balances in place.

The Financial Secretary talked about the Entity Procurement Committee; those procurements, when they are broken down still have to be signed and approved by somebody. The chief officer has to approve them. So, if somebody is, in your words, unfairly breaking down procurements when they should not be, if they are above $100,000, they have to go to the Entity Procurement Committee. So, there are a number of steps and balances in place to avoid those scenarios and those committees can reject that procurement if that is what they understand is being done.

We have visibility from the Central Procurement Office of all the procurements over $100,000, about anything that is published in the Bonfire portal and the chief officer has to approve them as well.

The Chairman: Let us take a scenario where a project is tendered and it is a $10 million range, so obviously, it goes to your Committee and they do not get the price that they wanted; the price comes in at $12 million. What happens if the chief officer then decides to break up that $10 million project into entities that fall below the $250,000 mark so that it is done, basically, by the chief officer without retendering it? Or, if it is retendered, it is handled at the entity level and not going back to the Procurement Committee? Under the Law, who is charged with preventing that kind of activity?

Mr. Taraq Bashir, Director, Central Procurement Office: Mr. Chairman, I did talk about a Procurement Code of Conduct. We have a number of things that we have to comply with, in terms of roles and responsibilities and our duties. The most basic one is that we have to comply with the laws and the regulations of the land. So, if somebody chooses, actively, to break those laws and regulations then they are accountable for their actions.

The Chairman: Accountable to whom?

Mr. Taraq Bashir, Director, Central Procurement Office: Well—

The Chairman:—you are not accountable unless you are accountable to somebody. We are all accountable to the man above but He doesn't come down too often to walk amongst us and make judgments.

In this situation, my question is: if that happens, which is obviously against the intent of the law, who is responsible to stop that and say, *This is illegal, this is not what the Procurement Law intends, you have to re-tender the whole process on the package that you did before.*

Mr. Taraq Bashir, Director, Central Procurement Office: There are—

The Chairman: Is it you?

Mr. Taraq Bashir, Director, Central Procurement Office: If I am aware of it, yes, absolutely I do but—

The Chairman: Okay.

Mr. Taraq Bashir, Director, Central Procurement Office: There are situations, Mr. Chairman, and we discussed them already through the meeting, where it is in your interest to get a good outcome, to break that contract up. So, it is on the intent of why you are doing it.

As a very good example, I can talk about the Mental Health Facility. We did do procurement for this service and maybe it touches on a number of points that are being raised. We did procurement for the full package and we found, in this instance—and we talked about the construction industry in the Cayman Islands—that the bids that were coming back were way above our expectation as a government of what we think is good value and what they should be.

So, in that instance, we made a conscious decision, a conscious and strategic decision that said, *This is not acceptable to us, so we will break this down into a number of different packages.* So, it is a conscious, strategic decision that we make as a government. Those kinds of decisions should not be made by one person in a darkened room. They should be made by people that are going to have some thoughts, and I would hope that they would come and consult with myself as well, because, when we have a significant failed procurement, I would expect people to come talk to me for some advice and some guidance and, if I need to, talk to the Financial Secretary about guidance as well.

So, in that instance, we made a conscious decision to break that package into three separate packages for the clusters of cottages, a separate package for the preparation work and a separate package for the main building. The result of that is that we had a successful procurement because our objective from a procurement process is to get a successful outcome of what we are trying to achieve.

The Chairman: Did you put out an RFP for those individual units, and was the total sum less than what the total package was prior to?

Mr. Taraq Bashir, Director, Central Procurement Office: Yes, Mr. Chairman, that is correct.

The Chairman: And it is the same level of confidence that you can place on the construction companies and the capabilities of the construction companies who responded to the original RFP for the total project? It is not a situation now, where we have come down, under the Builders' Law, from a general contractor to a home builder contractor to build the units?

Mr. Taraq Bashir, Director, Central Procurement Office: Yes, Mr. Chairman.

The Chairman: With less insurance liability, less technical qualifications, et cetera, most of whom could not have met your original RFP requirement, because my grandmother told me, *you get what you pay for.*

Mr. Taraq Bashir, Director, Central Procurement Office: I am trying hard not to respond.
[Crosstalk]

Mr. Taraq Bashir, Director, Central Procurement Office: It is about understanding the value that you are getting, Mr. Chairman.

In the first instance, as a government, we made a considered decision that said, *The value and the tender responses for this total package is not good value for us.* And, it was very clear to see, in those kinds of situations and those kinds of construction projects we employ, for quantity surveyors to give us expert advice on what our expectation for that bid is. We discussed this point earlier on. If the actual outcome is way above that, we have to make a decision, first of all, on value, and we made a conscious decision to cancel that procurement.

The Chairman: And none of the requirements in that particular case, that is, the electronic fencing and all, of that sort of stuff, nothing that the original RFP asked for was eliminated from the individual RFPs on the three separate projects?

Mr. Taraq Bashir, Director, Central Procurement Office: Mr. Chairman, you are correct. It still provides the full facilities that we were looking for.

The Financial Secretary has asked me to confirm your answer, which is that the total value of the separate packages was less than the cost of the original tender document without any reduction, in terms of your requirements and the quality of your outputs.

The Chairman: To be determined at the end of the project.

[Inaudible interjection]

The Chairman: If not, thank you very much. It was interesting morning and we will suspend until 2 o'clock when we come back to deal with Ms. Cetonya Cacho, Chief Officer in the Ministry of Education, Youth, Sports and Agriculture.

Thank you all.

Proceedings suspended at 12:36 pm

Proceedings resumed at 2:05 pm

The Chairman: Good afternoon.

Let the record show that we have a quorum present and I would like to call the Public Accounts Committee back to order. For the listening public, we are still dealing with government's use of outsourced services, and this afternoon we have Ms. Cetonya Cacho, Chief Officer, Ministry of Education, Youth, Sports Agriculture and Land.

[Pause]

MINISTRY OF EDUCATION, YOUTH, SPORTS, AGRICULTURE AND LANDS

Ms. Cetonya Cacho, Chief Officer, Ministry of Education, Youth, Sports, Agriculture and Lands: Cetonya Cacho, Chief Officer in the Ministry of Education, Youth, Sports, Agriculture and Lands.

Mr. Mark Ray, Head of Business Services, Department of Education Services: Mark Ray, Head of Business Services, Department of Education Services.

ADMINISTRATION OF OATHS OR AFFIRMATIONS

Ms. Cetonya Cacho, Chief Officer, Ministry of Education, Youth, Sports, Agriculture and Lands: I, Cetonya Cacho, do solemnly, sincerely and truly declare and affirm that the evidence I shall give to this honourable Legislative Assembly, shall be the truth, the whole truth, and nothing but the truth.

[Pause]

Mr. Mark Ray, Head of Business Services, Department of Education Services: I, Mark Ray, do solemnly, sincerely and truly declare and affirm that the evidence I shall give to this honourable Legislative Assembly, shall be the truth, the whole truth, and nothing but the truth.

[Pause]

The Chairman: Good afternoon. Let me take the opportunity to thank you, Ms. Cacho for accepting our invitation. Also, let me congratulate you on your most recent confirmation as Chief Officer in the Ministry of Education. Anything this Committee can do to help you along, we will do.

As you would have been made aware, we are dealing with "Government's Use of Outsourced Services". We brought you here because the Auditor General reported, as a case study, the way you handled the bus contract. We hope that the rest of the civil servants who are listening, particularly chief officers, will all call you this afternoon and get some advice from you on how to handle their procurement.

Would you like to just take us through how you came about doing it that way and how you felt about the result that you got?

Ms. Barbara Conolly: Mr. Chairman, can I recuse myself from this session as a result of being the counsellor for the Ministry of Education? I will just remain as an observer.

Thank you.

The Chairman: Okay. My apologies.

[Pause]

Ms. Cetonya Cacho, Chief Officer, Ministry of Education, Youth, Sports, Agriculture and Lands: Thank you, Mr. Chairman.

I really want to say thank you to the team at the Department of Education Services which consists primarily of Mark Ray, who is the Head of Business Services and Jenny Rivers, the Procurement Officer, who work diligently; a very hard working team.

We have lots of resources coming through the Department of Education Services as you are aware, and more so now with the new curriculum, and they are just exceptional. I would ask, if you would allow me please, to have Mark respond on my behalf.

The Chairman: State your name and title when you begin, for the Hansards.

Mr. Mark Ray, Head of Business Services, Department of Education Services: Yes, sir.

[Crosstalk]

Mr. Mark Ray, Head of Business Services, Department of Education Services: Yes, sir.

Mark Ray, Head of Business Services at the Department of Education Services.

Mr. Chairman, for a number of years as you are aware, we outsourced the bus transportation of our students. One of the things that we recognised was the need to ensure that we have safe and effective transport, but we want to make sure that there is competition to allow for a good competitive process.

Traditionally, and I think this stems from the fact that the bus contractors are usually more prone to bid on routes that are within their area because obviously, the gas involved, the cost on time for moving far out of their catchment area might be a bit troublesome for them. Therefore, we believe that is the traditional method that they would use to determine what they would bid on. In recognising that, however, we always thought that we wanted to foster more competition and one of the things we decided to do was to break the tender down.

Previously, they would submit their pricing as a lump sum and we thought that maybe if we can get them to break it down, we would have more opportunity for better comparison. We would be able to evaluate a bit more clearly to see if we can negotiate to get better value for money recognising, of course, the large amounts of money that we spend on outsourcing busing. In so doing, one of the interesting—I would say—lessons learned from it was that, as with any private business, you have variations in the way different businesses go about creating their cost.

Even though we got the breakdown that we were looking for, it was a bit more difficult to really

compare one with another because where one contractor might say, *Okay I am making an allowance of 10 per cent for maintenance*, and another might say that amount might be two per cent for them. Similarly, someone may be looking at seven per cent profit, while another may be looking at 10 per cent profit.

So, in trying to make the comparisons, we recognised that that was also a little bit of a challenge in really sort of determining apples and apples. However, it allowed us to engage in some negotiations that we were not able to do previously. In that, we were able to identify, as they broke out, what their profit margin was and we were able to negotiate and say, *Well, can we work on this and bring it down?* And we were able to get that. We had agreement across the board with the bus contractors and the process definitely gave us a number of lessons learned, in terms of ways in which . . . and we had a very good discussion with the audit team. I really want to thank them because, not only did they seek to get information from us, but they shared some thoughts and ideas on what we could to try to do to make the process better.

One of the things we are looking at are pretender meetings, where we can really sit and have a discussion and present to the contractors, information that will help them to understand more than just the routes they service, so they can get an understanding of what is possible.

Also, because there are so few school bus contractors on Island, it is difficult to really test the market outside of who provides services for us currently, but we will definitely want to make sure that we have some requests for information from them. We are always working with them, so we know the pricing that they provide anyway. They have been more than willing to engage with us, they have been very willing to support schools in many ways that would not show up in the books, to be honest with you.

All in all, I would say the process that we went through, in terms of trying to foster more competition and negotiate with the bus contractors, was a useful one. It definitely taught us many things and we will continue to improve the processes as we go forth.

[Pause]

The Chairman: Thank you, very much.

We also noticed on the report that you are one of the few ministries at that level that prepared a business case and we think that was helpful.

Do you want to tell us a little bit about how you went about preparing the business case and did you avail yourself to the model that is on the Procurement Office website?

Mr. Mark Ray, Head of Business Services, Department of Education Services: Mr. Chairman, the development of the business case was in an area related to Information Technology (IT) services for our student information system. That business case was actually prepared by our IT manager in the Ministry, but at the time (if I am not mistaken) I do not think the model was available through government at that point. It was prepared to definitely give some form of justification as to why we would look to go in a sole-source manner to acquire this particular software.

Of course, in Education, we always have to identify resources that meet with our curriculum needs. So in that case, we used it for the IT programme and also, in several cases we are doing it now for our new curriculum. We are doing a lot of business justification cases because we recognise, as you will all appreciate, that if we have a specific curriculum that is being delivered, we need specific tools that will meet those needs. So, we continue to engage the business justification case model and utilise it and going forward, as per the requirements of the Procurement Law, we will do it for the tenders that we put out this year.

The Chairman: Do you have any plans to broaden this out to things like your janitorial, maintenance and stuff like that, which are substantial amounts of money?

Mr. Mark Ray, Head of Business Services, Department of Education Services: Yes sir, definitely, because they all fall under the guidelines of the Procurement Law, so those would require business cases.

The Chairman: Any questions?

Hon. Bernie A. Bush: Yes, Mr. Chairman.

The Chairman: Yes.

Hon. Bernie A. Bush: In the case of procuring the new books for the new curriculum, I have come to realise that some have not arrived yet. In your future dealings, when you deal with these people in procuring the stuff, will you be giving them deadlines to have it delivered and to be on time or something like what is happening, because it is a little difficult, but it still going along? Would that be covered in your next procurement plan or whatever?

Ms. Cetonya Cacho, Chief Officer, Ministry of Education, Youth, Sports, Agriculture and Lands: Yes. One of the risks that we identified when procuring curriculum resources was that we had quite a short lead-up time between when we ordered those resources once they had been selected because sufficient research needed to be done to ensure that we procured the right resources. So, that was a risk we identified earlier.

Through you, Mr. Chair, the majority of the resources arrived on Island as scheduled. The hurricane that affected the Bahamas slowed down some of our shipment and that was beyond our control. That being said, Mr. Ray and Ms. Rivers worked with the companies that we ordered from, to try to get the material as quickly as we could. They engaged in things like providing materials online, where possible, until the physical books arrived.

The Chairman: Any questions? I mean, they are really treating you good this evening, Ms. Cetonya.

In all fairness, like the Auditor General said, we are glad to see that you have adopted this style of procurement and you are being as constructive and definite as you are, and we congratulate you for doing it. We lean on you to brag a little bit in your Chief Officer's Minutes and tell them how good the PAC Chairman treated you and if you want to get treated well by the PAC Chairman, you better start doing these kinds of things, right?

Thank you all very much for coming and it has been a pleasure talking to you.

Ms. Cetonya Cacho, Chief Officer, Ministry of Education, Youth, Sports, Agriculture and Lands: Thank you, Mr. Chairman.

I would like to say thank you to the audit team as well. Based on the recommendations, Mark did not get to speak to it, but we have also put in success criteria in all of our contracts, as was one of the recommendation. We have plans, next year, now that the curriculum ordering has been mostly completed, to look at the monitoring evaluation process of those contracts, as recommended by the Auditor's Office.

Again, I would like to really thank the team at Department of Education Services for their work.

The Chairman: You can convey our thanks to them as well.

Well, this Meeting of the Public Accounts Committee is adjourned until the Chairman summons you all again.

[Laughter]

The Chairman: Thank you all very much.

At 2:15 pm the Public Accounts Committee stood adjourned.

Legislative Assembly of the Cayman Islands

PUBLIC ACCOUNTS COMMITTEE

MINUTES
Meeting held
Thursday, 13th February 2020 at 10:23 am

Present: Mr D Ezzard Miller, MLA - Chairman
Mr Christopher S. Saunders, MLA - Member
Mr Austin O. Harris, Jr., MLA - Member

Apologies: Ms Barbara E. Conolly, MLA - Member
Hon Bernie A. Bush, MLA - Member

In Attendance: Mrs Sue Winspear - Auditor General
Mr Patrick Smith - Deputy Auditor General (Financial Audit)
Ms Manesa Webb - Committee Clerk

1. Meeting to Order

There being a quorum present, the Chair called the meeting to order at 10:23 am.

2. Apologies

Apologies for absence were received for Ms Barbara E. Conolly and Hon Bernie A. Bush.

3. Approval of PAC Minutes

- Thursday, 7th January, 2020 (Administrative Meeting)

The Minutes were reviewed and minor amendments made. Minutes were then **approved** on a motion moved by Mr Christopher Saunders and seconded by Mr Austin Harris.

4. Matters arising from Minutes of 7th January 2020

Item 4 of the 7th January 2020 Minutes – Witness Session Preparations - The Committee had agreed by round-robin that the Auditor General could approach the Attorney General rather than a private law firm once she ascertained that the Attorney General wasn't advising the Cayman Islands Airports Authority (CIAA).

The Chairman requested to move the Education Report hearing because of conflicting appointments which was supported by round-robin. The Education Hearing date was moved from the 23rd of January 2020 to the 7th of February 2020.

The public hearings on School Education and Efficiency of Summary Courts were held on February 6th, 2020, and February 7th, 2020, and the Committee Clerk will draft the reports.

5. Approval of the Office of the Auditor General's Invoice

Invoice# 207328 dated 31 December 2019 in the amount of $51,569.52 was discussed and unanimously **approved** on a motion moved by Mr Austin Harris and seconded by Mr Christopher Saunders.

6. Consideration of the OAG Report

Financial Reporting of the Cayman Islands Government: General Report on the Results of the 2018 Financial Audits– February 2020

The annual reports and financial statements of the Government are the key documents that enable the Legislative Assembly and the residents of the Cayman Islands to hold the Government and individual public sector entities accountable for their use of the public money.

The Auditor General advised that to date, no entities have received a qualified opinion, which is a vast improvement and only four entity audits for 2018 remain outstanding.

The Auditor General advised that the consolidated entire public sector (EPS) account, which includes the consolidation of the public-sector entities along with the executive expenditure and coercive revenues of the Government, has not been audited for 2018.

The Auditor General updated that the following ministries, authorities and government owned companies were still outstanding:

- Cayman Islands Airports Authority (CIAA)
- Ministry of Health
- Cayman Airways Ltd
- Cayman Islands Turtle Centre

The Auditor General advised that her team tried to go through and pull out issues of interest. Timeliness of financial reporting remains good. The Stock Exchange was the only entity that did not submit their financial statements on time.

The Auditor General mentioned that the financial reporting has increased tremendously over the last ten years and Government should focus on getting to the next level by getting a proper performance framework in place and ensuring that the supporting schedules and items are ready for the auditors.

7. Consideration of Public Hearings

OAG Report on Financial Reporting of the Cayman Islands Government: General Report on the Results of the 2018 Financial Audits– February 2020: -

The Committee agreed that presentation event on the above report be held on 31st March 2020. For those entities achieving an unqualified option the Auditor General will provide a comprehensive list to the Clerk and will indicate which Chief Officers and Chief Financial Officers deserve special mention. Certificates will be prepared and presented.

OAG Report on Efficiency of Summary Court – November 2019: -

The Committee agreed to have a continuation hearing on the above Report to be held on March 2nd 2020 and that the following witness be requested to attend at the stated time:

PAC Hearings Date : March 2nd 2020		
Witness	**Government Entity**	**Time**
Hon. Franz Manderson - Deputy Governor	Office of the Deputy Governor	10:00am

OAG Report on ORIA Terminal Redevelopment Project - Progress Update as at August 2018: -

The hearing is deferred until the Committee receives legal advice.

8. Debrief on Hearings and PAC Reports

The Committee agreed that the following reports would be drafted and reviewed in the next administrative meeting.

1. Government's Use of Outsourced Services - June 2019
2. Customs in the Cayman Islands - May 2019
3. School Education - October 2019
4. Efficiency of Summary Courts - November 2019

9. Auditor General's Update

The Auditor General advised that Patrick Smith is now the Deputy Auditor General on the Financial Audit side, and Angella Cullen on the Performance Audit side. Work on the corporate matters is now shared between the Auditor General and the two Deputy Auditor Generals, and the old Deputy Auditor General post has been removed from the establishment.

10. Any Other Business

There was no other business for consideration by the Committee.

11. Scheduling of Next Meetings:

The next meetings were confirmed for the 10:00 am on Monday, March 2nd 2020.

12. Adjournment

There being no further business, the Chair adjourned the meeting at 11:46 am.