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CHAIRPERSON: Good morning. Can Mr Vermeulen confirm that he is still under oath?

MR VERMEULEN: I do.

CHAIRPERSON: Thank you. Advocate Lebala if I'm not  
5 wrong you had finished leading the witness when we adjourned  
on Thursday, and we adjourned because there was some party  
who wanted to cross-examine Mr Vermeulen and when we  
adjourned we made arrangements that the legal team must get  
copies of Mr Vermeulen's statements and annexures that you  
10 would recall the order was that we'll come back today, give  
them an opportunity to prepare their cross-examination and  
we'll start with the cross-examination this morning. Was that  
the arrangement?

ADV LEBALA: Morning Chairperson, morning  
15 Commissioner Musi, yes, that was the direction that we had to  
follow Chair. Chair, except to mention that I thought that at  
one time Solomon SC and Cane SC would address you on a  
procedural aspect that might arise as we go deeper and deeper  
in as far as this process is concerned, I don't know if it would  
20 be an appropriate time or we could leave it to a little bit later.  
Thank you.

CHAIRPERSON: Maybe if they are ready to address the  
issue, I'm not sure what the issue is all about, they can do it  
now before we start with the cross-examination.

25 ADV SOLOMON: Morning Chair and Commissioner Musi.

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One of the procedural aspects that I have raised with ...

CHAIRPERSON: Advocate Solomon I'm sorry, can you just pick up your voice a little bit?

ADV SOLOMON: Is that better Chair?

5 CHAIRPERSON: Yes.

ADV SOLOMON: One of the procedural aspects I did raise with my learned and good friend Advocate Lebala is this, there is a document that has been inserted into Mr Vermeulen's bundle that was furnished to us by Advocate Cane on behalf of  
10 the DoD to try and shed some light on the interaction particularly between Admiral Howell and Mr Vermeulen in the process. Now that is a document I would have dealt with in re-examination, Advocate Lebala was content for me to deal with the document with Mr Vermeulen. It just strikes me that if I  
15 deal with that document through the witness after there has been cross-examination under what we've styled re-examination, they may complain that they haven't had an opportunity to cross-examine the witness on that particular document, so I'm not sure how one intends to proceed.

20 Obviously although we've called what I, the task I performed with Mr Dawie Griesel as re-examination you will recall there were some questions that were raised by yourself Chair and to a lesser extent Commissioner Musi when I was traversing areas that hadn't been dealt with but I felt should  
25 have been dealt with, that were in the documents that were part

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of what Mr Griesel was supposed to testify about but didn't, so it just strikes me that if I'm simply there to re-examine and clarify areas that I feel my witness hasn't been asked and needs to address, even if it hasn't been touched upon at all, 5 it's going to have the effect that those who want to cross-examine for example this witness, are not going to have had the opportunity of being appraised of the extra documents or information that I want to elicit from the witness.

ADV SNYMAN: Chairperson, I just wish to clarify from 10 Advocate Solomon and Advocate Cane whether these additional documents that has been added to the Vermeulen bundle was placed in the bundle that was made available to us ...

CHAIRPERSON: I'm sorry, we are struggling to hear you.

ADV SNYMAN: Thank you. Can you hear me now? I just 15 wish to seek clarity from Advocate Solomon and from Advocate Cane whether this additional document that has been referred to today was included in the bundle which we received on Thursday last week.

ADV SOLOMON: Chair it is in my bundle, I can give the 20 page number, it was page 163 to 166. Chair and Commissioner Musi, it's the bundle that, the separate file that's been called the Declassified Documents bundle - Rob Vermeulen, just to check that you are with me.

CHAIRPERSON: Page?

25 ADV SOLOMON: 163 and following.

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ADV SNYMAN: Chairperson, our bundle ends at page 162.

ADV SOLOMON: Chair, do you have the document in your bundle, and Commissioner Musi?

CHAIRPERSON: Yes.

5 ADV SOLOMON: I see Commissioner Musi is confirming he has it, does Chair have it?

CHAIRPERSON: Thank you, we do have that document but I'm not sure at what stage was it put in our file but I see it is here in our file.

10 ADV SOLOMON: If I had to guess, some time on Thursday and it obviously hasn't gotten to the file that was given to the representatives of Lawyers for Human Rights.

CHAIRPERSON: Can I make a suggestion? I think you are correct that if Mr Vermeulen is going to be, is going to deal with these documents in re-examination other parties might be justified to complain and say that they were not given an opportunity of dealing with, or cross-examining on the basis of these documents. Will it not simplify matters if we suggest that if Advocate Lebala is inclined to do that, that he should deal with this document when he, he must reopen, deal with this document and from there we'll follow the normal procedure and we do that you know, to avoid possibility of one party saying that they were not given an opportunity of cross-examining on the basis of this document. Will that not be a better arrangement?

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ADV SOLOMON: Chair, Commissioner Musi, I'm in favour of that, I'll wait to hear from Advocate Lebala.

CHAIRPERSON: Before I hear from Advocate Lebala let me hear from Advocate Cane.

5 ADV CANE: Thank you Mr Chair for the opportunity to  
address you. Mr Chair and Commissioner Musi, the difficulty  
that the Department of Defence legal team had which was  
drawn to the Evidence Leaders' attention was that on Thursday  
16 October there were certain propositions put to Mr  
10 Vermeulen, the effect of which was that Rear Admiral Howell, a  
former employee of our client had in his official capacity at  
that time acted improperly in moderating the value system  
relating to the submarines. We complained that we had not  
been given notification of any intention to draw this kind of  
15 adverse inference and that no inquiries had been raised as to  
the whereabouts or availability of the now retired Rear Admiral  
Howell so that he could come and give evidence on this issue.

As I said, we raised that in the correspondence  
immediately on the 16<sup>th</sup> of October and we subsequently  
20 followed it up with a notification to the Commission as to  
Admiral Howell's whereabouts and the communication that he is  
available and cooperative to give his evidence before this  
Commission, and so what the Department of Defence would do  
at this point is reserve its rights to actually deal with this issue  
25 through the relevant witness who is the now retired Admiral

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Howell.

We thought that it was important to place it on record at this point because the document to which my learned friend Mr Solomon have referred in the document signed by  
5 Rear Admiral Howell and hopefully will be appropriately dealt with by him in due course, but it pertains to the issues that were put to this witness Mr Vermeulen during the course of his evidence in chief and for that reason it became necessary for us to contact Admiral Howell and to ascertain his availability  
10 and to inform the Commission that in our view he should be given an opportunity to himself give evidence on these issues. As you please Mr Chairman.

CHAIRPERSON: I think in the light of what the Defence counsel said I think it's unnecessary for Mr Vermeulen to deal  
15 with this document. If they are in a position to make the author of this document available to the Evidence Leaders probably what we might want to do is that after the cross-examination of Mr Vermeulen, then the next witness that maybe should testify and who must deal with this document will be Mr  
20 Howell himself. It will serve no purpose to ask Mr Vermeulen to deal with this document, with the document prepared by somebody else if that person can be made available and deal with the document that he himself authored. Would that not be the better arrangement? Advocate Lebala?

25 ADV LEBALA: Chair, you've hit the nail on the head.

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Might we add in parenthesis that our function is to bring evidence before the Commission and we have to bring inclusive evidence without excluding any single grain of evidence that could assist this Commission to enquire into, to establish facts  
5 and make recommendations.

We are taken aback by Cane SC's proposition, in actual fact when we led the witness in that direction in testifying about the role played by Rear Admiral Howell it was not only with a view to allow this Commission to draw an  
10 inference, we could have been specific to say let the Commission draw an inference but we trust the discretion of this Commission and that's the reason why that could highly qualify judges to chair this Commission, it's not up to us to say draw an inference, that stage is still coming, we are not at that  
15 stage.

Now if it's said that we wanted you to draw a negative inference that was not the intention, the intention was to bring that evidence and we are proud to say ...

CHAIRPERSON: Advocate Lebala, I think on that point I  
20 can mention it to you straight away that that's not the impression that I got, Mr Vermeulen clearly said that he does not know why Mr Howell did that, so there was no inference that was drawn by the witness that was simply a fact which was within the knowledge of Mr Vermeulen, but Mr Howell is the one  
25 who did A, B, C and D, he never said that he did that because

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of an illegitimate or wrong reasons, he said he doesn't know why he did that, so I think you can be rest assured you know that that's not the impression at that High Court when he, Mr Vermeulen testified about that issue.

5                   Now what I to find out is are you comfortable with the suggestion that I'm making by saying that seeing that Mr Howell will be made available to you, that Mr Howell should be the witness who must deal with this document which appears on page 163 to 166?

10    ADV LEBALA:           Certainly Chair, that's the basis upon which we were leading this testimony, in actual fact we have started that process as the Evidence Leaders to make it a point that Mr Howell appears before this Commission.

15    CHAIRPERSON:       Thank you. Advocate Solomon are you comfortable with that arrangement?

ADV SOLOMON:       Yes Chair and Commissioner Musi, I think that's a sensible approach and it is a document that Mr Vermeulen is not the author of and let Admiral Howell deal with it, thank you.

20    CHAIRPERSON:       Thank you. And then (indistinct) this document, we'll not deal with it now, we'll deal with it at a later stage. I suppose now we must move to the next step which is cross-examination, if any.

25    ADV SNYMAN:       Thank you Chairperson, thank you Commissioner Musi. Firstly my client Mr Holden wishes to

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address the Commission.

CHAIRPERSON: Just hold on, I'm not quite sure which procedure you are trying to follow now, it's not the time to address me, it's the time to cross-examine if at all there is any cross-examination unless if you want to say to me that you know, our regulations and/or directives makes provision for what you want to do now. I thought finally on Thursday when we postponed it was to give you an opportunity to prepare cross-examination, not to address me.

ADV SNYMAN: I'm in agreement with you Chairperson, the address which Mr Holden wishes to make to you is in fact that we have prepared cross-examination for today and that Mr Holden will be leading this cross-examination based on the circumstances of the nature of how we have been forced to prepare for today, given when we had access to documents, given the years and length of time that Mr Holden has researched this subject matter we are of the view that Mr Holden is best placed to assist the Commission in this way, this is the address which Mr Holden intended making before proceeding with cross-examination and I'm of the view that both the guidelines make provision for this as do the correspondence that has been addressed to Mr Holden and our other clients.

CHAIRPERSON: Unfortunately I don't think you know this is the time to make speeches, if it all he wants to cross-examine

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let him go straight into cross-examination.

ADV SNYMAN: Thank you Chairperson, then we will proceed.

CHAIRPERSON: Thank you.

5 MR HOLDEN: Thank you Chair.

**CROSS-EXAMINATION:**

MR HOLDEN: Mr Vermeulen, we've heard during proceedings thus far that you have many pressing engagements to return to in Simonstown.

10 CHAIRPERSON: Just hold on, just hold on. Just to get our record straight can we get your full names?

MR HOLDEN: Certainly, my name is Paul Edward Holden. Can we begin again? Thank you Chair. Mr Vermeulen, we've heard during proceedings thus far that you have many pressing  
15 engagements to return to in Simonstown, as such I will endeavour to conduct this cross-examination in a short amount of time as possible. I'd like to focus first on the issue of the RFO Value System, it's a Request for Offer Value System which may seem rather technical to the casual observer, but I think is  
20 critical to understanding whether the submarine evaluation was conducted according to good procurement practice. Would you agree with that statement?

MR VERMEULEN: Yes Chair, I would.

MR HOLDEN: Mr Vermeulen, during your testimony you  
25 confirmed that you were appointed as the ARMSCOR programme

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manager serving on the Integrated Project Team from 1996 onwards, is that correct?

MR VERMEULEN: That is correct.

5 MR HOLDEN: And you served in this position for the duration of Project Wills.

MR VERMEULEN: That's right. That's correct.

MR HOLDEN: As a matter of interest at what stage did you cease being ARMSCOR project manager for Project Wills?

10 MR VERMEULEN: I have not ceased being the programme manager for Project Wills, I'm still occupying that post, albeit other posts as well.

MR HOLDEN: Briefly Mr Vermeulen could you recap what your responsibilities were as ARMSCOR programme manager for Project Wills?

15 MR VERMEULEN: During the RFO process or throughout the entire acquisition process?

MR HOLDEN: Throughout the entire process.

20 CHAIRPERSON: Just hold on, I think you must try and be specific. That question, if you say deal with the entire project, he has been in that position for 15 years, plus minus 15 year, are you saying to him now he must tell us what he has been doing from 1996 or 1995 until yesterday? It's too vague a question. Maybe try and be specific, because he tells you that he is still the project manager.

25 MR HOLDEN: Thank you Chair. Could we then restrict

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the answer just to the RFO phase please?

MR VERMEULEN: Certainly. During the RFO process, going back to the value system I was involved in preparing the value system insofar as the parameters that needed to be considered, working with submariner user specialists, with ILS specialists and the like, so my role in terms of the value system was actually preparing the document, debating in terms of the weighting processes that were contained therein and the actual parameters that were to be considered at a subsequent stage i.e. during the evaluation itself.

Once the offers were received my role continued in that I assisted in scoring, together with the rest of the Integrated Project Team and essentially in terms of the evaluation it ended with the scoring, the basic scoring of the values obtained from the four bidders.

MR HOLDEN: Just make this entirely clear ... Thank you Mr Vermeulen. As you testified last week one of your responsibilities as ARMSCOR programme manager was to compile the request for final offer document that was distributed in February 1998 to the five bidders selected following the completion of the Request for Information evaluation, is that correct?

MR VERMEULEN: That is correct, that process took place after the RFO, after the value system had been compiled, the RFO that was to, it was to be distributed to the bidders was

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compiled by myself together with all the attachments from various departments.

MR HOLDEN: Would it be fair to say then that you are familiar with the content of the Request for Offer document that was distributed to the five contenders for Project Wills in February 1998?

MR VERMEULEN: Yes, it would be a fair assessment.

MR HOLDEN: Now to clarify and reiterate points made in your testimony last week is it correct to say that the offers made by the bidders selected in the RFO, RFI phase, apologies, were to be evaluated according to the RFO value system?

MR VERMEULEN: Yes, as I stated during my testimony the RFO responses are binding and more formal than that of the RFI, so the RFI relatively is insignificant compared to the RFO.

MR HOLDEN: Mr Vermeulen, you testified that during the evaluation of bids submitted under the RFO process for Project Wills you served on the Integrated Project Team focusing on the technical evaluation of the submarines and that in this role you would have been very familiar with how the RFO value system was applied to the bids to drive out the result, would you agree with that?

MR VERMEULEN: Yes, in terms of the scoring of the basic results I was familiar with that yes.

MR HOLDEN: Just for clarity, could you briefly recap

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what the function of the RFO Value System was?

MR VERMEULEN: The RFO Value System was required to drive out essentially, or to provide inputs that could be used to selected a preferred supplier, taking into account the other  
5 three components as well that were happening in parallels, i.e. the Military Value System of which I was involved with, the IP Value System and the financing, so it was a component of that and it was designed to provide the necessary inputs to SOFCOM so they could make a fair assessment in terms of  
10 selection or recommendation of a preferred supplier.

MR HOLDEN: Thank you. Chair, Mr Vermeulen, can I now refer you to page 99 of the Declassified Documents bundle as was described last week, page 99. Is everybody on that page? To confirm Mr Vermeulen the document starting at this  
15 page is the final value system that was used to evaluate the bids as part of the RFO process, correct?

MR VERMEULEN: That's correct.

MR HOLDEN: Could you please turn to the following page. Mr Vermeulen this page confirms that the value system  
20 described in this document was approved and adopted on the 11<sup>th</sup> and 12<sup>th</sup> of May 1998, is that correct?

MR VERMEULEN: Yes, that would be correct Chair.

MR HOLDEN: Could you please name the individual who was responsible for the value system?

25 MR VERMEULEN: Yes, the value system was compiled by

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the-then project engineer Mr Gregory De Muynk who was employed as a civilian in the Navy, in the Naval Engineering Section, it was, the responsible party was Commander Reed who was appointed project officer at that time, it was approved  
5 by Admiral Howell, Director Naval Acquisition, it was also approved by Rear Admiral Simpson Anderson, Chief of the SA Navy, as well as by Mr Shaik who was Chief of Acquisition.

MR HOLDEN: Thank you. So to be pedantic this is the value system that was used by you and your fellow members of  
10 the Integrated Project Team to evaluate the bids submitted under the RFO process, correct?

MR VERMEULEN: Yes, that is correct.

MR HOLDEN: And it was this process that drove out the results you presented on your slides to the Commission last  
15 week that showed the German Submarine Consortium as the lowest scored bidder, correct?

MR VERMEULEN: That is correct.

MR HOLDEN: Thank you Mr Vermeulen. Can I now refer Chair and the witness to page 107 of that same bundle. Could  
20 you read into the record paragraph 6.5 and 6.6?

MR VERMEULEN: 6.5 reads:

*“Once the offer is received the various categories are then measured against the SA Navy’s requirement by scoring the criteria out of a  
25 predetermined score and then multiplying it by its*

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*relevant weighting factor. This process is rolled up into the final percentages obtained reflecting in essence the three major portions of the acquisition. This score then serves as a relative measure between the offerers and may be permeated by other factors such as the life cycle cost, acquisition cost or the cost of ownership”.*

5

MR HOLDEN: Thank you Mr Vermeulen. Chair, Mr Vermeulen, could I now ask you to turn to page 118 of the Declassified Documents bundle. Mr Vermeulen, can you read the title of this document please?

10

MR VERMEULEN: This document reads “Project Wills Submarine Evaluation”.

15

MR HOLDEN: Could you explain what purpose this document served in the acquisition process?

MR VERMEULEN: Unfortunately it is difficult for me to do this in that this document only came to my attention in recent weeks when I prepared for my statement. I hadn't seen this document before. I was under the impression that our basic results had always been directed directly to SOFCOM but obviously this intermediate step took place which up until recently I was unfamiliar with.

20

MR HOLDEN: Mr Vermeulen based on your reading of this document, and I suppose my reading as well, I'd like to ask you to clarify something, my reading, and I'd like to see if you

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agree with it, is that this document was amongst other things written to confirm the recommendation that the German Submarine Consortium was the winner of the technical evaluation and there was this outcome that was forwarded to the Strategic Offers Committee for compilation.

MR VERMEULEN: Yes, I believe it's clear from this document that that was its intention.

MR HOLDEN: Thank you Mr Vermeulen. Chair, Mr Vermeulen, can I now ask that you turn to page 124 of the Declassified Documents bundle. Mr Vermeulen, could you read paragraph 15 on that page, and if you wouldn't mind including the formula.

MR VERMEULEN: Certainly Chair. Paragraph 15 reads:

*"In determining the Military Performance Index (MPI) of the various options the ratio of the performance, logistic and engineering management values and their associated costs were calculated in accordance with the formula below".*

The formula reads:

*"MPI (Military Performance Index) is equal to the factor X times performance score divided by the cost plus factor X logistics score divided by the cost, plus factor X engineering management score divided by the cost".*

MR HOLDEN: Thank you Mr Vermeulen. This is

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obviously an absolutely crucial formula. If I may attempt to summarise the position this was the formula that was used to drive out the final results of the Military Performance Index. The scores awarded as the Military Performance Index, what  
5 were used to determine the best bidder and the technical evaluation and then the scoring adjudicated by the Strategic Offers Committee, it was the application of this formula, the performance results, which you were part of evaluating that drove out the scores that form the Military Performance Index  
10 and it was the application of this formula that saw the German Submarine Consortium move from the last place in the performance results to first place in the Military Performance Index. In other words there was the application of this formula that allowed the bidder, the German Submarine Consortium ...

15 CHAIRPERSON: Just hold on Sir, what are you reading from?

MR HOLDEN: Sorry Chair, I didn't hear that question?

CHAIRPERSON: What are you reading, where are you reading from because I'm trying to follow, I can't see the  
20 statement that you are reading.

MR HOLDEN: Sorry Chair, I'm trying to summarise what we've covered to date and ask if he agrees with what I state in my statement.

CHAIRPERSON: Are you making a proposition to him?

25 MR HOLDEN: That's correct Chair.

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CHAIRPERSON: Maybe if you can just be slow when you read it because I'm also missing some of the things that you are saying. Thank you.

5 MR HOLDEN: Fair enough Chair. I was told in primary school that I was a terrible mumbler, so if that happens again I apologise. Shall I start from the beginning of that line of questioning? Mr Vermeulen, this was an absolutely crucial formula, do you agree with that statement?

10 MR VERMEULEN: It's difficult for me to agree with that in entirety, I can only make an assumption that it was, bearing in mind I wasn't privy to the exact process that took place. This report was forwarded to SOFCOM no doubt, and I'm not sure exactly if SOFCOM took this at face value in its entirety, so it's difficult for me to agree with you one hundred percent in terms  
15 of your conclusion.

MR HOLDEN: Thank you Mr Vermeulen. Based on your reading of the document it was the formula that you've just read that was used to drive out the final results for the Military Performance Index, is that correct?

20 MR VERMEULEN: It certainly would appear so.

MR HOLDEN: And it was the scores awarded as the Military Performance Index that were used to determine the best bidder in the technical evaluation and of the scoring adjudicated by the Strategic Offers Committee bearing in mind  
25 what you have just said.

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MR VERMEULEN: Yes, it was.

MR HOLDEN: It was the application of this formula to performance results which you were part of evaluating that drove out the scores the form the Military Performance Index, is that correct?

MR VERMEULEN: Again I can only assume that to be the case. I didn't have the background which the author had in drawing up this evaluation, for instance in that formula I can't say exactly how those individual costs were ascertained, we didn't have that sort of breakdown available to us at that level. For instance the engineering management score, I've no idea how he actually arrives at that specific cost, bearing in mind the guidelines provided by SOFCOM which Mr Dawie Griesel provided some days ago and in which he stated that the total basic score should be divided by the total basic cost as I've testified the previous days. It obviously would appear from reading this document that that was not applied.

MR HOLDEN: Now you have pre-empted my questioning somewhat, I think you know where I'm going with this. If I can just return to the questioning, would you agree that it was the application of the formula that you just read from earlier that allowed the bidder, the German Submarine Consortium with the lowest scores and the technical evaluation conducted by you and the Integrated Project Team to emerge as the winner of the Military Performance Index evaluation?

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MR VERMEULEN: Assuming that SOFCOM took this at face value then I must assume that, but it's an assumption on my part, I didn't know the mechanisms exactly which applied to SOFCOM and the precedents, the significance they provided to this document, I can't say specifically but I can only assume that.

MR HOLDEN: Thank you Mr Vermeulen, I appreciate it, it's difficult to speak to a document that you weren't the author of. The Commission may be wondering where I'm going with this, so I'm going to try and clarify this now. Mr Vermeulen, does this formula that we've just quoted from appear anywhere in the RFO Value System as approved on the 11<sup>th</sup> and 12<sup>th</sup> of May 1998?

MR VERMEULEN: No, it does not.

MR HOLDEN: This is quite an important point, I would like to repeat it. While a formula of this type may have been anticipated by paragraph 6.6 of the value system, this particular formula did not appear at any stage in the RFO Value System document, is that correct?

MR VERMEULEN: Yes, that is correct.

MR HOLDEN: Mr Vermeulen, during your testimony last week you appeared somewhat surprised that this formula was used to drive out the Military Performance Index scores, it appeared to my view at least that you only became aware of the application of this formula when you are allowed to do the

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Submarine Evaluation report compiled by Captain Reed and Admiral Howell during the preparation of your testimony, is this correct?

MR VERMEULEN: Yes, that is correct.

5 MR HOLDEN: Without putting words in your mouth I would imagine that you would not have been so surprised if this formula appeared in the RFO Value System with which you are very familiar, correct?

10 MR VERMEULEN: It's difficult, I think it would have been practically difficult for it to appear in the RFO Value System because I'm not sure if the formulation of the SOFCOM had been finalised at that stage, so I think the author in the value system would have had some hindsight, had to have had some hindsight knowledge to include that formula at that early stage  
15 in the value system. I think that the actual level 2 or second tier SOFCOM only really took shape subsequent to the RFO Value System, but I might be incorrect.

20 MR HOLDEN: I'm going to ask a slightly difficult question and I hope you don't mind, and it may be a slightly unfair question as you didn't actually compile this document but here I'm just trying to get your opinion. If this formula did not appear in the RFO Value System document ...

CHAIRPERSON: I'm sorry, are you saying you want to get his opinion?

25 MR HOLDEN: That's correct.

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CHAIRPERSON: Opinion?

MR HOLDEN: Yes.

CHAIRPERSON: Is that opinion going to be of any value to us particularly if he was not part of the, if he's not the author of the document? Shouldn't you perhaps ask him about what is done and what he knows? I'm sure you will agree with me that you know his opinion is not going to be of much value to us because we have the documents in front of us, we can read it and from there form our own determinations. If you can try and avoid asking questions where he must speculate.

MR HOLDEN: Fair enough.

CHAIRPERSON: Ask him about what he knows, what he has done. Thank you.

MR HOLDEN: If I may respond to that Chair, I feel that his opinion would actually be very valuable, it doesn't seem that you agree with that, I base this on his CV, his long experience within the procurement process and very intimate knowledge of how the RFO process operated and while he may not have authored this document I am almost a hundred percent certain that he understand its contents and can comment on that. Would you like to respond to that?

CHAIRPERSON: I can't respond to you. If at all you want to continue with that line of questioning ask me whether I do agree or not, but then I don't think that then I can comment or respond on what you say to me. I was just trying to say to you

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that just be careful not to ask him to speculate. Ask him, he told us exactly where he was involved and where he was not involved, so try and avoid asking questions where you say he must speculate, let him not speculate, ask him to tell us what he knows.

MR HOLDEN: Thank you Chair, I do apologise, this is the first cross-examination I've ever conducted, so if I don't know the exact rules I hope you will accept my apology. I suppose the key question I want to ask you here is if the RFO Value System document, if the formula did not appear on the RFO Value System document and did not form part of ARMSCOR's usual procedures do you have any idea how this formula was generated?

MR VERMEULEN: I honestly don't know how the formula was generated.

MR HOLDEN: ... ask you what might be a speculative question, I hope not, do you have any knowledge of who would have had the authority to approve this generated formula?

MR VERMEULEN: I really don't.

MR HOLDEN: Okay, thank you Mr Vermeulen. I'm now going to ask you what Advocate Lebala referred to as an evaluative question during the testimony. Do you think applying such a crucial formula to drive out the results without it appearing in the RFO Value System and at variance with ARMSCOR's usual approach constitutes good procurement

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practice?

MR VERMEULEN: I find it difficult to comment on that Chair.

MR HOLDEN: Okay, thank you Mr Vermeulen. I think  
5 you've already indicated this earlier Chair but I (indistinct) the  
people that I feel needs to answer these questions are the  
authors and moderators of this document, namely Commander  
Reed and Admiral Howell, and if I may be so bold, based on  
this line of questioning and Mr Vermeulen's answers I would  
(indistinct) individuals. The second issue that I'd like us to  
10 focus on is that of the integrated logistics support element of  
the submarine evaluation and in particular how the German  
Submarine Consortium who emerged as the winner of the  
evaluation by the time the results were handed to SOFCOM  
compilation on the 1<sup>st</sup> and 2<sup>nd</sup> of June 1998. This is where I  
15 will attempt to try and put the particular version of events to  
you Mr Vermeulen and do so with more vigor than that  
employed by Advocate Lebala when he raised these matters  
with you.

I will begin to recap some key facts that we have  
20 already covered, I hope you don't mind those, I do this mainly  
to ensure clarity in the final question. Mr Vermeulen to confirm  
you served on the Integrated Project Management Team during  
the evaluation of RFO proposals under Project Wills, is that  
correct?

25 MR VERMEULEN: That is correct. Yes, I did.

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MR HOLDEN: In this capacity you were one of a team of individuals who were asked, sorry, who were tasked with scoring the offers from bidders, who were selected to respond to the request for offers issued in February 1998, in particular  
5 the technical evaluation, is that correct?

MR VERMEULEN: Yes, that is correct.

MR HOLDEN: As has been canvassed before the three elements of a technical evaluation that constituted the final score were the RFO response element, the integrated logistic  
10 support element and the submarine product performance element, correct?

MR VERMEULEN: Yes, those were the three overarching categories.

MR HOLDEN: In generating a final score in the technical  
15 evaluation the integrated logistic support element was given a weighting of 67.51%, correct?

MR VERMEULEN: That's correct.

MR HOLDEN: This would suggest that the integrated logistic support element was considered a particularly  
20 important discriminating criteria in the technical evaluation, correct?

MR VERMEULEN: Yes, it was.

MR HOLDEN: Mr Vermeulen, could you once more explain how the weighting system was devised and how it  
25 impacted on the final product performance score.

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MR VERMEULEN: Yes, the weighting system, it was a bottom-up process, we did a pairing analysis, we would take each parameter and weigh them off against the other parameters and in so doing it rolls up to a final score, so basically a forced decision making process, and you will notice from the slides that these are put into the, of the three categories that were mentioned. So, basically when you do the evaluation those factors come into account because you will take the parameter itself out of, in the case of the ILS it was 1 to 10 where 5 was the minimum requirement.

That particular score would then be divided by 10 because that was the maximum score, it would be multiplied by its specific weight, relative weighting, it would then be multiplied by the weighting of that category, i.e. 67.5% and that would drive out that particular value then for that parameter under consideration.

MR HOLDEN: Thank you Mr Vermeulen, that was an incredibly clear summary. Chair and Mr Vermeulen, I refer to page 123 of the Classified Documents bundle. Mr Vermeulen, just to clarify this is the Submarine Evaluation Report compiled by Captain Reed and Admiral Howell as confirmed by page 118 and a 119 of the self-same bundle, correct?

MR VERMEULEN: Yes, it is.

MR HOLDEN: Mr Vermeulen, could you please read the total normalised results as appears in the table just under

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paragraph 10 of page 123 indicating which supplier received which score.

**MR VERMEULEN:** *“The results of the evaluation of the individual components to the proposals are indicated in the table below”:*

5

<u>SERIAL</u>	<u>TECHNICAL EVALUATION</u>	<u>LOGISTIC EVALUATION</u>	<u>ENGINEERING MANAGEMENT</u>	<u>TNV</u>
1. French Scorpene	84.8%	57.7%	45.9%	85.67%
2. German 209 1400 MoD Submarine	87.1%	48.95%	71.25%	80.6%
3. Italians Fincantieri S1600 Submarine	89.4%	71.14%	54.43%	100%
4. Swedish Kockums T192	88.6%	50.6%	49.84%	80.86%

**MR HOLDEN:** Thank you Mr Vermeulen. To clarify, these results confirm that the result of the Integrated Project Team’s technical evaluation according to these results the German Submarine Consortium was placed last of the four bidders considered, correct?

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**MR VERMEULEN:** Yes, as reflected in this table, correct.

**MR HOLDEN:** To confirm, these scores correspond to the slides you presented last week, correct?

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**MR VERMEULEN:** Yes, they did.

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MR HOLDEN: Do you notice any material deviation in the scores between this table and what the Integrated Project Team provided as a result of the technical evaluation?

5 MR VERMEULEN: No, this should be in line with the basic scores that, the calculations that we would have done should we have been asked to do those, bearing in mind, if I could just refresh you, that the role of the IPT specifically was to do the basic scoring. Under normal circumstances as I explained they would then have brought price into account, the total contract  
10 price.

MR HOLDEN: Thank you for that clarification. Could you now refer to page 124 of the Classified Documents bundle, specifically paragraph 16 and the table presented.

MR VERMEULEN: Do you wish me to read the ...

15 MR HOLDEN: I would like to, but I'm waiting for the chair to nod.

MR VERMEULEN: Paragraph 16 reads as follows:

*"The results of this calculation are summarised in the table below":*

<u>SERIAL</u>	<u>PERFORMANCE RATIO</u>	<u>LOGISTIC RATIO</u>	<u>ENGINEERING MANAGEMENT RATIO</u>	<u>MIL PERFO</u>
Germany 209 MoD 1400	100%	100%	100%	100%
Sweden T192	79.23%	92.37%	65.25%	90.93%
Italy S1600 Submarine	93.26%	82.48%	86.67%	83.13%
France Scorpene Submarine	86.66%	65.29%	68.82%	66.43%

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MR HOLDEN: Thank you Mr Vermeulen. To clarify, these scores indicate that the German Submarine Consortium received the highest score, the military evaluation ... Sorry, 5 military performance score despite receiving the lowest score in the technical evaluation conducted by the Integrated Project Team, is that correct?

MR VERMEULEN: That is correct.

MR HOLDEN: I'm afraid I'm going to have to ask you one 10 more question about SOFCOM, if you don't know the answer then I obviously I understand that too. The Military Performance Index formed 1/3 of the final evaluation score as calculated by the Strategic Offers Committee, the others being NIP and DIP and financing, is that correct?

15 MR VERMEULEN: Yes, that is correct.

MR HOLDEN: This suggests that the military performance score was a key score in discriminating which bidder would be selected as the preferred supplier, is that correct?

20 MR VERMEULEN: It is correct.

MR HOLDEN: Now as we have addressed already the military performance score was calculated using the formula contained in paragraph 15, is that correct?

MR VERMEULEN: Yes, it would appear so, assuming that 25 SOFCOM accepted the results of this report at face value.

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MR HOLDEN: Could you please in layman's terms explain how the performance score was converted into a military performance score by means of this formula?

5 MR VERMEULEN: Unfortunately I can't as I was not involved with this process, I don't have the background into those individual costs, so would be trying to delve into the author's mind here and I think that could be dangerous.

ADV SOLOMON: Chair, Commissioner Musi, with your leave could I note an objection. Mr Vermeulen has been at pains to  
10 point out that he is not the author of this document, it's extremely unfair to allow cross-examination to proceed really dealing with the detail of this document which Mr Vermeulen has no personal knowledge of, it's really getting anyone in this room to comment on a document that they were not the author  
15 of. His views on this document and how it came into being and what its content is and what the import of the content is, is totally irrelevant, it doesn't assist the Commission at all and it's unfair actually on Mr Vermeulen, so I must object to further questions, I'm being indulgent but I think one must draw a line  
20 in the sand now with your leave Chair and Commissioner Musi.

CHAIRPERSON: Mr Holden, do you want to respond to that?

MR HOLDEN: Chair, as far as I can recall Mr Vermeulen addressed these matters, when his evidence was led he addressed this document, I'm merely cross-examining him on  
25 the evidence that was led while he was giving his testimony.

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CHAIRPERSON: Can you refer me to the relevant portions of the record where he says that he dealt with certain issues, because the objection is simple, Mr Vermeulen was not the author of this document. You are asking him to comment about  
5 what other people did, you are asking about what took place in meetings where he was not present, his views are, will not be of much value to the Commission. That seems to be the basis of the objection, do you want to respond to that?

MR HOLDEN: Chair I think I already have responded to  
10 that previously, I understand that he is not the author of this document but I do think that as a person who is steeped in this field, somebody who engaged in the process and is still actually engaged in Project Wills that he is, that he can understand the content of the document which is actually, I  
15 think pretty straightforward and that he can testify with a degree of knowledge that other people may not have because of his experience in that position.

CHAIRPERSON: But then (indistinct) issue. He said to me that he was not part of that team which drew this document,  
20 he's not the author of the document, his answers, of what value are they going to be to the Commission?

MR HOLDEN: Chair, I think I've discussed this before but I do think they're of value Mr Commissioner, again based on his previous experience and his very detailed knowledge of  
25 how the procurement system worked I would argue that his

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opinion carries quite a lot of weight and if may be so humble as to suggest the Commission should afford it a degree of weight because he is so familiar with the subject.

5 CHAIRPERSON: Advocate Solomon, do you want to respond to that?

ADV SOLOMON: Chair, only to reinforce the point that it's clear Mr Vermeulen does have deep knowledge in regard to the evaluation results, he's indicated that he was involved in the technical evaluation, he was the programme manager, he has testified in regard to the performance results that we found at 10 page 123 paragraph 10 that those accorded with the work that he had done and that's really where his involvement seized. When it comes to the tables on page 124 paragraph 13 and 16 he's indicating that he has no personal knowledge of this and 15 it's really just valueless to continue to ask him to read out aspects of this document of which he has no knowledge.

We understand that Admiral, Rear Admiral Howell who is one of the authors of this document is going to give evidence, I think Mr Holden can ask those questions of Admiral 20 Howell far more fruitfully than to continue to try and elicit responses from Mr Vermeulen which are really just based on supposition and conjecture, he said it, as much, it's just supposition and conjecture, it doesn't advance the inquiry which this Commission is engaged in at all and we persist with 25 our objection.

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CHAIRPERSON: Sorry, unfortunately I'm not going to allow you to continue with this line of cross-examination, I don't think that you know the answers that Mr Vermeulen is going to give will be of any value to the Commission, particularly in the  
5 light of the fact that the authors of this document are going to testify.

MR HOLDEN: Chair I'm afraid I don't understand how the procedures work when I respond to your ruling, I was hoping to make one more point if that's possible.

10 CHAIRPERSON: Okay, let me hear what you want to say.

MR HOLDEN: Well, first of all Mr Vermeulen testified that he has been part of Project Wills since he was initiated. If you recall from his testimony before the Commission last week he mentioned that he was part of the team, I think he was part  
15 of the IONT that was involved in negotiating the final terms of the contract for the submarine. In that position he would have negotiated the final baseline, contract baseline for the provision of the integrated logistics system and I would argue that there are some claims in this document put forward  
20 regarding, written by Admiral Howell that he could independently verify as he was both part of the Request for Offer process and was also negotiating this process afterwards.

CHAIRPERSON: Unfortunately I do not agree with your views on that point and I'm not going to allow you to further  
25 cross-examine Mr Vermeulen on this document because if you

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can recall last week in his evidence Mr Vermeulen clearly stated that you know some of the parties of the preferred bidders was very weak as far as certain areas are concerned and they went out of their way to try and make sure that there is an improvement in those areas when it comes to contracts. Now because he said that you can't want to keep on cross-examining him about issues that happened at the meeting when he was not present and then two, on a document which he was not present when it was drafted nor is the author thereof particularly if you are being told here that the authors of this document will come and testify, so I'm not going to allow any further cross-examination of Mr Vermeulen based on this document.

MR HOLDEN: Chair, I'm sorry to stick on this point. Would you mind if I was to make one more, one more averment? To do so Chair I'm going to have to ask you to turn to page 125 of the Evidence bundle or the Declassified Documents bundle, page 125 of the Declassified Documents bundle. Paragraph 20 is an absolutely fundamental paragraph to understand in the entire way the score was generated. If I may read from the section I think is appropriate to raise at this point, this was in a reference to the Germany Tour 9 Type 1400 MoD Submarine, it says:

*"The Logistics Support Package is comprehensive, it has got a large amount of deliverables offered as*

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*options ...”.*

And this is the key point:

*“... as options and were not costed into the proposal. The log risk is determined as low because many options were not considered, additional funds should be allocated”.*

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Now I would submit that in this document what the, what Admiral Howell and Commander Reed are saying is that there wasn't a finalised offer of elements that would form the integrated logistics support system and that in fact the options outcome which the decisions, sorry, the options they would be selected from the German Submarine Consortium were to be done during the negotiation phase and as we know Mr Vermeulen is a member of the negotiation phase drawing up the contract baseline, so in that position he would be able to confirm to me, and this is an absolutely crucial point for the Commission to understand I think, whether he was ever of the opinion that what was offered by the German Submarine Consortium consisted only of a series of non-binding options or whether they actually formed a firm commitment.

CHAIRPERSON: As far as what is concerned? A firm commitment on which issue?

MR HOLDEN: It would have been a firm contractual commitment, as we understand the RFO process was a binding process, a firm commitment as to the exact form, function,

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content and price of the integrated logistics system.

CHAIRPERSON: Mr Vermeulen, are you in a position to answer that question?

MR VERMEULEN: Yes, I am Chair. Chair, the response, I  
5 must agree with that observation. At the conclusion of the  
evaluation, and it's well-known that the GSC offered a poor log  
package and hence they scored, they were penalised in the  
score as a result of that, when the German Submarine  
Consortium was nominated as the preferred supplier I knew we  
10 had our work cut out for us because as you quite rightly say a  
number of the elements of the ILS were offered as costed  
options, we would have to negotiate those into the contract and  
at that stage I didn't know the level of success, I would have in  
hindsight.

15 Fortunately we did manage to negotiate as I've  
stated, we managed to negotiate a number of key ILS elements  
into the contract during the negotiation phase as you correctly  
observed and those included those items that I mentioned  
previously. So, at this stage yes, the log would certainly from  
20 my side it's been seen as a risk with the GSC, I didn't know  
how successful my negotiations would pan out.

MR HOLDEN: Thank you Mr Vermeulen. Just as a, I'm  
afraid I don't have this figure in front of me and I've always  
wanted to know this figure but you mentioned in your  
25 discussion on the contract baseline that there was a ceiling

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placed by Cabinet on the total cost of the submarine acquisition, are you aware of whether that ceiling cost was applied to the total acquisition cost or was it applied to individual elements within the submarine contract?

5 MR VERMEULEN: To the best of my knowledge that ceiling price would have addressed the full scope of supply and not individual elements.

MR HOLDEN: Okay, I'm just a little bit confused on this point because you testified last week that you negotiated for  
10 certain additional elements to be added into the integrated logistics system, but you did so without increasing the price. That would suggest that there was a price that was set at some stage which you didn't pass, is that correct?

MR VERMEULEN: Yes, if I could clarify that. Cabinet  
15 approved a certain amount for the submarine contract, what I endeavored to do was increase the scope of supply within the framework of that price approved by Cabinet, I couldn't exceed that price and I didn't attempt to, at the same time I didn't attempt to decrease that price, I worked within the framework  
20 of that price and during the negotiation phase we managed to get further an extension of the ILS package within the scope of supply, in other words the costed options for the platform simulator and the combat information centre simulator we managed to include as part of the scope of supply. The fifth  
25 scale model was never part of the scope of supply, we included

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that, and very importantly with ILS was the ceiling amount for spares.

Now that ceiling amount I think was originally in the order of \$11 million US, \$11 million or \$12 million, I can't remember exactly, we managed to increase that, the eventual contract price was in Euros. Within that amount, that framework price approved by Cabinet we managed to increase that to €26.1 million. So that was all within the financial ceiling approved by Cabinet.

10 MR HOLDEN: I'm not aware of how the budgeting was being done for the submarine process at this stage, was there, a (indistinct) phases, but was there a line item for the integrated logistics support element that indicates what the total amount was that it was going to cost the state?

15 MR VERMEULEN: No, this was one of the difficulties. You would find in the price breakdown that certain ILS elements were included with the submarine, it was very difficult to extract the ILS elements per se as a separate line item at that stage, at the RFO stage. Obviously during the negotiation phase we did that extraction in detail.

20 MR HOLDEN: Okay, I think we're working potentially at cross-purposes here. During the negotiation phase when the contract baseline was finalised was there a line item that said integrated logistic support element?

25 MR VERMEULEN: Yes at that stage we had broken down, we

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had a very clear impression of the costs for the ILS elements, for instance training, spare parts as I've just said, the CIC Simulators, although they were cost options we, for contractual milestone purposes we had to have prices for those, so that  
5 was part of the CPL requirement, we broke down the price to that level of detail where we knew exactly what the ILS elements would cost.

MR HOLDEN: Thank you. The reason I'm asking this is I think that it could be potentially very useful for the Commission  
10 to note this information if they do call Admiral Howell at some future stage. Do you offhand, I know it might be a difficult question because it was quite a long time ago, remember what the final cost was? If you don't remember it offhand it would be useful if you could, I don't know exactly how this process  
15 works Chair, but if we could request a document to confirm what that final price was.

CHAIRPERSON: Just hold on, I'm sorry, if you don't mind when you speak can you look into the mic because we are battling to hear you and I see it's because when you speak you  
20 are facing that side and the mic is on this side.

MR HOLDEN: Would you like me to repeat that statement?

CHAIRPERSON: Yes.

MR HOLDEN: If I can just get this back. I think this is  
25 quite an important point potentially for the Commission to

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grasp, and I think it will be a very interesting point if Admiral Howell or Commander Reed appear before the Commission at some stage. I'll ask Mr Vermeulen whether he was aware in the final contract price for the, that was signed the German Submarine Consortium. There was an indication of the total final cost of the integrated logistic support element. The reason I ask that is that I would imagine if I put myself into the future, if Admiral Howell was here in the future and I was asking questions I would want to try and examine the way he arrived at the cost for the integrated logistics segment in his evaluation was fairly done and I would argue that one way you could do that is to see how close that estimation approximated the actual final cost.

CHAIRPERSON: Yes, I agree you can argue that at a later stage if Mr Howell or Commander Howell does testify (indistinct) put the question to the witnesses in front of us.

MR HOLDEN: Mr Vermeulen, are you aware of the final cost for the integrated logistic support element in the final, in the final contract, or if you aren't aware of it now is there a document perhaps you could refer us to?

MR VERMEULEN: Yes, I don't have the figure available right now but certainly there is a document, if you recall I mentioned that I negotiated a supply terms agreement. A supply terms agreement consists of in the order of 20 annexures. Annexure "C" in the supply terms agreement is the price breakdown and

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that describes at a very high level, remember there was also a technical specification, the technical specification which I'm not sure the annexure number, there is a technical specification which outlines in detail every ILS element and then the costing is in Annexure "C" which is a price breakdown but okay, so that information is available and it formed part of the contract baseline.

You must just bear in mind again when the RFO, when this formula was drawn up in this report that information couldn't have been available, bearing in mind that a lot of the items that eventually appeared in the price breakdown in the contract were negotiated after the event, if you follow what I mean, in other words at the time of drawing up this RFO evaluation report, the final scope of supply for integrated logistic support was unknown, we had to go through a negotiation phase which drew out those details if you follow my reasoning. But yes, that information is available, there is a price breakdown and there's a technical specification which described in detail the ILS requirements.

MR HOLDEN: Chair, again I'm a little bit unfamiliar with how the procedure works here, but I would imagine that that document would be of great interest both to the Commission and to myself. I don't know if there is a way I could apply to view that document, at a later stage, not quite now, I don't want to hold up the proceedings of the Commission.

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CHAIRPERSON: Let's first finish with the cross-examination, you are still busy cross-examining this witness, let's go through that process and finish with the witness, if at all at some later stage you want other documents then we can  
5 see what we can do at that stage.

MR HOLDEN: Thank you Chair. I'm afraid my cross-examination has been thrown in to a bit of disarray by the ruling that I cannot ask Mr Vermeulen to comment on this document, but I'll try my best. Okay Mr Vermeulen, you have  
10 already read into the record ... Sorry, I'm afraid that I actually haven't read that into the record just yet. Okay, this is a question that I'm struggling slightly with. During the evaluation of the integrated logistics support statement by the Integrated Project Team of which you were a part, were you  
15 ever made aware by any person or by the documents presented to you that what the German Submarine Consortium was offering in terms of integrated logistic support was a set of options rather than a binding commitment?

MR VERMEULEN: Yes, I was. In their response they clearly  
20 mentioned which were options and which were included in the price. For instance the simulators at that stage were not included in the price, they also had an option for a second hand submarine, so they clearly, they had to indicate exactly what was an option and which was a firm price offer.

MR HOLDEN: So, if I'm understanding you correctly, if  
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they were options were you forced as a member of the Integrated Project Team or any other member forced to try and discriminate between the options to decide which ones you would like to have in the submarine or did you take all of the options that were presented as a given and included them in the integrated logistics segment for their score?

MR VERMEULEN: No, you can't do that because you don't know the success you are going to achieve, you don't have a crystal ball that tells you exactly what the scope of supply will be the options and depending on the amount Cabinet approved to obviously try and negotiate those in, but at the time of the RFO evaluation you can only take the firm prices, you can only consider those and not the options because the other suppliers would have also offered options, so you have to take the prices that are offered for the equipment themselves and not the options, so the price breakdown would typically include the submarines, it would include a portion of the logistic support, in other words they offered, as I said, in the order of \$11/\$12 million US. Now that was a firm offer, that you could take into account, but you can't consider options and assume that you are going to get those options included in the scope of supply during the negotiation phase.

MR HOLDEN: And then just to clarify it, I think maybe I didn't frame my question as clearly as I would have liked. When the Integrated Project Team was evaluating the German

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Submarine Consortium's RFO response, were those, was the, any element within the integrated logistics segment indicated as an option and not a firm commitment?

5 MR VERMEULEN: Yes, there were elements that were offered as options and they were clearly stated that they were costed options.

MR HOLDEN: Okay, so if you can help me with this, when you drove out the score for the technical evaluation, we're talking about the basic scores here, and I appreciate this 10 was quite a long time ago, do you recall whether there was a decision made to treat the options that were given by the German Submarine Consortium as an element that could be included in generating their final evaluation score?

15 MR VERMEULEN: No, you cannot use the options because you can't be guaranteed that those would eventually emerge into the scope of supply, so the evaluation would have taken only those items where there was a fixed price for those.

MR HOLDEN: Okay, I'm almost finished with this line of questioning, just I'd like you to clarify something. You made a 20 comment in your witness statement that the RFO was binding and was a final offer and that on that basis that SOFCOM, or whatever contracting authority would be able to proceed with negotiations with the selected supplier, what doesn't make sense to me personally is how you can have a final binding 25 offer that includes options that may be selected in future?

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MR VERMEULEN: No, it's a quite normal process. You would have a binding offer and let us assume that we decided to include those options and purchase them at the prices. They do price those options and you can hold them to that price, 5 let's assume the Platform Simulator had a price allocated which it no doubt did have, you could decide if it was affordable that we would purchase those as well, so it was still, even though they are options they are still binding, it's like purchasing a motor car, there are a number of options that are also priced 10 and you can at your discretion decide to include those options and the (indistinct) for those options are firm.

MR HOLDEN: Thanks, that actually helps me a great deal. Just (indistinct) want to phrase this question correctly. So, if I understand correctly the options that were presented to 15 you as a member of the Integrated Project Team, the offers offered by the German Submarine Consortium, they were costed, is that correct?

MR VERMEULEN: Yes, the options were costed.

MR HOLDEN: And I suppose here we come to what I 20 consider, or just nearly thought of as perhaps the crux of the matter, is that if you look at page 125 of the Declassified Evidence bundle, I've already read from the section before, it's paragraph 20 and this is in reference to the German 209 Type 1400 MoD, there is this one particular curious sentence which I 25 think you were actually (indistinct) in your testimony, and I

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would like to get your sense of this, it says here:

*“The Logistic Support Package is comprehensive but a large amount of deliverables are offered as ...”.*

CHAIRPERSON: I’m sorry, from which line are you reading  
5 because ...

MR HOLDEN: Apologies Chair, it appears halfway through the paragraph, it’s line 6 of the paragraph. It says here:

*“The Logistic Support Package is comprehensive but  
10 a large amount of deliverables are offered as options and were not costed into the proposal. The log risk is determined as low but because many options were not costed additional funds should be allocated”.*

15 Now you seem to suggest that actually at that point in time at least the Integrated Project Team was aware of the costing of those elements.

MR VERMEULEN: Yes, to my knowledge the price breakdown included those costs.

20 MR HOLDEN: So, if I’m to extract the number of the (indistinct) here are you suggesting based on your own experience as part of that evaluation team that this document is actually not correct in stating what it does and saying that there are not cost, non-costed options?

25 MR VERMEULEN: Not necessarily. I know for instance as I

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mentioned earlier on there were certain logistic support elements included with the price of the submarine, so you didn't have an isolated cost for those items at the time the offers arrived, but it did, but those items were not necessarily options, they were included as part of the submarine price, so, you had to separate those items, for instance the submarine price included onboard spares, so we didn't know at that stage exactly what those onboard spares amounted to. And there may have been certain options, for instance the Fifth Scale Model wasn't actually an option and I'll tell you why it wasn't an option and I'll tell you why it wasn't an option, the Germans had no intention of parting with their Fifth Scale Model, we negotiated that in and eventually we convinced them that they didn't require it once our Type 209's had been built, so they were never options upfront, so I don't think you can rule out as being untrue what this author is saying in this statement, you have to understand the background to it, which I'm not necessarily fully cognisant of.

ADV SOLOMON: With your leave Chair and Commissioner Musi, could I just come in here? I'm not sure that that question is fairly put to the witness because I don't read it the same way as Mr Holden, I think there is at least an alternate way of reading that sentence and that should in fairness be put to Mr Vermeulen because what it seems to say is that the logistic support package is comprehensive but a large amount

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of deliverables are offered as options and were not costed into the proposal, it doesn't mean that they were, the option had not been costed, but they weren't taken into account in the proposal and I see you nodding Chair and I think you understand what I'm saying, so I think that should be pointed out to Mr Vermeulen that there is another way to read this.

CHAIRPERSON: You know, but besides that it goes back to the problem that I stated earlier on. We are asking Mr Vermeulen about a document drawn by other people and you are asking him now to give an opinion on the construction of this sentence. You put to him a question, he said, and he gave you an answer, after getting an answer you go back to a document drawn by somebody else, you say: "But my reading of this document is A, B, C and D, can you please comment?", I think that is an unfair question. He is not the author of this document but besides that as Advocate Solomon says that sentence has opened two interpretations and you cannot say that your interpretation is correct and ask Mr Vermeulen to comment on your interpretation of a document which was drawn by somebody else. I think that is an unfair question, he gave you an answer of how he understood those options, you can weigh the person, the author of this document if he comes and you can put to him that type of questions. Thank you.

MR HOLDEN: Thank you. I must apologise, I'm not a legal expert, I'm not used to the idea that what I think is a

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relatively explicit (indistinct) would have multiple interpretations but I'm going to leave that for the moment. Chair, I'm going to move on to another line of questioning and I was wondering if it would be possible to adjourn for a short  
5 break if you are prepared to do so?

CHAIRPERSON: I'm sorry, I'm struggling to hear you.

MR HOLDEN: I notice that it's now 11h40 and I was wondering whether it would be possible before I start the next line of questioning, I don't want it to be broken up by the tea  
10 break, if we can take the tea break now?

CHAIRPERSON: I think maybe let's take a tea break up to 12h00 then.

MR HOLDEN: Thank you very much.

CHAIRPERSON: Thank you.

15 **(Commission adjourns)**

**(Commission resumes)**

CHAIRPERSON: Can the witness confirm that he is still under oath?

MR VERMEULEN: I do.

20 MR HOLDEN: Thank you Chair and thank you Mr Vermeulen. The third major issue that I would like to question you on flows from Mr Vermeulen's witness statement. Chair and Mr Vermeulen, I refer to Mr Vermeulen's witness statement on page 19 paragraph 6.1, this is page 19 of the Vermeulen  
25 statement bundle that was referred to during the leading of

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evidence last week.

CHAIRPERSON: Thank you, we've got that.

MR HOLDEN: Mr Vermeulen, would you please read paragraph 6.1?

5 MR VERMEULEN: Paragraph 6.1 reads as follows:

*"From a military value perspective the Type 209 submarines were the most cost-effective of the three submarine product systems on offer".*

10 MR HOLDEN: Mr Vermeulen, do you stand by this statement or would you like to amend it at all?

MR VERMEULEN: I stand by the statement in this context and I realise it may be misleading. I perhaps should not have used the term "military value" because that has connotations within SOFCOM. What I'm referring to here is value for money specifically. As I explained in the previous days on when taking the stand how we would normally do a process like this, assuming we didn't have SOFCOM and an IP index and financing index, we would evaluate the offers at hand and we would select, we would ...

20 There were two key factors that were taken into account, the one was that they met the Navy's requirement, the functional specification and then we would immediately look at price and we would say right, which is the less expensive of these options and as you know the GSC did come in cheaper, and that would have been, and I would have made a

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recommendation then directly to my board in the form of a submission, recommending that we enter into negotiations with the GSC.

5 In those negotiations I would have outlined the risks and there were risks, we had a risk with respect to logistics and I would have outlined a strategy as how it could get about becoming those risks. Remember I would also have had to approach my board of directors a second time. Having concluded the negotiation phase I would then have had to put  
10 in a submission for a placement of a contract, so I made this statement and I stand by it, it's purely in terms of best value for money, we could acquire a product that met the Navy's requirement at the cheapest price, so that's the context that I'd like to request that you read that statement in.

15 MR HOLDEN: Thank you Mr Vermeulen, I think that is actually the context in which I read it. As far as I understand there were four product systems on offer, is that not correct?

MR VERMEULEN: That is true.

20 MR HOLDEN: I just noted that in your statement you said the most cost-effective of the three submarine product systems.

MR VERMEULEN: Yes, what I meant there was the three submarines. You are quite correct, there were four product systems on offer. Thank you for that.

25 MR HOLDEN: What were the four submarine product systems on offer?

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MR VERMEULEN: Okay, the four product systems were as follows; the GSC Type 209 MoD 1400, that was the product system 1. The second was the S1600 Scorpene, it was a new submarine on offer from DCNI of France. There was a Type 5 192 submarine on offer from Celsius Kockums, it was a derivative of the Gotland Class submarine. Which one is outstanding? And then there is Sauro Class submarine, the Italian Fincantieri submarine which was offered, which is a derivative of the Italian submarine, the Sauro Class, the S1600 10 submarine.

MR HOLDEN: During the leading of your evidence you provided I think in addition to what you have just said, an explanation of why you made this assertion in your witness statement. Chair, Mr Vermeulen, can I ask that you refer to 15 pages 2484 and 2485 of the transcript of the public hearings as posted on the Commission's website.

CHAIRPERSON: What page is that?

MR HOLDEN: Page 2484 and 2485.

CHAIRPERSON: 2484?

20 MR HOLDEN: Chair, I notice that the witness doesn't have the pages I referred to.

CHAIRPERSON: No, which page are you referring to?

MR HOLDEN: 2484.

CHAIRPERSON: That we have. Which paragraph?

25 MR HOLDEN: And 2485.

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CHAIRPERSON: 2484, which paragraph are you referring to?

MR HOLDEN: It's paragraph 20.

CHAIRPERSON: Paragraph 20.

5 MR HOLDEN: Apologies, line 20.

CHAIRPERSON: Yes we're there, and then 2485?

MR HOLDEN: That would be line 12.

CHAIRPERSON: Line 12. Alright, we've got that. Advocate Lebala, do you have a copy of the record?

10 ADV LEBALA: I'm tracking it from my laptop Chair, I don't have the physical copy.

CHAIRPERSON: Okay, Advocate Solomon?

ADV SOLOMON: Chair no, I don't have a copy and I don't think Mr Vermeulen does either.

15 CHAIRPERSON: I'll tell you what I'm going to suggest. I see the paragraphs that he is referring to, Vermeulen has testified about that on so many occasions. I'm going to suggest that perhaps they just read it, read out those portions to Mr Vermeulen before he is questioned, I have seen this  
20 paragraph so many times during his evidence in chief, can we just, let's start with 2484, just read that portion that you wanted to refer to.

MR HOLDEN: Apologies Chair, it's actually line 25 that I think we should probably start with. Oh no sorry, it is line 20.

25 Advocate Lebala said:

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*“Conclusion”.*

And here he is quoting from Mr Vermeulen’s witness statement:

*“From the military value perspective a Type 209 submarine were the most cost-effective of the three submarine product systems on offer’. Are you referring to cost price?”.*

That is what Advocate Lebala asked Mr Vermeulen. Mr Vermeulen responded:

*“Chair, in this regard I’m referring to that slide I produced. If you look at the basic value and the cost to that submarine I judge that to be the most cost effective. I know that SOFCOM, because they were looking at normalised indices, had other issues to factor in and I understand that they had to apply a formula. Now I’m just looking from my, shall I say simplistic view at the basic value, that’s the statement I’m making. My contention is still that the GSC which met the requirements of the specifications and was 18% cheaper than its nearest rival was the most cost effective, but it could be a contentious issue that I’m stating here, but without continuing to the next computation of figures I think that would stand”.*

If I could now ask the witness and the commissioners to turn to page 45 of the Vermeulen Statement bundle, page 45 of the

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Vermeulen Statement bundle.

CHAIRPERSON: We've got that.

MR HOLDEN: To confirm Mr Vermeulen, the document at page 45 is a Request for Final Offer that was distributed to those bidders selected following the RFI phase, is that correct?  
5

MR VERMEULEN: Yes, that is correct.

MR HOLDEN: Could I ask you to read paragraph 1.1.1 of the RFO?

MR VERMEULEN: *"The Request for Final Offer, hereafter  
10 abbreviated RFO, addresses the final part of the offer preparation phase for the acquisition of four fully qualified submarines for the South African Navy".*

MR HOLDEN: Thank you Mr Vermeulen. Based on this paragraph it is clear the bidders who responded to the RFO were bidding to supply four submarines to the South African Navy as the end user, correct?  
15

MR VERMEULEN: That is correct.

MR HOLDEN: During your testimony last week, particularly on Wednesday and Thursday you provided the acquisition costs quoted by the four bidders on the RFO fares, could you please repeat the acquisition costs you quoted, if you need to refresh your memory they can be found on your slides or on page 124 of the Declassified Documents bundle.  
20

MR VERMEULEN: The prices are as follows;, in the case of  
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the GSC R4.333 billion, this has been at the South African rate of exchange quotes being done, R4.33 billion. Fincantieri's quoted at R5.241 billion. I beg your pardon, Fincantieri is quoted at R5.132 billion, DNCI at R5.241 billion and Celsius  
5 Kockums at R5.567 billion.

MR HOLDEN: Mr Vermeulen, how many submarines were purchased from the German Submarine Consortium?

MR VERMEULEN: A total of three, the fourth one was a costed option which remained in the scope of supply as an  
10 option, it was eventually removed based on a decision by the PCP.

MR HOLDEN: Could you confirm at what stage the decision was made to purchase three rather than four submarines from the German Submarine Consortium?

15 MR VERMEULEN: I don't know the precise moment but it definitely occurred before we commenced the negotiation phase.

MR HOLDEN: According to my information, and I have a document to quote from which I can hand to the Chair if you  
20 would like to see it, that decision was made in June 1998, I can hand up the document if you'd like to have a look.

CHAIRPERSON: You can. What is the source of that document?

MR HOLDEN: That is the Draft Auditor-General's Report  
25 into the Strategic Defence Procurement Packages.

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CHAIRPERSON: Advocate Solomon?

ADV SOLOMON: Chair, just on a point of procedure obviously we haven't seen this document and I haven't had a chance to discuss the document with Mr Vermeulen, I don't think this particular document would fall into the controversial category but any other documents that Mr Holden wishes to put to this witness we would require an opportunity of considering those documents and the witness would then unfortunately have to stand down so we have an opportunity of taking those documents up with them because it would be unfair if he's simply asked to comment on documents that he's never seen before. I don't think this particular document will be controversial but just, I don't want to set a precedent where my witnesses are in cross-examination confronted with documents that neither they, nor I, or the rest of our team have seen. Thank you Chair and Commissioner Musi.

CHAIRPERSON: Mr Holden?

MR HOLDEN: I think that's actually a very fair point. We have put together a document bundle, it's only about 10 or 12 pages long. At this stage of proceedings I don't think it's entirely necessary to hand that out, they may become necessary a little bit later but I can do so now and then obviously Mr Vermeulen could consider those documents if he'd like to.

CHAIRPERSON: So, you are going to ask him to comment

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on a document prepared by the Auditor-General?

MR HOLDEN: Chair, I've just extracted one fact from that document as the most convenient source of information for the question I just answered. I'm not going to ask his opinion  
5 on that specific fact, I was just laying the groundwork in cross-examination, I'm just trying to establish the date on which this decision was made.

CHAIRPERSON: Okay, you can do that but then just bear in mind that I also need to be fair to this witness. He cannot be  
10 confronted with documents for the first time now and be asked to comment on them. Just bear that in mind.

MR HOLDEN: I agree with you Chair, I am going to come to documents that I'd imagine that Mr Vermeulen's counsel would probably object to not having read before. Would you,  
15 shall I distribute these documents now so that he can have a look at them and then consider or shall we carry on?

CHAIRPERSON: You can proceed. I'm just saying that as a matter of principle let's try and avoid putting, producing documents for the first time during cross-examination and  
20 expect the witness to give an answer there and then. If at all the purpose of referring to that document was just to put that to him you can do so but then just bear in mind that you cannot, when you deal with the other documents the witness must be given an opportunity of considering those documents.

ADV LEBALA: Chair, may we interpose through your  
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permission, and Commissioner Musi? We are evidence leaders, we led this witness, I suppose our opinion carries weight albeit this is not our witness, this is a witness for the Commission. We are alive to this document, there is a reason why we didn't  
5 put it to the witness just to rescue the whole process, but we would like also to have a say Chair.

CHAIRPERSON: Advocate Lebala, I apologise. In fact I should have started with him because this is your witness, an oversight on my part, I apologise.

10 ADV LEBALA: Thank you Chair.

CHAIRPERSON: Do you want to comment?

ADV LEBALA: Well, we would like this document to be circulated. If relevancy could be exposing us that we did not do our task and we did, but we are not here to just debate  
15 whether it should be placed before the Commission or not but it would be more appropriate for it to be circulated before any question are being put to this witness arising from that document.

CHAIRPERSON: Can I suggest this? From what I  
20 understand you just want him to confirm a particular date, just the purpose of that document. I would allow you to do that but in meantime can you make sure that you circulate a copy of that document to the other legal teams.

MR HOLDEN: Yes, we can do that.

25 CHAIRPERSON: Thank you.

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MR HOLDEN: Sorry, sorry Chair, shall we hand it to them now or during lunchtime?

CHAIRPERSON: I think you can proceed with the question if you say to me, you said to me that you just want him to confirm a particular date contained in that document and so you can proceed with that question, just bear in mind what I said earlier on.

MR HOLDEN: Let me rephrase the question to you Sir, I don't necessarily have to put that document. The information at my disposal suggests that the date that that decision was made was June 1998. As you mentioned it in your answer that would be before the negotiation phase was entered into, is that correct?

MR VERMEULEN: Yes, whilst I can't confirm the exact date it was certainly as I said before the commencement of the negotiation phase, it sounds correct.

MR HOLDEN: According to my information the overall evaluation of the ARMSCOR, Arms Acquisition Steering Board ... Sorry, let me restart that sentence if you don't mind. So to clarify Mr Vermeulen this decision was made before SOFCOM presented the outcome of the overall evaluation of the Arms Acquisition Steering Board on the 8<sup>th</sup> of July 1998?

MR VERMEULEN: I can't comment on the accuracy of the date.

MR HOLDEN: Okay. As a matter of interest are you

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aware of why was such a material change to the acquisition we're talking about, decision to go forward, three submarines ...

CHAIRPERSON: Mr Holden I'm sorry to interrupt you again.

5 I'm struggling to follow what you are saying, I think you are talking too softly.

MR HOLDEN: I apologise Chair. Mr Vermeulen, as a matter of interest are you aware of why was such a material change to the acquisition, and here I'm talking about going for  
10 three submarines instead of four, there was not a decision to re-enter the RFO stage and request new information from bidders, which, as you have pointed out, constituted a binding agreement.

MR VERMEULEN: I don't know about re-entering an RFO  
15 phase, I think your question alludes to the reduction of four to three submarines. I can only speculate there that it was based on affordability but I would hesitate to say that it resulted in re-entering into an RFO evaluation phase.

MR HOLDEN: As far as I understand Mr Vermeulen, the  
20 RFO evaluation phase included stipulations as to cost, correct?

MR VERMEULEN: Very much so.

MR HOLDEN: I would imagine as a matter of logic, and I'm sure this should be quite simple to apprehend, but the price for three submarines would be different to the price of four  
25 submarines?

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MR VERMEULEN: Very much so.

MR HOLDEN: Which begs the question for me, and I know you maybe weren't part of this decision making process but if the RFO constituted a binding commitment in terms of price and the state agreed to negotiate on the basis of a price  
5 quoted for three, for four submarines, one would imagine that the process would be reopened because the price would be different and that's a very important part of the RFO process as you've mentioned.

10 MR VERMEULEN: I think your word is correct when you say "one can imagine", I'm not sure what negotiations took place at an upper level. If you recall there was an IONT that was negotiated in the umbrella agreement and then at a lower level the supply terms, so one could surmise that an agreement was  
15 struck and a price was agreed upon, but I wasn't privy to that.

MR HOLDEN: And now we come to, I think you've pre-empted one of my questions, are you aware, so when the decision was made to purchase three rather than four submarines are you aware of whether an approach was made by  
20 any member of the acquisition team to any of the three losing bidders in the RFO phase to get a formal and binding quotation as to what it would have cost to purchase three rather than four submarines?

MR VERMEULEN: Not to my knowledge.

25 MR HOLDEN: As a matter of logic if they were to have

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received a new formal and binding quotation that would have been assessed according to the RFO value system, is that correct?

MR VERMEULEN: Not necessarily. The RFO value system  
5 focused on the parameters. You could be correct in saying it would impact the ILS package, you could, it could be a valid argument but in terms of revisiting the value system the same would apply. Remember it's clear that we only bring in pricing right at the end, so that value system would apply for one  
10 submarine in terms of the product itself would apply for one submarine or three or four. So, they wouldn't have scored any different in that respect. In terms of the ILS it would have had an impact, certainly.

MR HOLDEN: So to clarify it based on what you have  
15 just said, you are not personally aware of what the acquisition cost of three submarines purchased from Fincantieri, DCN or Kockums would have been, is that correct?

MR VERMEULEN: That is correct.

MR HOLDEN: Obviously I'm not suggesting that you  
20 could not make an educated guess on the basis of the existing RFO's, but that's not really my point, my point and my question is this, is it true you cannot reference a binding price offer from the three losing bidders on the RFO evaluation phase to confirm what it would have cost to purchase three submarines  
25 from Fincantieri, Kockums or DCN?

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MR VERMEULEN: It's correct, it's very hard to extrapolate, you can't simply divide the price by four because scale of economy comes into it, obviously the more submarines you buy the price decreases proportionally under normal circumstances, 5 so it would have been difficult to extrapolate and guess at what the losing bidders, what their price would have amounted to in the case of reducing and removing one submarine from its scope of supply.

MR HOLDEN: Mr Vermeulen, I assuming that you are 10 getting (indistinct) when I ask these questions, but I'm going to put it to you now, considering this line of questioning would you consider either retracting or modifying paragraph 6.1 of your witness statement? Please take your time to refresh your memory as to what you said in paragraph 6.1.

15 MR VERMEULEN: I would still stand by this statement and I will tell you why, this statement was made based on evaluating four submarines at that stage and not a reduced amount. Obviously if you reduce the amount it could impact the price considerably and then it would have to be reassessed. Does 20 that answer the question?

MR HOLDEN: It does answer the question but the thrust of what I'm trying to get at here is you make quite a definitive statement about the cost effectiveness of the three submarines that were bought but you actually don't have a price 25 comparison to compare it against what three submarines would

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have cost from the three other suppliers.

MR VERMEULEN: But if you will recall you corrected me earlier on, this was supposed to be four product systems containing four submarines each, I mentioned three submarines here, that was an error on my part. What this statement amounts to, and I think we addressed this earlier, it should have read: "From a military value perspective the Type 209 submarines were the most cost-effective of the four submarine product systems on offer" and at that stage the four submarine product systems consisted of four submarines each.

MR HOLDEN: Sorry Chair, I'm just referring to a document to clarify something very quickly. Okay, thank you for clarifying that Mr Vermeulen, I can see why you would want to stand by that statement, but I'd like to draw some inferences from it if I can. Would it be fair to say that on the basis of the purchase of three submarines from each of the four suppliers at this point in time you couldn't comment as to the cost-effectiveness?

MR VERMEULEN: That's a fair assessment yes, I would not have been able to do that because I wouldn't have known the impact on the prices of either of those, of any of those four submarine product systems.

MR HOLDEN: Okay, thank you. The reason I ask this question is really it's about a question of competition and I think you will apprehend what I'm trying to say here, is that it

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seems to me that the evaluation process that produced the final results that eventually led to the selection of the preferred bidder was done on the basis of four submarines and not three submarines. Now I know the Commission has already indicated  
5 that your opinion may not be valuable in every instance but would it be fair to say to your mind at least as somebody with experience in procurement, that by failing to get a competitive quote or re-entering the RFO phase for three submarines rather than four submarines the decision that was made was not  
10 competitive, you did not take into account the realities of how the contract was going to be negotiated?

MR VERMEULEN: I think that's a valid point. At this stage following the completion of the value system assessment it was based on a scope of supply of four submarines each, so one, I  
15 can understand your sentiments in that regard.

MR HOLDEN: I'm going to put a very, it might not be speculative but it's quite a broad question, if you were sort of to go back to that phase when it was decided to buy three rather than four submarines and it was your decision to make,  
20 would you personally have seen the wisdom in asking for another evaluation?

CHAIRPERSON: I'm sorry, I think you are asking the witness to speculate now. You are definitely asking the witness to speculate and I'm not quite sure of what value the  
25 answer that he's going to give to that question is going to be to

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the Commission. Maybe let's try and avoid asking the witness to speculate.

MR HOLDEN: Thank you Chair, I will try and bear that in mind. Can you give me one second if I can try and rephrase that question. I think the point that I'm trying to establish is that there was no competitive evaluation process at the RFO stage for the purchase of three rather than four submarines, can you comment on that?

MR VERMEULEN: Yes, the situation was as follows; the basic results were normalised and those results were then recommended to SOFCOM and that was on the basis of the scope of supply of four submarines and that's where the evaluation process as far as I understand ended.

MR HOLDEN: Thank you Mr Vermeulen. That ends my questions on that line of questioning although I would have imagined that the Chair appreciates the importance of what Mr Vermeulen has just said and what I have just asked. Finally I'd like to turn to an issue that I'm sure that the assorted members of the press would be very keen for me to reference, I'm sure they've been waiting for me to do this. Before I do so Mr Vermeulen please be aware and please take cognisance of the fact that I'm not accusing you of any wrongdoing.

Chair, Mr Vermeulen, can I ask you to turn to page 49 of the Witness Statement bundle of Mr Vermeulen. Mr Vermeulen to confirm this is a page and a request for offers

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that were distributed in February 1998 to those bidders selected as a result of the RFI evaluation process, is that correct?

MR VERMEULEN: Yes, it is.

5 MR HOLDEN: And you were responsible for compiling this document, correct?

MR VERMEULEN: That's correct.

MR HOLDEN: Mr Vermeulen, could you please read paragraphs 2.15.2 and 2.15.3 into the record please.

10 MR VERMEULEN: 2.15.2 reads:

*"An offer may be rejected in the event that the buyer has reasonable grounds and is satisfied that an offerer has promised or has caused to be promised bribes, gifts, commissions or any other consideration whatsoever to any employee of the buyer, government official of South Africa or an existing contract of the buyer or has acted in bad faith in obtaining the contract".*

2.15.3 below reads:

20 *"Any fees paid or due to an offerers agent who is not a fulltime offerer employee must be specified and can be renegotiated by the buyer. The practice of employing agents in South Africa or are not fulltime employees of the offerer is discouraged by*  
25 *the buyer".*

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MR HOLDEN: Thank you Mr Vermeulen. If I may ask and as a matter of interest as you were part of compiling these documents, what do you understand by the phrase “acted in bad faith in obtaining the contract” to mean?

5 MR VERMEULEN: Obviously it applies to persons who have another agenda, you are possibly, you could refer to enriching themselves, that type of thing.

MR HOLDEN: Thank you, that’s a useful clarification for me to work with. Paragraph 2.15.3 stipulates that the offerer  
10 must inform the buyer if they have paid fees to an agent of the offerer, is that correct?

MR VERMEULEN: That’s correct.

MR HOLDEN: And in this instance the buyer would be ARMSCOR, correct?

15 MR VERMEULEN: The buyer was ARMSCOR, yes.

MR HOLDEN: Mr Vermeulen this is not clear to me and I was hoping that you could possibly answer this seeing as you were part of this, the compiling this document, but to what body in ARMSCOR or to what individual would the offerer perform if  
20 they were employing an agent as contemplated in paragraph 2.1.5?

MR VERMEULEN: Normally if the offerer is going to include for instance a local agent he would have to stipulate that in his offer, he would have to state that he is using a local offer and  
25 normally there would be a price breakdown for that, for the

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fees for that agent.

MR HOLDEN: Thank you, that's very useful. Mr Vermeulen, are you personally aware of whether or not the German Submarine Consortium employed an agent as described  
5 in paragraph 2.15.3?

MR VERMEULEN: No, I did learn through documentation afterwards that it appears that they had.

MR HOLDEN: I know it might be difficult to recall at this stage but which agents are you referring to in this instance?

10 MR VERMEULEN: I actually couldn't specify exactly who they were, unfortunately I don't have those details.

MR HOLDEN: Mr Vermeulen, during the evaluation process and thereafter were you ever personally approached formally or informally by any individual or entity that would fit  
15 the definition of an agent as described in paragraph 2.15.3?

MR VERMEULEN: No. During the ... Are we talking about during the negotiation phase?

MR HOLDEN: I would like to restrict this to the RFO phase. I know the chair has asked me to be specific and I'd  
20 like to ask you about the negotiation phase but I'll phrase that in a different question.

MR VERMEULEN: Okay. During the RFO phase when we were evaluating offers, especially in a competitive bid of this nature I would not entertain discussing anything of any nature  
25 with a contractor, it's mandatory that I work through a

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Procurement Secretariat and that works both ways, if I have to solicit more information, if there is unclarity with respect to an offer I would work through the Procurement Secretariat and likewise whatever information we would glean from that we would pass on to all the bidders so that they all have the same information. If any contractor or offerer approached me directly I would immediately refer them to the Procurement Secretariat.

MR HOLDEN: Thank you. I think just to clarify on that point I am comforted by the fact that you (indistinct) that you would have, the question that I asked, was there ever an attempt to approach you that you are aware of?

MR VERMEULEN: No, I'm not aware of it.

MR HOLDEN: Mr Vermeulen, are you familiar with the name Commander Jeremy Mathers?

MR VERMEULEN: Yes, I am.

MR HOLDEN: Mr Vermeulen, have you in the past had any formal or informal contact with Commander Jeremy Mathers?

MR VERMEULEN: Are we talking about before the SDPP's?

MR HOLDEN: Before the SDPP's and if you wouldn't mind, during the, I know that ..., I don't want to pre-empt the question I was going to ask you, and the RFI phase.

MR VERMEULEN: Very much so before the SDPP's, if I remember correctly Commodore Howell was Director Fleet

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Logistics which was one of the posts he occupied, so he dealt at some length with our office in Simonstown in that portfolio. Certainly not during the RFO evaluation process, I didn't deal with him. If I remember correctly he would have been out of the Navy at that stage, then I definitely wouldn't have dealt with him. Sorry, did I say Howell? Commodore Mathers, yes. Shall I repeat all that? With respect to Commodore Mathers, just let me start again for clarity, I definitely dealt with Commodore Mathers before the RFO evaluation, before the SDPP's. During the SDPP's, during the evaluation period I don't recall dealing with him, I certainly don't, and during the negotiation phase I would have dealt directly with the GSC.

I know that I met up with Commodore Howell after the contract had been placed, or sorry once again Commodore Mathers, during the course of the production phase he did come through to Germany and he did visit Captain Reed, the project officer in our office in Kiel and I also spoke to him then, but that was after the contract had been placed and that was when I also learnt that he was in fact, he had a role to play with the GSC at that stage.

MR HOLDEN: I appreciate that this was a long time ago Mr Vermeulen, but can you recall what official position Commander Jeremy Mathers held at the time of the initiation of Project Wills?

MR VERMEULEN: I couldn't say for certain exactly what he

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was involved with at that stage.

MR HOLDEN: Chair this is the point at which I would have asked the witness to quote from documents in my document bundle, maybe this would be an appropriate time to  
5 distribute them and let them assess them?

ADV LEBALA: Chair, may we interpose? I suppose that would be an appropriate time for lunch adjournment, we are being shortchanged, we are posing ourselves a question why we are not being provided with this important seeming to be  
10 document, just to ... Oh I see, I see that it's being provided to us Chair. I'm indebted to Mr Holden Chair. Thank you Mr Holden.

CHAIRPERSON: You know, I'm seeing these documents for the first time and I see it's already 12h50, can perhaps Mr  
15 Holden go through them with us very quickly and tell us what documents are these that he has just distributed?

MR HOLDEN: In this section of the cross-examination I would like to quote from Annexure "PH3", that is an extract from a Ferrostaal compliance investigation and that was  
20 conducted by the US Law Firm Debevoise and Clinton on the 13<sup>th</sup> of April 2001, that appears at page 5 and 6 in the document bundle.

ADV LEBALA: Chairperson and Commissioner Musi, just to assist, the important team of evidence leaders is almost  
25 complete, some of our colleagues who have a great interest,

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probably more than us in this testimony are present, so we'd request that we should adjourn and copies should be made available to them. It is a coincidence today Mr Holden that almost the part of the large percentage of the Evidence Leaders are here to hear your testimony, so it would be appropriate if there are additional documents that you have, other than this, I would request you to make copies because they would also like to make note of what you say and when you refer I'm certain that they have a keen interest. I assure you that some of them are going to lead evidence on this particular aspect when you go to other Terms of Reference, and what is of significance is I see that Ms Snyman is next to you, she knows how important distribution of this documentation is to colleagues, although she have an interest in leading evidence or cross-examining when copies are being made, so I'm going to request that if there are additional copies through the Commission that you would like to distribute you should do it during lunch adjournment and not only to myself, Cane SC and Solomon SC. I've got colleagues behind me that have an interest in this.

CHAIRPERSON: Thank you Advocate Lebala, I understand that. Can we just continue, try to explain to us before we adjourn what are these documents that you have just distributed?

MR HOLDEN: I'd just like to make the point to Advocate

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Lebala as well that these documents that I'm quoting from in this instance were actually submitted as annexures to mine and Andrew Feinstein's joint submission to the Commission, that's why I was hoping that maybe they would, their Evidence  
5 Leaders would have knowledge of those documents. The second document I would like to refer to appears at, is Annexure "PH5" and that's at pages 8 to 9, and that is an extract from the Draft Auditor-General's Report into the SDPP which I'm sure the Commissioner is aware I've dealt with in  
10 quite substantial detail in my submissions to the Commission so far.

CHAIRPERSON: I think maybe this might be an appropriate moment to adjourn, we'll come back at 14h00 then. Thank you.

**(Commission adjourns)**

15 **(Commission resumes)**

CHAIRPERSON: Thank you. Can the witness confirm that he is still under oath?

MR VERMEULEN: I do.

CHAIRPERSON: Thank you. Before we continue the cross-  
20 examination I suppose both legal teams have got copies of the document that was distributed by Mr Holden?

ADV SOLOMON: Yes, we do. Thank you Chair.

CHAIRPERSON: Thank you. Any other person wants to say something before Mr Holden starts with his cross-examination?

25 ADV LEBALA: Chair, we will go first. Chair I've

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highlighted that I'm sitting here with my colleagues behind me and to be specific Ms Ramagaga, Mphaga SC, Ms Sello Sibeko SC who are part of the Evidence Leaders' team. We could be traversing into a territory that they have an interest in that could implicate on Term of Reference 1.5 and 1.6. Just for the edification of everybody who is here 1.5 refers to whether there are people inside or outside the Government of the Republic of South Africa who improperly wins the awarding of the bids, 1.6 refers to whether corruption could be imputed and therefore the whole SDPP contract should be terminated.

Now one poses himself a question with that difficulty in mind and I've conferred with members, other Evidence Leaders, they are concerned about it, here are the implications. We could be implicating other persons who have a right to be appraised as to what is happening as we are standing here, we've already started referring to Mr Jeremy Mathers. If we look at Annexure "PH3" I'm not going to delve into it, it also refers to the interest of (indistinct) Final Report.

Then you see Debevoise and Plimpton LMP and in hindsight some of these parties have got interest in Terms of Reference 1.5 and 1.6. Now this does not take away Mr Holden's right to cross-examine if he wants to, but we have to place it on record that we are concerned that Mr Holden is already taking us in that territory and hence there are six Terms of Reference, we should bear on mind, on our minds that

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there are six Terms of Reference and I'm confident that Mr Holden appreciates these Terms of Reference. Now what does that mean? It means either Mr Holden is going to hold his cross-examination in as far as he's not dealing with that which comes out of the watch in as far as the RFO's are concerned.

If his cross-examination goes to the womb that gave birth to where he is going now in as far as the RFO value systems is concerned, fine, but even when he does that we should bear in mind that he is traversing into another territory already. Now short of saying of he's also assuming my function, (indistinct) function, he is assuming Ms Sello's function, Sello SC's function, he's assuming Ms Ramagaga's function and (indistinct) SC's function, he's assuming Aboobaker's function, he's assuming Mr Skinner SC's function and with consequences of course.

Now I will be in your hands in as far as at this is concerned and safe to say at this stage we can only wait for you to give directions Chair and Deputy Musi. I beg your pardon, and Commissioner Musi, and we trust your discretion on this one. The important discussion is being called for at this stage on this one. Thank you.

CHAIRPERSON: Advocate Solomon?

ADV SOLOMON: Thank you Chair, we're indebted to those pearls of wisdom from our colleague Lebala SC, I think he is quite right. From our personal point of view we would not wish

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to have a situation where Mr Vermeulen's cross-examination is stood over to another phase of the Commission of Inquiry, so we would not object to Mr Holden dealing with these documents bearing in mind the strict parameters of this leg of the inquiry.

5 I can tell you Chair and Commissioner Musi that I've discussed the documents that were handed to us over the luncheon adjournment with Mr Vermeulen, I'm not sure that he can deal with any of the documents but I don't want to pre-empt what Mr Holden is going to put to him, but we do endorse the  
10 sentiments of our colleague Lebala that we must limit cross-examination to the first phase of the inquiry.

Having said that we don't object to Mr Holden dealing with these particular documents, we will see where he is going with them with Mr Vermeulen, I don't know if that  
15 addresses the issues at hand. Thank you Chair.

CHAIRPERSON: I think in other words let's play it by the ear, let's first see where Mr Holden wants to go. Mr Holden?

MR HOLDEN: Thank you Chair. I'd just like to point out in response to Advocate Lebala that I'm aware of the Terms of  
20 Reference and the reason I decided to lead with these questions at this point is because the last time we had hearings before the Commission and ...

CHAIRPERSON: Mr Holden, I think I have given a ruling, you don't have to justify it.

25 MR HOLDEN: Okay, fair enough.

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CHAIRPERSON: I think let's go ahead.

MR HOLDEN: Okay, thank you. Okay Mr Vermeulen, just to resume with where we were, before I do so I just, I want to reiterate a point that I made right at the beginning of this line of questioning which is that I'm not accusing you of any wrongdoing whatsoever and I'd like you to bear that in mind when I run through these questions with you. So, I'm going to start back where we were a little bit earlier and I'm going to ask you to repeat yourself if you don't mind. Mr Vermeulen, are you familiar with the name Commander Jeremy Mathers?

MR VERMEULEN: Yes, I am.

MR HOLDEN: Mr Vermeulen, have you in the past had any formal or informal contact with Commander Jeremy Mathers?

MR VERMEULEN: Yes. Before the commencement of the SDPP's I had worked previously with Commodore Mathers.

MR HOLDEN: Okay, can I now refer the Chair and Mr Vermeulen to pages, let me just double check the reference, to pages 8 and 9 of the bundle that I distributed, that's Annexure "PH5". Okay, on the following page halfway down the page there's a sentence beginning: "A review of Mr Mathers' employment history ...".

CHAIRPERSON: On the following page?

MR HOLDEN: That's on the following page which is page 9 of the Evidence bundle Chair. It is the fourth paragraph on

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that page, it starts: "A review of Mr Mathers' employment history ...". Mr Vermeulen, could you please read the paragraph beginning: "A review of Mr Mathers' employment history ..." and ending "... 30 April 2000".

5 MR VERMEULEN: *"A review of Mr Mathers' employment history revealed that he was employed by the DoD as a permanent force member from January 1961 to January 1998. The record reflects that he was also on the permanent force from 1<sup>st</sup> of February 1998 to*  
10 *11 February 1998. The record indicated that he entered the reserve force on 12<sup>th</sup> of February 1998 and left on 31<sup>st</sup> of January 2000 where after he was on the citizen force from 1<sup>st</sup> of February 2000 to date. The record further indicated that he received*  
15 *his last salary payment on 30<sup>th</sup> of April 2000".*

MR HOLDEN: Thank you Mr Vermeulen. Just to go through the dates that I indicated there, I would like to put them in some context. Could you confirm the date at which the Request for Information was sent to the various selected  
20 bidders?

MR VERMEULEN: I can confirm that the value system was furnished on the 14<sup>th</sup> of October 1997, I just have to check to see the exact date once again as to when the RFI left. Would you like me to do that? Sorry, the RFI was just to get it, on  
25 the 23<sup>rd</sup> of September 1997 to the various embassies and

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consulates.

MR HOLDEN: Okay and I think you just, you mentioned it just now but on what date was the RFO value system approved?

MR VERMEULEN: The 14<sup>th</sup> of October 1997.

5 MR HOLDEN: And at what date, on what date were the RFO's distributed to the bidders that were selected as part of the RFI process?

MR VERMEULEN: The 23<sup>rd</sup> of September 1997 according to my reports.

10 MR HOLDEN: Now just to clarify one more issue, at what stage did the RFO process end, at what date, do you have an awareness of that?

MR VERMEULEN: The bids were received in May 1998.

MR HOLDEN: Okay, so I think based on what you have  
15 just read into the record and what you have just confirmed to me now we can confirm that Commander Mathers was employed by the DoD during the issuing of the RFI's, the issuing of the RFO's and left prior to the receipt of offers, is that correct?

MR VERMEULEN: That would appear to be correct, yes.

20 MR HOLDEN: Thank you Mr Vermeulen, and I think you will appreciate why I'm putting these questions to you rather than somebody else. You confirm that you were part of compiling the RFO value system, is that correct?

MR VERMEULEN: Yes, I can confirm that.

25 MR HOLDEN: If I could refer you to the top of page 9 of

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my evidence bundle, sorry, apologies Chair, could you refer to page 8 of my evidence bundle. Mr Vermeulen, could you please read the paragraph beginning 7.61 "JRM Maritime Consulting CC ..." and ending with the words "... submarine programme"?

5 MR VERMEULEN: *"The memorandum dated 14<sup>th</sup> of October 1997 from JR Mathers Commodore, Chief of Naval Staff Logistics to (Indistinct) indicated that Mathers was providing inputs on the development of the value system of the submarine programme".*

10 MR HOLDEN: Thank you Mr Vermeulen. I'd imagine you appreciate where I'm going with this, but in your own experience of compiling the RFO value document did you have an experience of Mr Mathers contributing to the compilation of that RFO value system?

15 MR VERMEULEN: No, I don't. I gave a detailed list of all the individuals who were contributing to the RFO value system, I could understand him being involved in providing inputs to the RFI value system, he does have a submarine background, so that would make sense, however, he wasn't one of the  
20 appointment staff members to provide inputs on the RFO value system which subsequently occurred.

MR HOLDEN: Thank you Mr Vermeulen. This may be slightly difficult for you to answer Mr Vermeulen but could you describe the official functions of the Chief of Naval Logistics, a  
25 position that Jeremy Mathers was set to hold?

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MR VERMEULEN: The Director Fleet Logistics which is a current term, basically all issues involving logistics of the user system or the fleet for that matter fall within his ambit, so he has a broad range of responsibilities in terms of the supportability of all the products, all of the ships shall I say, in the inventory of the Navy at the fleet.

MR HOLDEN: Thank you. As someone without a military background, that's me, I would hope that you would indulge me with what might seem to be a very obvious question, if Commander Mathers was making inputs into the RFO value system as this document suggests and his position was Chief of Naval Logistics at the time, I would imagine that his inputs into the RFO value system would focus on matters amongst others that formed the integrated logistic support element of the RFO. Could you comment on that?

MR VERMEULEN: Yes, not necessarily the case. As I say he had a submarine background, he's an engineer as far as I know, he would have had a very in-depth knowledge of the product as well apart from logistics, so I should imagine if he was involved in providing inputs it would encompass the entire span of the product system, however, that's speculation on my part.

MR HOLDEN: Chair, I think you can grasp the importance of this line of questioning, just as a personal comment it would be most interesting to view the correspondence to which the

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Auditor-General's office referred in the paragraph just quoted as well as other official correspondence to assess to what extent Commodore Mathers influenced the development of the RFO value system. Mr Vermeulen we are almost done, only a few more questions. Can I now refer you to page 5 of my document bundle. Mr Vermeulen, would you mind reading in the text that appears on that page into the record for me?

MR VERMEULEN: Just for clarification when you say page 5, are we talking about Annexure "PH3"?

MR HOLDEN: That's correct. It is the first page, the cover page, I just want to make sure that it happens on record.

MR VERMEULEN: The contents of this page reads as follows:

*"Ferrostaal final report compliance investigation dated 13 April 2011, Debevoise and Plimpton LLP".*

MR HOLDEN: Chair, I will be, as you are all probably aware, hoping to testify on this particular document when I do appear before the Commission, if I may just say that for clarity as far as I understand this is a report by a US based law firm Debevoise and Plimpton, into the activities at Ferrostaal, a constituent member of the German Submarine Consortium completed in April 2011. Chair, for your reference it is attached as Annexure "M" to mine and Andrew Feinstein's joint submission to the Commission. Mr Mathers ..., Mr Vermeulen, can I refer you to the following page which is page 6 of the Evidence bundle. Apologies Chair, in my cross-examination

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preparation I thought I had indicated where I would like Mr Vermeulen to end the quote from this document, I just want to see if I can find it once more.

CHAIRPERSON: I'm sorry Mr Holden, just maybe for my own understanding here you have given us two pages, where does this come from? Where does this come from, this report?

MR HOLDEN: Oh, the Debevoise Plimpton report as far as I'm aware, and this was a report that was actually reported on quite extensively in the media.

CHAIRPERSON: No, no, besides the media where does it come from because I can't work on what the media says.

MR HOLDEN: Fair enough. As far as I understand and the way that I have received this document was that it was leaked online, by it I mean that an intellectual who had access to this document posted it onto the web, I do note, however, and I'm sure that you would probably want to test the validity of this document at some stage, I'd imagine that I would be dealing with that in my testimony, but I would like to note that Debevoise & Plimpton have never contested that this is a report from their office, they have never contested any of the material within this report.

CHAIRPERSON: Are you going to testify about the fact that they never contested the validity of this report because up to now ever since you gave me this document I don't seem to be having that evidence that they never contested the contents of

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this report.

MR HOLDEN: Chair it's a bit early because I haven't completed my witness statement as you know, but this is something I would have liked to have included in my witness statements if I had met with the evidence leader.

ADV LEBALA: Chair, we would like to object. If it pleases Chair, Commissioner Musi we'd like to raise a valid objection in the context of the spirit and letter of this Commission and its directives. This page is dealing with interests of other parties that we all know that this Commission would not permit testimony to be led directly or indirectly against them without them being timeously advised. Now before we even go to the rudiments of the content, the context in which it is being put, interests of two parties are being mentioned and it sounds negative Chair, it implicates those parties and we know what the directives of this Commission say in as far as that is concerned.

The parties' whose testimony is being ... I beg your pardon. Parties against whom negative testimony is being imputed have to be timeously advised so that they should prepare and they have a right to come and either challenge, test and question that which Mr Holden is saying and on those basis we object Chair. Besides Chair, may I add in parenthesis Mr Holden just advised us that this document is leaked and I don't think this Commission would lower those standards and

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go that subordinate Chair.

CHAIRPERSON: Mr Holden, the other difficulty that I have, I'm not quite sure what does this document have to do with Mr Vermeulen. Whoever is the originator of this document, what  
5 does it have to do with Mr Vermeulen? Mr Vermeulen in his evidence he never made any mention of this report. What is the relevance of this document to the evidence that was given by Mr Vermeulen?

MR HOLDEN: Chair there were, there are a number of  
10 elements of relevance, first of all the witness has already indicated that he knew the witness and that he dealt with him and not to pre-empt my line of questioning but we've already covered what was stated in the RFO document regarding what the offerer was not allowed to do and what may invalidate a  
15 contract and what I'm trying to establish is that Mr Vermeulen has already testified to what he considers as bad faith and I was going to ask Mr Vermeulen if he was aware of this material at the time when the RFI process was ongoing, he would have considered reporting that to the ARMSCOR Secretariat or the  
20 relevant body.

May I also refer to Advocate Lebala's objection, I'd like to point out that Advocate Lebala himself led testimony last week in which there were constant references to Admiral Howell and Captain Reed, I think the emphasis there were  
25 largely acknowledged to be negative because there was a

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supposition that the submarine evaluation report did not accurately or comparatively, I'm putting words in your mouth but accurately or comparatively determine the winner of the German, of the submarine bid. I find it strange that in that instance Advocate Lebala was perfectly willing to talk to the activities of other witnesses who are not before the Commission, who I'm not aware have been called to the Commission, but in this instance he finds that this is an unreasonable imposition on Jeremy Mathers.

5  
10 CHAIRPERSON: Mr Holden, as I understood Advocate Lebala he referred to the evidence of those two witnesses and said that he's going to call them and then my view the relevance thereof was that what he had were the documents that those two witnesses prepared, they were almost slightly different from the evidence or from the document prepared by this specific witness and that is why Mr Vermeulen was referred to those documents and those two people will be given an opportunity of coming to testify.

15  
20 Now in your case I don't know which or who prepared this report, I don't know whether the people who prepared this report are coming to testify in order to confirm the correctness of what you say are their findings. I don't believe they are going to come unless if you say to me that you know these people, whether they are attorneys or forensic  
25 auditors, that they will come and confirm that they are the ones

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who prepared this report and that the findings as contained in this report, they are correct according to their investigations.

MR HOLDEN: Chair, I appreciate the sentiment and I understand that this would have been an issue or may have been an issue that we could have canvassed and discussed with my evidence leader had I been allowed to meet with him prior to the beginning of public hearings. I would like to point out ...

CHAIRPERSON: Mr Holden, I think you are referring to, for the third time to the fact that if the evidence leaders had met you previously, I was made to understand you have discussed this matter with the evidence leaders, you are not coming, you are not seeing the evidence here for the first time today.

MR HOLDEN: Actually Chair, I'm not sure if you are aware of this but I have never met ...

CHAIRPERSON: In any event it's not that important, that is not that important, let's deal with this document. What is your position to the two questions that I've asked?

MR HOLDEN: If you could be so kind Chair we can repeat those two questions.

CHAIRPERSON: You want to refer this witness to this document, is there anybody who is coming to come and confirm the correctness of the contents of this document?

MR HOLDEN: Chair, as far as I understand I'm not allowed to subpoena witnesses to appear before the

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Commission. I would, however, strongly recommend that they should be subpoenaed to appear before the Commission.

CHAIRPERSON: These attorneys who prepared this report?

MR HOLDEN: That's correct Chair.

5 CHAIRPERSON: Okay, we can talk about that at a later stage. What does that have to do with this witness, particularly in regard to the evidence that he led before this Commission, what do you want to ask him?

MR HOLDEN: What I want to ask him? I think I've  
10 already explained what I want to ask him Chair but I'll repeat it at this point. We've already gone through the RFO value system which Mr Vermeulen has testified that he compiled and he is aware of the contents of that value system, I very much doubt that Mr Vermeulen would agree to append an approval or  
15 be part of that process if he didn't agree with the contents of that value system, sorry, of the RFO. The RFO specifically states a number of stipulations regarding how a contract could be invalidated if an individual is approached or employed by the offerer in this instance, and I would assume that Mr  
20 Vermeulen was at some stage at least for his own benefit made aware of the seriousness of that, of whether such an approach was made.

I would also imagine that he would be under a duty in his position as an ARMSCOR employee to report any  
25 suspicion of wrongdoing, that would (indistinct) a useful line of

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questioning, whether he was ever informed of what would constitute a breach under terms of those paragraphs that were quoted earlier from the RFO and very importantly, and I know you have already made your opinion clear about how you value the opinion of Mr Vermeulen but I would like to put to Mr Vermeulen that if he was aware of the substance of the material in front of us he would have considered approaching the ARMSCOR Secretariat based on what he had been briefed on as a violation of the RFO terms.

5  
10 CHAIRPERSON: So, in other words you want him to answer a question whether if he was aware of this document whether he would have reported the matter to the ARMSCOR Procurement Division, is that the question?

MR HOLDEN: Well, maybe I could rephrase it because I can see that my ...

15  
CHAIRPERSON: I'm asking if that is what you said that if at all he was aware of the existence of this document would he have reported the matter to the ARMSCOR Procurement Commission, Procurement Division.

20 MR HOLDEN: That's correct.

CHAIRPERSON: Okay, put the question to him and let's see how he responds to it.

MR HOLDEN: Mr Vermeulen before we do so and with the Chair's indulgence, could I ask you to read from page 6 of my Evidence bundle with the paragraph beginning: "Jeremy

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Mathers ...”, it’s in brackets numbered as (3).

ADV LEBALA: Chair, we are objecting. We are objecting and we take this in a serious light as evidence leaders. Firstly the witness advises this Commission that this is a leaked document. Now at best the witness could follow, and I’m saying this noting that Ms Snyman is next to Mr Holden, Ms Snyman ought to advise this witness that at best the request could be made for this document to be provisionally accepted subject to the other rules of evidence permitting it to be allowed. Now that foundation has not been laid.

Number two; this is a leaked document. Now are you relegating this, I don’t know whether Mr Holden is relegating this Commission to little less than nothing you know, as accepting such evidence which carries no value. It’s a leaked document Chair, on those basis alone the Commission has to raise eyebrows and I sense that the Commission is trying to be accommodative to Mr Holden, we are not going to allow this witness to allow this type of evidence to be allowed before this Commission. It violates a number of fundamental premises of the law of evidence, in terms of the Law of Evidence Amendment Act 84/1988 Chair. That’s our objection.

ADV SOLOMON: Chair before, and with yours and Commissioner Musi’s indulgence, if I could also just indicate what our attitude is. We’re really back to an earlier ruling that you made in regard to asking Mr Vermeulen to hypothesise and

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speculate on what he would have done in a certain set of, or confronted with a certain set of circumstances. Now it's not particularly helpful when the circumstances are in themselves open to question and doubt as to their authenticity or where they come from and I do endorse what my learned and good friend Mr Lebala has put, that if the source of this document is dubious and its content is dubious, what is the point of putting to this witness: "Had you known about this dubious source document, what would you hypothetically have done and what would you have considered your duties to be?". It's just really an exercise in futility, whatever his answer is, is of no use to this Commission, so we likewise object to this line.

CHAIRPERSON: Mr Holden, let's not ask the witness to speculate. Put facts before him and then let him answer but then let's not ask him to speculate. Just try and find out firstly what the facts are and from there ask him a question so that he can answer on the basis of the fact and not to speculate.

MR HOLDEN: Chair just to clarify, does that mean I may allow the witness to read from page 6 of the Evidence bundle?

CHAIRPERSON: What is the purpose thereof? Why do you want this document whose origin is very doubtful at this stage, to be read by the witness? How does it help the Commission?

MR HOLDEN: Chair correct me if I'm wrong, but roughly five minutes you said yes, that I can I proceed with this line of questioning based on the explanation I gave, unless I

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misunderstood. Could you clarify that for me?

JUDGE MUSI: Let me say something. I find it rather strange you know Mr Holden, you have been represented, this matter was postponed today because a decision was made on  
5 Wednesday by your own legal representative to allow you space to bring the documents that were given to yourselves on Thursday in order for you to be able to prepare for your cross-examination. Today what happened to your attorney or your advocate?

10 MR HOLDEN: I was actually going to address that in the first part of the proceedings today but I wasn't allowed to, I was told to proceed directly to cross-examination. I could deal with that now if you'd like?

JUDGE MUSI: Fine, fine, fine. Maybe you should deal  
15 with it now. I'm posing this question because you have difficulty understanding how questions should be phrased, you have difficulty understanding what the objections are all about here, but you have a legal representative, why can't your legal representative assist you?

20 MR HOLDEN: Chair with your indulgence I'm going to read from my statement that I was going to lead earlier on at the Commission's proceedings, and I'm going to start right from the beginning so that you are very clear about what I'm saying,  
...

25 CHAIRPERSON: Mr Holden just hold on, just before you

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continue, I didn't (indistinct) didn't know what you were going to do or what statement you were going to read because the purpose of us postponing the matter on Thursday was to allow you to cross-examine, but then your attorney or your advocate, I'm not sure, end up saying that you first want to make a statement, she didn't say to me that she first wants you to explain why you are going to do the cross-examination, she just said that you want to make a statement and that's why I made a ruling that there is no time for making statements.

10 MR HOLDEN: Apologies Chair.

CHAIRPERSON: It mustn't be put as if I was stopping you to cross-examine, it's because I was told you want to make a statement and I wasn't even told what type of statement that is going to be, and I said it's not time for statements, it's time for cross-examination. I think I want the record to make that very clear, but then you can go ahead and tell us why you wanted to, what sort of statement you wanted to make this morning.

15 MR HOLDEN: Apologies Chair, I didn't mean to suggest that you were being unreasonable this morning, that was definitely not my intention. May I read from the statement now?

20 *"Chair, I am Paul Holden. I am a writer (indistinct) historian. I have researched and written extensively on the Arms Procurement which is the subject of the Commission's Inquiry. Leave was*

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5                    *granted to my legal representative last Thursday to*  
*cross-examine Mr Vermeulen. I wish to conduct the*  
*cross-examination myself. I am here as a private*  
*individual, unlike other parties appearing before the*  
*Commission I am not here on behalf of the*  
*Government Department of a multinational defence*  
*equipment manufacturer. Lawyers to Human Rights*  
*represent me as far as they are able without*  
*(indistinct) and I also have had the benefit of some*  
10                   *pro bono advice from counsel, however, unlike other*  
*parties I do not have access to the funds which*  
*would be necessary to brief counsel to steep*  
*themselves in the vast amount of material relevant*  
*to the Commission's inquiries, to attend the*  
15                   *hearings of the Commission, to monitor the*  
*evidence and to prepare cross-examination. On*  
*Thursday the Commission was adjourned until*  
*today, because of the funds and the time that would*  
*be required it has not been possible for me to brief*  
20                   *counsel to prepare adequately and to conduct the*  
*cross-examination".*

JUDGE MUSI:            Thank you. Let me follow up on the real  
question I wanted to, or the real issue I wanted to raise with  
you, that was merely preliminary. My point here is this, one  
25                   understands that this document that you have handed in may

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have questionable origins or may not be properly before this court, this session, but one understands that maybe you would want to use the document for purposes of cross-examination. The problem, however, is this, as I read this document I can't see anywhere where it implicates this particular witness and I don't know why questions arising from this document should necessarily have to be put to this witness. He does not, he is not implicated in this document in any way, other people instead are implicated, are you now going to ask him about the implication of other people in this document, is it proper, is it really relevant to him, this? But if you think there is anything of relevance arising from this document put the questions to him.

MR HOLDEN: I will do so. I will ask you Mr Vermeulen then not to read this matter into the record, although I do point out that that actually forms part of the public record in as much as it's available very easily online and also formed as an annexure to my submission. The question I have for you Mr Vermeulen, I assume that you have read the content of both the Auditor-General's report, the extract that I gave you plus the Debevoise & Plimpton extract that I've given you.

MR VERMEULEN: Yes, I have that.

MR HOLDEN: What I wanted to ask you is that in your position as a member of somebody who was drawing up the offerer documents and as an employee of ARMSCOR were you

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ever briefed as to what would constitute these crimes and what would be necessary for, what would be the threshold at which you would decide to report this matter to an official higher up in the decision making chain?

5 MR VERMEULEN: No, I didn't receive a briefing of that nature.

MR HOLDEN: So your understanding of the content of this paragraph is based entirely on your own reading, is that correct?

10 MR VERMEULEN: It's correct.

MR HOLDEN: Are you aware of any other member of ARMSCOR, in particular who appeared in the Arms Acquisition Process who may have been briefed about this or was that not, I don't want to put words into your mouth here, what I'm trying to establish is whether there was any formal available document or training provided by ARMSCOR on corruption and bribery issues?

15 MR VERMEULEN: Yes, ARMSCOR has a Legal Services Division who would be well au fait with the consequences around these terms and conditions.

20 MR HOLDEN: Thank you. Now as far as I understand if you were as an employee of ARMSCOR, you would have had a responsibility to report any wrongdoing to the relevant body or official within ARMSCOR, is that correct?

25 MR VERMEULEN: Certainly, that's correct.

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MR HOLDEN: And now we come to the nub of the matter, you've read both of these documents, one which has not been allowed into the public record as yet, the question that I wanted to ask you is if you had been aware of this material or  
5 of the facts alleged in these materials would you have considered those facts sufficient to have raised that issue, raise an issue of impropriety with an ARMSCOR official?

CHAIRPERSON: Alright, I'm not sure how many times should I say this. You are now asking the witness to  
10 speculate, then if at all the witness wants to speculate, and I've said to you many times that you know, speculation will not help us much, after all Mr Vermeulen can decide if he wants to tell us and speculate and tell us if this thing had come to his attention, what he would have done. You are not saying to him  
15 it did come to his attention, so you are saying if they had come to his attention what he would have done. I'm not quite sure how that answer is going to help me, or is going to help the Commission.

MR HOLDEN: This is my last question I must point out, I  
20 think the point that I was going to make is that I think it would be useful to compare Mr Vermeulen's opinion because, and I'm afraid I don't have, (indistinct) will come out in cross-examination but if there was any other member of the Acquisition Team who was aware of the activities of J Mathers  
25 and they did not report that, I would consider that personally

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curious and I would like to compare the thresholds at which Mr Vermeulen would have reported it and a certain individual may not have. Does that clarify my line of questioning?

5 CHAIRPERSON: Mr Vermeulen, are you in a position to answer that?

MR VERMEULEN: I would have to speculate in this regard.

10 CHAIRPERSON: As I said you are asking him to speculate, now he's asking you whether do you want him to speculate, and if he does speculate I'm not sure how that is going to help the Commission. He has given evidence about what he knows but then about what he does not know, whatever answer he is going to give me he will be speculating. Maybe let's get to the next question.

15 MR HOLDEN: Fair enough Chair, I only have three more questions to put to the witness. Mr Vermeulen, during the evaluation process were you ever made aware of any individual entity that appeared at any level in the acquisition chain that may have been promised bribes, gifts, commissions or any consideration whatsoever? In this regard I would like, I would ask that you contemplate both formal documents put to you and talk around the water cooler as it were.

20 MR VERMEULEN: No, I have no first-hand experience at all of any individuals being approached towards accepting bribes or having had accepted bribes.

25 MR HOLDEN: Finally Mr Vermeulen, and again I would

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like to reiterate that I ask this final question not as an accusation but just as a matter of hygiene, did you ever during the evaluation of Project Wills or thereafter receive from the German Submarine Consortium or its subsidiaries, or from DCN  
5 or its subsidiaries, or from Fincantieri or its subsidiaries, or from Kockums or its subsidiaries any promise of a bribe, gift, commission or any other consideration whatsoever?

MR VERMEULEN: No, I did not.

MR HOLDEN: Thank you Chair, that concludes my cross-  
10 examination, I hope that it will be helpful to the Commission.

CHAIRPERSON: Thanks a lot. Any re-examination?

ADV SOLOMON: Yes, thank you Chair and Commissioner Musi, with your leave there are just a few aspects that I think I should just try and clarify.

15 **RE-EXAMINATION:**

ADV SOLOMON: If we could just go Chair and Commissioner Musi to the Declassified Documents bundle and to the evaluation reported a page 118 and if Chair and Commissioner Musi could indicate to me if they have the  
20 document, I wanted to go particularly to page 126, it starts at a 118 but if we could go to a 126. I see Commissioner Musi is on the same page, do you have it Chair?

CHAIRPERSON: I do.

ADV SOLOMON: If I could just direct your attention to the  
25 five paragraphs from 23 to 27 under "Conclusion", if you could

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read each one out in turn and then indicate to the Commission,  
to Chair and Commissioner Musi if you agree or disagree with  
any of those conclusions, obviously talking in your capacity as  
the project manager of Project Wills. You can go ahead when  
5 you are ready Mr Vermeulen, thank you.

MR VERMEULEN: Thank you Chair, yes.

*"In general all the submarines evaluated are good  
products and they are all acceptable to the Navy".*

This is paragraph 23. I would concur with that, I think any one  
10 of these products based on the information we received in the  
bids, they met the requirements of the Navy and they would  
have fulfilled their function. With regard to paragraph 24:

*"Whilst being a good product the French Scorpene  
is considered to be expensive".*

15 It was relatively expensive compared to the GSC's offer. 25:

*"The German's 209 is the best value for money".*

In a somewhat convoluted manner I definitely came to the same  
conclusion based on the logic that I would have applied to  
assessing these offers, nevertheless we arrived at the same  
20 conclusion.

*"Based on the provided information that is in detail  
of the proposal the acquisition costs, broad life  
cycle costs, Italians offer good value for money but  
are expensive".*

25 The Italians provided an excellent offer, they focused a lot on

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ILS, they had a very good understanding of the ILS requirements, so yes, they did put together a very good offer, they were relatively more expensive than the GSC. Paragraph 27:

5                   *"It must be remembered the Swedish Kockums T192*  
*is provided with air-dependent propulsion as a*  
*standard fit. At least 15% will have to be added for*  
*acquisition costs for the other contenders to*  
*provide them with the same capability.*  
10                   *Notwithstanding this the T192 rates second in value*  
*for money".*

Yes Sir, the air-dependent propulsion was the feature of this submarine which wasn't required as part of the Navy's functional specification, it was an extra functionality that  
15 wasn't considered on that basis so yes, in short I agree with the conclusion reached in these underlying paragraphs under "Conclusion".

ADV SOLOMON:       Thank you Mr Vermeulen. Then there was a passage of the evidence I had hoped my legal team, Chair  
20 and Commissioner Musi would be able to refer you to where it was in the record, they haven't within the time available and I don't want to stand down and waste time, I think I can deal with it this way. There was a passage when Advocate Lebala was asking you about the very document, the submarine evaluation  
25 document here at page 118 that you've just looked at the last

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page of it, and it seemed obvious to me that you were in fact referring to the RFO Value System which we find Chair at page 99 of the same volume, and I don't want the record to look as if you later on in your evidence changed your evidence because it might appear so. Would you just for clarity's sake indicate what your knowledge was in regard to the document at page 99, the RFO, the value system and then the document that we've just looked at, at page 118, the Project Wills Submarine Evaluation Document.

5  
10 MR VERMEULEN: Yes Chair, with respect to the value system I was familiar with the contents of this document, all the weighting and all the parameters themselves I provided inputs to the formulation of that document. With respect to the second document contained in page 118, that only came to my attention in preparing my statement for this Commission.

15 ADV SOLOMON: Thank you Mr Vermeulen. Then Chair, Commissioner Musi, I don't want to disturb you by asking you to come down again and perhaps we could look at the, I'm not sure if it was given to you Chair and Commissioner Musi, the 20 slideshow, but in hard copy, and I'm not sure what, if it's been paginated, I see there are some numbers on mine that it seems to go from the first, the picture is zero (0), and then it runs up to 15, are we all on the same page?

25 CHAIRPERSON: Hold on, hold on. The first page is zero (0).

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ADV SOLOMON: Yes, and does Commissioner Musi have the same document?

CHAIRPERSON: Yes, and then the last page ...

ADV SOLOMON: Then if I could just take you ... Do you  
5 have it Mr Vermeulen, to page 16 "Cybicom Atlas Defence", this was dealing, just to refresh Chair, Commissioner Musi, this is when my learned and good friend Mr Lebala was dealing with the DIP and the Industrial Participation. Now you dealt with Cybicom Atlas Defence, this, am I correct in saying Mr  
10 Vermeulen, pertains to the Combat Suite?

MR VERMEULEN: That is correct.

CHAIRPERSON: I'm sorry Advocate Solomon, if I recall the witness made a distinction between ordinary DIP and what is referred to on page 16. If I'm not wrong he referred to, he  
15 says as a directed ..., this is the one that he was dealing with?

ADV SOLOMON: Yes, you are quite correct Chair and I see Mr Vermeulen is nodding, your recollection is correct.

CHAIRPERSON: Thank you.

ADV SOLOMON: If you could just again for the purposes of  
20 the Commission, this is dealing with the direct-DIP, is that correct?

MR VERMEULEN: Yes, that is correct Chair.

ADV SOLOMON: Could you just indicate to the Commission the Combat Suite and the eventual selection as to the  
25 subcontractors involved in that and what you knew of the

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supply of the Combat Suite?

MR VERMEULEN: Yes, Chair. The GSC in their offer specified a Combat Suite produced by a German-based company, they were then known as SDN Atlas, they are now  
5 Atlas Electronic, it was part of the scope of supply and further on once this Combat Suite had been accepted as a direct-DIP application they formed a partnership with locally based Cybicom Atlas Technologies where a substantial amount of Knowledge Transfer took place so as to make this Combat Suite  
10 locally supportable.

ADV SOLOMON: Were you aware of a meeting of the South African Submarine Industrial Cluster, the SASUB Club, that took place during about August 1998?

MR VERMEULEN: Yes Chair, perhaps if I could go back and  
15 give some background regarding this particular meeting, I mentioned during the course of my testament that I had regular meetings, I gave feedback together with the project officer to the Project Control Board. One of the issues that was raised during these meetings was the possibility of considering an  
20 alternative Combat Suite on the basis that we should be considering a local Combat Suite as opposed to the German-based Combat Suite which was provided in the offer by the GSC.

At this stage may I just remind the Commissioner  
25 that we were in the negotiation phase, so I was in a position to

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deal directly with the GSC at this stage in negotiating the contract baseline. Based on the instructions I received from the PCB, the Project Control Board, I approached the preferred supplier GSC, and I told them to go and do a comparison study  
5 of the Combat Suite they had offered in their bid to that of a locally based Combat Suite supplied by a company called African Defence Systems who were then based at Mount Edgecomb Kwazulu-Natal.

They duly carried out the project comparison study  
10 and they reported back a number of findings. Essentially there was a technical risk that would have been problematic in terms of integrating this ADS or African Defence System which was in fact a derivative of a Thomson CSF Combat Suite, it was in actual fact a French Combat Suite with a portion of local  
15 components, but it was essentially a Thomson CSF Combat Suite known as the "Suptic" [sic] system. They duly did the comparison study and they found that there would have been high risk in integrating the system because it had never been fitted into a Type 209 submarine before. That was the one  
20 issue.

Of course the one, another issue was in fact that there wasn't a local Combat Suite *versus* a foreign Combat Suite, we were comparing two foreign combat suites in the essence, the French *versus* the German system. It was  
25 estimated that the full development of the Suptic System and in

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drawing up the detailed design package for integrating the system into the Type 209 submarine would add on a further 10 months of detailed design time, so that was a timescale issue. So, there was a technical risk issue as well as a timescale  
5 issue.

And then lastly they estimated that this would cost an additional, I think it was in the order of a R100 million to R200 million to further develop. It could have been more, I'm not a hundred percent sure of the costs, but it was a  
10 substantial amount more. Based on that the project executive, myself included, presented to PCB a strong recommendation to stick to the SDN Atlas which was known as the Isis 9045 Combat Suite, we recommended based on the findings of this comparison study that we remain with the original Combat Suite  
15 as offered by the German Submarine Consortium and this in turn was accepted by the PCB.

ADV SOLOMON: Yes, thank you Mr Vermeulen. I've no further questions then for this witness, thank you Chair and Commissioner Musi.

20 CHAIRPERSON: Advocate Lebala, am I right to say that that's the end of the evidence of Mr Vermeulen and he can be excused?

ADV LEBALA: Certainly Chair, Commissioner Musi, I don't know whether, of course we could be going to Ms Cane  
25 SC as to whether she has questions, but that's the end of the

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testimony of Mr Vermeulen Chair.

CHAIRPERSON: I'm not sure if Ms Cane can re-examine, she's representing DoD and not ARMSCOR as I understand it from ..., unless if I'm wrong?

5 ADV CANE: Thank you Mr Chair, you are quite correct, I didn't consider that I have the right to re-examine this witness.

CHAIRPERSON: Thank you. So, that is the end of the evidence of Mr Vermeulen. Mr Vermeulen, thanks a lot for attending these hearings and giving evidence, I'm sure your evidence will contribute a lot towards us as a Commission meeting, or being in a position to get out our mandate. You are now excused.

MR VERMEULEN: Thank you Chair.

15 CHAIRPERSON: Advocate Lebala, who was your next witness?

ADV LEBALA: Chair, we are ready to lead the evidence of Mr Byrall Smith. He is going to testify about the acquisition process of the Corvette Product System.

20 CHAIRPERSON: Now in the light of time do you have another suggestion to make?

ADV LEBALA: At this stage the suggestion that we would like to make is to give Mr Holden the documents ... I beg your pardon Chair.

25 CHAIRPERSON: Can I try and help Advocate Lebala?

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ADV LEBALA: Please Chair, assist me.

CHAIRPERSON: Let's adjourn until tomorrow morning, we will continue with evidence tomorrow morning.

5 ADV LEBALA: Chair, I think this is very important as to whether Mr Holden is in possession of Mr Byrall Smith's documentation. It would be appropriate to hand it to him, we've already read his criticisms in his submissions and we are certain that he might be tempted to cross-examine Mr Smith also.

10 CHAIRPERSON: Alright, but that is an administrative issue. If I'm not wrong already on Thursday a decision was already taken that those documents shall be circulated. I think let's adjourn and then you will start with the first witness tomorrow morning. Thank you.

15

**(COMMISSION ADJOURNS)**