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

MR SMITH: I do.

CHAIRPERSON: Yes Advocate Lebala, maybe before we
5 continue let me just clarify one or two issues with the witness.
Mr Smith, the other day when you testified you said that we did
follow the normal acquisition process from 1992 onwards
through to the time of deferment in 1995 and I stand under
correction but as far as I can recall we went out on RFI and we
10 got to a shortlist of Bazán and GSC, that's as far as I can
recall. That appears on page 2690 of the record. You're
saying that you came to a shortlist and that two shortlisted
companies, it was Bazán and GSC as prior to the deferment of
1995. Then on the same page you go on and say:

15 *“Chair, I would caution about using the word
‘bidder’, this was at this stage as far as I can recall
we went out on a RFI, it wasn’t a matter of bidders,
it was a matter of soliciting information and yes,
Germany were part of that process and as I said as
20 far I can recall we got to a point in that process
which there was shortlisting and as far as I can
recall the shortlist consisted of Bazán and GFC”.*

One the same page you confirm, you say that the shortlisted
companies were Bazán and GFC, but then on the next page on
25 2691 Advocate Lebala says to you that:

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5 *“Is it correct that during that period two companies
got to be shortlisted, one was Yarrow of the United
Kingdom and Bazán of Spain to the exclusion of all
the others including the German Frigate
Consortium?”.*

And then you answered and say:

“As far as I can recall Chair, yes”.

Now I’m not quite sure which one is the correct answer. Prior
to the deferment of the Corvette process in 1995 after the RFI
10 was issued which two companies were, remained after the
others were eliminated? On the one hand you say it was Bazán
and the German Frigate Consortium and on the other hand at
the same time you also say that it’s Bazán and that UK
Company. Can you just try and clarify that for me please.

15 MR SMITH: Thank you Chair. Good morning to you.
Chair, I don’t have the transcript in front of me but if it says
“GFC” then it’s incorrect, what I said was, as far as I can recall
we went out on RFI and we had a shortlisting and on the
shortlist was Bazán of Spain and I think this is probably where
20 the confusion comes in as GEC of the UK. GEC is also GEC
Marine, also known as Yarrows, so maybe there’s a, in the
transcript it’s recorded GFC, it was definitely not GFC Chair,
it’s GEC Marine and Bazán of Spain.

CHAIRPERSON: So in other words you are saying that the
25 record is incorrect, instead of saying GEC it reads GFC?

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MR SMITH: Chair, if it reads "GFC" then I would respectfully say that it's an incorrect transcript taken through there. Chair, if you would bear with me maybe I should put it another way and say that the Germans were not part of the shortlist.

CHAIRPERSON: Yes I think you have explained it, probably the explanation that the record is incorrect by saying GFC, it should have said GEC and that to me seems to be the more reasonable explanation because I see on the next page Advocate Lebala says to you that:

"In all fairness to you Mr Smith, remember I'm giving you a version of what the critics are saying and if need be, if they were to cross-examine you this is what they would say. Now let's start here, you have confirmed that the German Frigate Consortium was not shortlisted, am I right Mr Smith?"

And this is how you answered:

"That's correct Chair".

So, probably the explanation that were given with that you know instead of saying GEC they wrote GF, the record indicated GFC because the next page is clearly clarified that the German Frigate Consortium did not form part of the shortlisted companies. Thank you for the explanation.

Advocate Lebala.

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ADV LEBALA: Good morning Chairperson and Commissioner Musi, we are ready to proceed.

CHAIRPERSON: Before, just hold on Advocate Lebala.

NOTE: Caucus.

5 JUDGE MUSI: Just to clear my mind also on that issue, the German Frigate Consortium, was it ever part of that process, was it eliminated?

CHAIRPERSON: Sorry, before you answer in other words prior to the deferment of the Corvette Project.

10 MR SMITH: Thank you Chair, Commissioner Musi. Commissioner yes, the Germans were part of the process prior to deferment but they did not achieve the shortlist, they didn't appear in the shortlist.

JUDGE MUSI: Thank you.

15 CHAIRPERSON: Advocate Lebala, you can continue.

ADV LEBALA: Chairperson and Commissioner Musi, we are ready to proceed if there are no incremental questions following up from your questions, we have none. What assures us is that we need to be up to date with the record because the
20 commissioners do look at the records. We are ready to proceed Chair, Commissioner Musi. Mr Smith let's start by refreshing ourselves with regard to where we were, what we know and where we ended on Tuesday and we'll build from there and this time I would like us to put our feet on the pedal
25 because we told the Commission about our vaulting ambition

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that we intend completing your testimony today. Are you refreshed?

MR SMITH: I am refreshed Chair.

ADV LEBALA: Now in your testimony we looked at the RFI you remember?

MR SMITH: I do Chair.

ADV LEBALA: To be specific we looked at the letters to different countries, the RFI itself, the RFI Value System.

MR SMITH: Yes Chair.

ADV LEBALA: We looked at the RFI report that we were busy with before we adjourned, are you refreshed?

MR SMITH: I'm refreshed Chair.

ADV LEBALA: And we learnt that in as far as the RFI Military Value System is concerned we noted the following; the RFI Military Value System is used to an enable the evaluation of international offers for Patrol Corvette's solicited by the Minister of Defence during that period around 23 September 1997, am I right?

MR SMITH: That's correct Chair.

ADV LEBALA: We've also established that the aim of the RFI, and of significance is at this stage we are still looking at the RFI, we are not at the RFO stage and we know that both processes are different, but what we established is that in as far as the RFI process is concerned its aim, and I'm talking about the RFI Military Value System where you played a role as

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a member of the Integrated Project Team where you guys are busy with the technical evaluation, the Military Value, not the industrial participation, not the finance options, is that correct?

5 MR SMITH: That's correct Chair.

ADV LEBALA: Now we know that the RFI Military Value System's aim was to eliminate those offers that are military unacceptable to the South Africa Navy, am I right?

MR SMITH: That's correct Chair

10 ADV LEBALA: And we also know that it intended to achieve a relative Figure of Merit for the military value for each of the acceptable offers.

MR SMITH: Yes, Chair.

ADV LEBALA: We took the Commission through the graphic representation of the military evaluation process, you remember?

MR SMITH: I remember, Chair.

ADV LEBALA: And we noted that it has got two parts and we saw how those two parts allow us to arrive at the Figure of Merit, am I right?

MR SMITH: Yes, Chair.

ADV LEBALA: But what was significant is that when you look at that graphic representation something was very unique, we started with the price and we measured it against the parameters, am I right?

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MR SMITH: Yes Chair, when we got down to the actual evaluation, that's Part 2, that that became (indistinct).

ADV LEBALA: Now we are still at the top from the ... I'm reminding you, I think for the sake of completeness and those
5 who are not here who are going to cross-examine you it would be fair for us to go back to page 16 paragraph 8 of the Declassified bundle. Declassified bundle Chair, Commissioner Musi, page 16 paragraph (a). You will see that below the self-same paragraph headed "Graphic Representation of Military
10 Evaluation Process: The Corvette Offer" the (indistinct) to the left as against the technical parameters to the right, am I right?

MR SMITH: That's right, Chair.

ADV LEBALA: Now you mentioned that the price there is
15 just the budget which is non-binding, am I right?

MR SMITH: That's correct Chair.

ADV LEBALA: And from there we looked at the Critical Performance Filter because it was a two-part, two-part analysis. Now at that stage we were looking at the criteria and
20 the critical requirements isn't it?

MR SMITH: Part 1 as the Critical Performance Filter, that's correct Chair.

ADV LEBALA: And Part 1 was what was contained in pages 18 to 31 of the bundle isn't it?

25 MR SMITH: That's correct Chair.

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ADV LEBALA: And later on we looked at the Relative Performance Evaluation.

MR SMITH: That's correct Chair.

ADV LEBALA: And at that stage to distinguish the
5 Relative Performance Evaluation against the Critical Performance Filter, at that stage we were looking at the weight, the criteria, the method and/or scale of assessment isn't it?

MR SMITH: That's correct Chair.

ADV LEBALA: And that's what was contained on pages 32
10 to 42.

MR SMITH: That's correct Chair.

ADV LEBALA: We went through both Part 1 and Part 2 and the commissioners came in to remind us that we should avoid bringing confusion, short of saying cluttering the record
15 because we are dealing with the Corvette's, let's forget about the submarines, do you remember that well?

MR SMITH: I do Chair.

ADV LEBALA: Now you will appreciate how important this is because when we come, we are still going to come back and
20 address the commissioners that we want them to know that part of your testimony because it relates to where we started with this ship platform. We always have to remember that at this stage we are not dealing with the combat system, we are not dealing with the military helicopter [sic], we are dealing with
25 the ship platform, am I right?

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MR SMITH: That's correct Chair.

ADV LEBALA: We then, we looked at the Critical Performance Filter results isn't it?

MR SMITH: Yes, we did Chair.

5 ADV LEBALA: We particularly looked at the Critical Performance Filter Overall Compliance Matrix, does that refresh you?

MR SMITH: It does refresh me Chair.

10 ADV LEBALA: Now that's where we appreciated failures and noted the following; that the German Frigate Consortium Meko A200, the German Frigate Consortium Meko 200, Spain – Bazán 590B only had two failures, am I right?

MR SMITH: I recall Chair.

ADV LEBALA: And they were tied isn't it?

15 MR SMITH: In terms of the number of failures, that's correct Chair.

ADV LEBALA: And France DCN Lafayette had three failures.

MR SMITH: I recall Chair.

20 ADV LEBALA: The UK GEC Marine that we now learned that it's also Yarrow Shipbuilding, had four fails?

MR SMITH: Correct Chair.

ADV LEBALA: And Italy, Fincantieri, Falco had 15 failures.

25 MR SMITH: I recall Chair.

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ADV LEBALA: Now that process led to the elimination of Italy Fincantieri, Falco, am I right?

MR SMITH: It did Chair.

ADV LEBALA: Actually I've got to be careful not to
5 mislead the record, it's Italy Fincantieri isn't it?

MR SMITH: That's correct Chair.

ADV LEBALA: Yes, may the record reflect that it's not Fincantari, it's Fincantieri, Falco. Then we look at the Corvette Military Evaluation Performance Score summary.

10 MR SMITH: Yes Chair.

ADV LEBALA: And the Performance Score summary, we looked at it after the Relative Performance Evaluation, am I right?

MR SMITH: I recall Chair.

15 ADV LEBALA: Now that's where now we weigh, we look at the scales and the parameters.

MR SMITH: That's correct Chair.

ADV LEBALA: And we noted the scores were, the German Frigate company Meko A200 had 843 score points.

20 MR SMITH: Yes Chair.

ADV LEBALA: And the German Frigate Meko 200 had 820.4 points.

MR SMITH: I have to take that as read Chair.

ADV LEBALA: Spain's Bazán 590B had 749.8 points

25 MR SMITH: I have to take that as read Chair.

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ADV LEBALA: The GEC Marine F3000 which we know is also Yarrow Shipbuilding had 628.1 points.

MR SMITH: I take it as read Chair.

5

ADV LEBALA: And France DCN Lafayette had 570.1 points.

MR SMITH: I take that as read Chair.

ADV LEBALA: Now at that stage we know that the Italian Fincantieri Falco was eliminated, am I right?

MR SMITH: That's correct Chair.

10

ADV LEBALA: Now what does it tell us? We know that GFC Meko A200 was number 1.

MR SMITH: I take that as read Chair.

ADV LEBALA: And then we went to the Evaluation Report, that's where we were before we adjourned, does it refresh you?

15

MR SMITH: It refreshes me Chair.

ADV LEBALA: Now what we know is that the Evaluation Report was prepared by Captain Kamerman and moderated by Commander Howell, is that correct?

MR SMITH: That's correct Chair.

20

ADV LEBALA: Now you told the Commission that you did not sign the Evaluation Report.

MR SMITH: That's correct Chair.

25

ADV LEBALA: Mr Vermeulen told us that in as far as the submarines are concerned Evaluation Report was not even signed by a representative of ARMSCOR, you remember?

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MR SMITH: That's correct Chair.

ADV LEBALA: Now let's get back to the Corvette's. Is it true that the Evaluation Report was not even signed by a representative of ARMSCOR?

5 MR SMITH: The Evaluation Report for the RFI was not signed by ARMSCOR Chair.

ADV LEBALA: I'm talking about the Evaluation Report of the RFI at this stage.

MR SMITH: That's correct Chair.

10 ADV LEBALA: Now at this stage I think I would like to complete this picture, please look at the Statement bundle. Commissioners, the Statement bundle, that's your statement and I must just ... Chairperson, Commissioner Musi, your attention is drawn to page 163 to 166, we are not going to take
15 you through the whole document, we just want to draw your attention to the role played by Captain Kamerman and moderator Commander Howell. Now their role has a basis and the significance of this document tells us and the Commission to weigh whether they should be called to testify or not. Now it
20 appears when you look at page 163, let's verify whether the commissioners are on the same page with us. I see that Commissioner Musi is nodding. Chairperson? I see the Chair is nodding. Now this document, please read it for the record at the top.

25 MR SMITH: *"Procedures for the Solicitation,*

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Submission and Evaluation of Offers for the Acquisition of Cardinal Equipment for the SA Navy”.

ADV LEBALA: Now at this stage it has become clear that by cardinal equipment we are talking about projects above R80 million, is that correct?

5

MR SMITH: That’s correct Chair.

ADV LEBALA: And this is inclusive of the SDPP acquisition, am I right?

MR SMITH: That’s correct Chair.

ADV LEBALA: Which covers the Corvette Platform programme, isn’t it?

10

MR SMITH: That’s correct Chair.

ADV LEBALA: Now please proceed reading.

15

MR SMITH: The reference, they give a reference there as the DoD Policy Directive Number 4/147.

ADV LEBALA: Now we have heard about the DoD Policy Directive 4/147, of course you were present during the testimony of Captain Jordaan, am I right?

20

MR SMITH: I wasn’t present for the testimony of Captain Jordaan but I do recall this being mentioned during the testimony of Mr Griesel.

25

ADV LEBALA: Yes well, let the record demonstrate that Captain Jordaan and Mr David Griesel did talk to the Policy Directive 4/147. For the sake of completeness let’s focus on what you know and what you heard. Now during the testimony

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of Mr David Griesel he informed the Commission about the inception of this Policy 4/147, you still remember?

MR SMITH: I do Chair.

ADV LEBALA: Now this document has been put in place
5 by that policy isn't it?

MR SMITH: Are you referring to the document on page 163?

ADV LEBALA: That is so, we are talking to this document, not any other document, the self-same document,
10 yes Sir.

MR SMITH: Yes, this document is, makes reference to that policy directive.

ADV LEBALA: Now read further "Introduction" paragraph 1.

15 MR SMITH: "Introduction" paragraph 1:
*"These procedures are applicable to the solicitation, submission and evaluation of offers from potential overseas suppliers for the supply of Corvette's, submarines and related equipments for
20 the SA Navy".*

ADV LEBALA: And remember I drew your attention to the fact that Mr Vermeulen did testify that Captain Kamerman and Commander Howell played a significant role in as far as also the RFO Evaluation Report of the submarines are concerned,
25 you remember I mentioned that part?

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MR SMITH: I recall that Chair.

ADV LEBALA: And you were present when he was testifying to that, am I right

MR SMITH: I was present Chair.

5 ADV LEBALA: Well, there it's standing in front of us. Let me read paragraph 2 for the sake of expedience:

10 *"These procedures as well as those reflected in Ref A shall apply to the allocated project evaluation teams for strict adherence during the evaluation period".*

Now does this also cover the team in which you were part, is that correct?

MR SMITH: This also covers the team of which I was part, yes Chair.

15 ADV LEBALA: Now paragraph 3:

20 *"Cognisance shall be taken of the parallel evaluation that will take place in other state departments and entities external to the South African Navy. These procedures shall therefore apply to the instant when the final selection is publicly announced by the Minister of Defence".*

Remember we are still dealing with cardinal projects, am I right?

MR SMITH: That's correct Chair.

25 ADV LEBALA: Now, "(Indistinct) Provisions" paragraph 4:

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“In general these procedures shall have the objective to:

(a) Provide for the fair and equitable treatment of all potential suppliers and contractors.

5 *(b) Promote the integrity of, and fairness of the acquisition and evaluation process.*

(c) Achieve transparency in the procedures relating to the acquisition in (indistinct) the evaluation process in particular”.

10 Now what has become clear is that all these processes in as far as solicitation, submission, evaluation of offers, the teams, the procedures applicable thereto was regulated and accounted for, am I right?

MR SMITH: That’s correct Chair.

15 ADV LEBALA: Now let’s not waste time, let’s go to page 166. Please read the paragraph headed: “Authorisation to Act as Nodal Points for Communication”.

MR SMITH: Paragraph 20:

20 *“The officers underneath are authorised to communicate directly with, and to receive communications directly from suppliers or contractors in connection with the military portion of the offer during the evaluation period”.*

ADV LEBALA: Now let’s pause there. What does
25 “Authorisation to Act as Nodal Points for Communication”

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mean?

MR SMITH: It would be the point, the single point of contact with regards to the communications as described in that paragraph.

5 ADV LEBALA: Now do you agree that paragraph 20 also runs on the theme of what you are saying that:

10 *“These officers underneath are authorised to communicate directly with, and to receive communications directly from suppliers or contractors in connection with the military portion of the offer during the evaluation period”?*

MR SMITH: That’s stated here, that’s what’s stated here Chair, so I agree with that.

15 ADV LEBALA: Now nothing tells us that Captain Kamerman will be the chairperson, am I right?

MR SMITH: It doesn’t mention it here Chair, no.

ADV LEBALA: Nothing informs us that Commander Reed will be the moderator isn’t it?

20 MR SMITH: Commander Reed was the project officer. No, it doesn’t inform us about that.

ADV LEBALA: And we note something which is very silent, look at the bottom. Commander Howell, are you noting that?

MR SMITH: I note that Chair.

25 ADV LEBALA: And nothing informs us in this paragraph

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that Commander Howell will be the moderator isn't it?

MR SMITH: No, nothing informs us on that Chair.

ADV LEBALA: Now what we know is that this document in
as much as it talks about the procedures for the solicitation,
5 submission and evaluation of offers for the acquisition of
cardinal equipment for the South African Navy it assigns some
roles to the following officers, Captain Kamerman, Commander
Reed and Commander Howell, do you agree?

MR SMITH: Chair, it assigns roles to Captain
10 Kamerman and Commander Reed and its signed off by
Commodore Howell representing Chief of the Navy, correct.

ADV LEBALA: Thank you for clarifying that. So, it does
not assign any role to Commander Howell, do you agree?

MR SMITH: I agree Chair.

15 ADV LEBALA: Now all that is being confirmed is it just
says that there will be officers to communicate directly with
and to receive communication, that has become clear, you
agree, am I right?

MR SMITH: That's correct Chair.

20 ADV LEBALA: Thank you. Now we were refreshing
ourselves because we have to start with today's testimony to
complete the Evaluation Report Now that is the RFI Evaluation
Report to refresh ourselves, is that correct?

MR SMITH: That's correct Chair.

25 ADV LEBALA: Now we do know that throughout,

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particularly in as far as the Evaluation Report is concerned you were part of that team, am I right?

MR SMITH: That is correct Chair, I was part of the team that actually did the value system which is Appendix "A" to that report.

ADV LEBALA: We also know that you were part of the team that prepared the Critical Performance Filter that we went through that made failures and qualified those with more failures and those with less failures, am I right?

10 MR SMITH: That's correct Chair.

ADV LEBALA: We also note that you were part of the team that gave the component scores in as far as the Military Evaluation Performance is concerned, am I right?

MR SMITH: That's correct Chair.

15 ADV LEBALA: And you remember we went through the proposals received?

MR SMITH: Yes Chair.

ADV LEBALA: We also went through proposals rejected for further evaluation.

20 MR SMITH: Yes Chair.

ADV LEBALA: We went through proposals failing some critical performance requirements but were allowed to be evaluated.

MR SMITH: Yes Chair, we did.

25 ADV LEBALA: We went through the Corvette Military

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Performance Scores?

MR SMITH: Yes Chair.

ADV LEBALA: Now that's where we look at the technical value, am I right?

5 MR SMITH: That's correct Chair.

ADV LEBALA: Not the industrial participation, not the financial option and that's where you played a role with your team isn't it?

MR SMITH: That's correct Chair.

10 ADV LEBALA: Now we know that in as far as the RFI Corvette Military Performance Scores are concerned Germany Frigate Consortium A-Meko 200 [sic] was number 1 with 843 points, you still remember?

MR SMITH: As read Chair.

15 ADV LEBALA: And German Frigate Consortium Meko 200 was number 2 with 820 points, does it refresh you?

MR SMITH: It refreshes me Chair.

ADV LEBALA: Spain – Bazán 590B was number 3 with 750 points.

20 MR SMITH: As read Chair.

ADV LEBALA: UK GEC F3000 was number 4 with 628 points.

MR SMITH: As read Chair.

25 ADV LEBALA: And France DCN Lafayette was number 5 with 570 points.

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MR SMITH: As read Chair.

ADV LEBALA: Now let's see what we noted and this is very important because we are going to the critical aspect and the last part of your testimony. The reason why we want to start at the back, we want to configurate what we are saying with what you will be testifying to from now on. Coming out of these scores we noted the following, that the German Meko designs offered excellent military performance, is that correct?

MR SMITH: That's correct Chair.

10 ADV LEBALA: And they had no limitations.

MR SMITH: That's correct Chair.

ADV LEBALA: We know that Spain was found to be a very good all-round design with significant better mobility and operability than the others?

15 MR SMITH: That's correct Chair.

ADV LEBALA: Your only limitations came when the Commission struggled, remember the Commission struggled to read that paragraph if you remember, there was a paragraph that the Commission struggled.

20 MR SMITH: I recall Chair.

ADV LEBALA: Chair, Commissioner Musi, at this stage it's appropriate to refer you to a new bundle. Now this bundle, I don't think it needs to confuse you, it's posted before you. Now this bundle, it's that which you could not read and what ARMSCOR legal representative did to simplify the process.

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They only comprised it from page 1 to 123, from page 1 to page 123. Now you will note that this bundle is the self-same bundle as this one that this witness is testifying to which starts from page 1 to page 174. Now we just, I suppose that the ARMSCOR
5 legal team just wanted to simplify it by isolating it from page 1 to 123, but what's significant also is from page 1 to 123 it just talks to the RFI process and from page 124 to page 174 is the RFO process, that would be the last leg of the witness's testimony.

10 Now we are still busy with the RFI processes in as far as the evaluation of the platform, ship platform is concerned. Now let's look at page 6, the difficulty that we have, we could not read page 6 when the chairman and Commissioner Musi, in exercising what was diligent instincts
15 said that we've got to know what this paragraph entail. Now let's complete for the record, paragraph 12 page 6, I would like you to read it.

MR SMITH: Paragraph 12 page 6 Chair, "Spain":

20 *"The Spanish 590B is a very good all-round design with significantly better mobility and operability than the others. As in the case of Germany very little design work will be necessary if the Spanish Corvette is selected. The delivery date of the first of Class exceeds the specified maximum but it is*
25 *felt to be conservative and could be brought forward*

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in negotiations”.

ADV LEBALA: Now do you agree that the only limitation as far as the Spain offer is concerned was the delivery date which was found to be conservative hence they say it could be
5 brought forward through negotiations?

MR SMITH: That’s as reflected here Chair, it’s correct.

ADV LEBALA: Now as at that stage Germany had no such limitations, am I right?

MR SMITH: In terms of what was stated there, I’ve just
10 go to, if I recall correctly there were, as was mentioned earlier there was two failures on the German side if I remember correctly, but that’s not covered in the text here in general.

ADV LEBALA: Not at that stage, you could ... Let’s refresh you. Let’s complete this picture. Please look at page
15 6 paragraph 11. Nothing is being said on the limitations of Germany.

MR SMITH: That’s correct Chair, nothing is said in this paragraph on the limitations of Germany.

ADV LEBALA: Just remember the stage at which we were,
20 we were at the stage of the Corvette Military Performance Scores and it’s very important for the Commission to appreciate where we are taking the Commission to. We are at this stage where we are talking to the Corvette Military Performance Scores, we are not in other stages where the Germans are
25 found to have limitations. At this stage we know that the

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German designs are said to be excellent military performance. Spain is a very good all-round design with significantly better mobility and operability than the others but it has got this limitation in as far as the delivery date is concerned. Do you agree?

MR SMITH: I agree Chair, as pointed out now that this whole section has to do actually with Military Performance Scores and not as I was referring to in a moment ago to the Part 1.

ADV LEBALA: And what we did, we started realising on the next page that the UK and France had poor signatures and their design had serious limitations, am I right?

MR SMITH: That's correct Chair.

ADV LEBALA: To be specific, I've got to be careful, I'm generalising them. The UK, I beg your pardon Chair, Commissioner Musi. The UK had poor signatures, especially the radar and generally poor operability due to a very (indistinct) forward structure, do you remember?

MR SMITH: That's correct Chair.

ADV LEBALA: And the combat suite ...

CHAIRPERSON: Sorry Advocate Lebala, just for my own understanding what is a signature because here the sentence says that you know, the F3000 design, poor signatures. What does that mean?

MR SMITH: Chair, what it's referring to when it says

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“poor signatures” and it says “(Especially radar)”, with a radar there’s a transmitted signal towards the ship and it’s bounced back and that is then measured as a signature and if the shape of the ship is of such a nature that it provides a good reflection back it’s actually a poor signature because you don’t want it to be seen basically, so that would be like a radar signature and you could have an acoustic signature as well which is you don’t want to, you don’t want your ship, you don’t want to be able to be heard so you would have a, preferably a low acoustic or sound signature, so it’s just a signature, the characteristics of that, of the ship.

ADV LEBALA: Now short of saying that when you talk about signatures we talk about the measurement, the measurement of the radar reflection isn’t it?

15 MR SMITH: They are referring here to especially the radar signature, correct.

ADV LEBALA: Yes, the officers did testify about that but we need to refresh ourselves time and again because I also lose some of these definitions and thanks for refreshing us, but we know that the combat suite effectiveness was also not good, am I right?

MR SMITH: That’s as stated here, that’s correct Chair.

ADV LEBALA: We are still on the UK F3000 design, is that right?

25 MR SMITH: That’s right Chair.

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ADV LEBALA: And the delivery time was very poor.

MR SMITH: That is also stated here Chair, that's correct.

5 ADV LEBALA: Now let's go to France. It had a problem with its design isn't it?

MR SMITH: That's correct Chair.

ADV LEBALA: And it is said that:
"The design suffers from being a drastically scaled down version of its well-known namesake with a total redesign of some of the main design features of the latter".

10

You remember that part, we read it to you?

MR SMITH: That is correct Chair.

ADV LEBALA: And it further said that it was an attempt to reduce costs.

15

MR SMITH: That is correct Chair.

ADV LEBALA: And it further said that the growth potential was poor.

MR SMITH: That's correct Chair.

20 ADV LEBALA: Logistic impact and accommodation and habitability were poor.

MR SMITH: Correct Chair.

ADV LEBALA: The delivery timescale lacked specified maximum limits.

25 MR SMITH: Correct Chair.

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ADV LEBALA: Now what we know as at this stage, am I right or wrong, the Corvette Military Performance Scores put the German Frigate Consortium Meko A200 at the top, am I right?

5 MR SMITH: That's correct Chair.

ADV LEBALA: It had no limitations isn't it?

MR SMITH: That's correct Chair.

ADV LEBALA: The only limitations that Bazán had was in as far as the delivery is concerned.

10 MR SMITH: That's correct Chair.

ADV LEBALA: Then we went through the Corvette costs, you remember?

MR SMITH: I remember Chair.

ADV LEBALA: We looked at the overall acquisition cost offer and we also looked at the costing breakdown, am I right?

MR SMITH: That's correct Chair.

ADV LEBALA: And we found that the Corvette Evaluation Costing Breakdown brought the following results, Spain – Bazán costs were R3 257 billion as a total vessel cost that would cost our state and its additional duties and taxes was only R546 million.

MR SMITH: As read Chair.

ADV LEBALA: And it was followed by the German Frigate Meko A200 with R3 780 billion as the total vessel cost to our state with the additional tax duties of R629 million.

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MR SMITH: As read Chair.

ADV LEBALA: And it was followed by the German Frigate Consortium Meko200's with R3 780 billion with the additional tax duties of R629 million.

5 MR SMITH: As read Chair.

ADV LEBALA: ... scores of the German frigate were tied. It means in as far as the costs were concerned Spain's Bazán had the lowest scores followed by the designs of the German Frigate Consortium, is that correct?

10 MR SMITH: That's correct Chair.

ADV LEBALA: And next was the France Lafayette with R3 982 billion with the additional tax duties of R660 million.

MR SMITH: As read Chair.

15 ADV LEBALA: And last was the UK Marine F3000 with R4 233 billion and the tax duties of R700 million.

MR SMITH: As read Chair.

20 ADV LEBALA: Now that's where we were. Now what we know as at that stage, we know that in as far as the military performance is concerned the Germans were at the top, especially the German Frigate Meko A200 design, is that correct?

MR SMITH: That's correct Chair.

25 ADV LEBALA: In as far as the costs in Rand's are concerned we know that the Spain – Bazán 590B cost-wise was the lowest and the most sensible, permit me to use this

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expression, am I right?

MR SMITH: Correct Chair.

ADV LEBALA: Now that's where we ended. Now we are starting here because we have to conclude now and go to the
5 RFO but before we go to the RFO I would like you to look at the
Declassified bundle Chair, paragraph 17 page 8. The
Declassified bundle Chair page 8, paragraph 17 at the top. I
assume that Chairperson and Commissioner Musi are on the
same page. Now page 17, let's put our foot on the pedal, I'll
10 take the liberty to read it:

"As can be seen ..."

Now we ...

CHAIRPERSON: Is it paragraph 17 and not page 17?

ADV LEBALA: I beg your pardon, it's paragraph 17 Chair.

15 CHAIRPERSON: Okay.

ADV LEBALA: And page 8. I appreciate Commissioner
Musi, Chair. May I take the liberty to read it?

"As can be seen ..."

As we know up to so far that the Spain – Bazán cost-wise was
20 the lowest.

*"As can be seen prices varied considerably, R1
billion between the Spanish and UK offers but not in
relationship to the offered quality, example the
most and second-most expensive offers scored
25 second last and last respectively for military*

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performance”.

I think that’s very clear, unless you want to clarify it.

MR SMITH: I don’t think it needs further clarification, I agree there Chairman.

5 ADV LEBALA: Now we go to the Corvette Military Value now, that’s where you also played a significant role as a member of the Evaluation Team and as a member of the Integrated Project Team, am I right?

MR SMITH: That’s correct Chair.

10 ADV LEBALA: Now this looks also at the technical aspect of the ship platform, am I right?

MR SMITH: That’s correct Chair.

ADV LEBALA: Let’s go on.

15 *“The military value was obtained from the performance cost ratio of the evaluated offers. For the purpose of valid calculation only the basic without RSA duties and taxes, ship platform cost was considered as the performance evaluation was confined to the technical evaluation of the various*
20 *ship platform offered, the combat suite being an identically specified at a cost the South African Navy prescription”.*

25 What this paragraph means is that the ship platform costing was considered because the combat suite was identical, am I right?

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MR SMITH: That's correct Chair.

ADV LEBALA: That's where we started when we said but the combat suite was already priced, I mean if you had to look at the successful bidder or the contestants you only had to look
5 at the ship platform.

MR SMITH: That's correct Chair.

ADV LEBALA: *"Now the resultant Figures of Merit were normalised to 100 as shown in the table below".*

10 Now this, are we talking about the formula when you talk about the Figure of Merit?

MR SMITH: Chair, you would have noticed that I think it's used, this Figure of Merit is sometimes referred to elsewhere as "military value" and in another place I think it's called a "military index", but they all, they all say the same
15 thing but basically it's a ..., and then the words that are used here, "Figure of Merit".

ADV LEBALA: Now it's very important to remind ourselves that we are dealing with a ship platform and looking at the RFI Value System, am I right?

20 MR SMITH: That's correct Chair.

ADV LEBALA: Now is it the same formula that Mr David Griesel told us about? You remember what Mr David Griesel told us about?

MR SMITH: I recall Chair.

25 ADV LEBALA: Now in this context the Figure of Merit

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normalised to 100, is it the same formula?

MR SMITH: It's the same formula Chair.

ADV LEBALA: And it made sense bearing in mind that the original date of this report is the 14th November 1997 and SOFCOM that established this formula that Mr David Giesel told us about was established on the 2nd of July 1997, does it refresh you?

MR SMITH: It refreshes me Chair.

ADV LEBALA: Now we don't have to go back to that formula, I think it's on record. For the sake of completeness let's look at the scores. Spain – Bazán had the top score, Germany GFC Meko followed, Germany GFC Meko 200 ... I beg your pardon, second was Germany GFC Meko A200, may the record reflect that, followed by Germany GFC Meko 200, Britain GEC F3000 number 4, and France DCN Lafayette number 5 with the price and the scores that follows, the Ship Platform Score:

| | <u>SHIP PLATFORM SCORE</u> | <u>PLATFOR M SCORE</u> | <u>SCORE RATIO</u> | <u>Figure of Merit</u> |
|-----------------------------|------------------------------------|----------------------------|------------------------|--------------------------------|
| SPAIN – (Bazán) | 750 | R1 863bn | 0.40 | 100 |
| GERMANY GFC MEKO A200 | 843 | R2 385bn | 0.35 | 88 |
| GERMANY GFC MEKO200 | 820 | R2 385bn | 0.34 | 85 |

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| | | | | |
|----------------------------|-----|----------|------|----|
| BRITAIN GEC F3000 | 628 | R2 839bn | 0.22 | 55 |
| FRANCE DCN LAFAYETTE | 570 | R2 588bn | 0.22 | 55 |

We note something again that the German GFC Meko A200 and the German GFC Meko 200 were almost tied in as far as the ship platform cost is concerned, am I right?

5 MR SMITH: That's correct Chair.

ADV LEBALA: And in as far as the score cost ratio is concerned?

MR SMITH: They are close Chair.

10 ADV LEBALA: I beg your pardon, I think I ... Let the record reflect that they were not tied, they were close. And we also note that in as far as the ship platform score is concerned they were not tied.

MR SMITH: That's correct Chair.

15 ADV LEBALA: Now at this stage we note that Spain in as far as the Corvette Military Value is concerned was number 1.

MR SMITH: That's correct Chair.

ADV LEBALA: Now let's conclude, we know at this stage that there is a difference between military performance and military value, am I right?

20 MR SMITH: That's correct Chair.

ADV LEBALA: And I think this is borne by what we are going to read on page 8 paragraph 19 of the Declassified

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bundle. Paragraph 19 "Conclusion: Military Performance":

"i. The German Frigate Consortium Meko A200 has the best military performance of all the designs offered.

5 *ii. The German Meko and Spanish 590B designs are markedly superior in military performance to the British F3000 and the French Lafayette designs.*

10 *iii. All of the five designs evaluated are technically acceptable to the South African Navy but considerable design work will be necessary on the British and the French designs before they would be suitable".*

Now does it tell us about the limitations of the British and French designs?

15 MR SMITH: It does Chair.

ADV LEBALA: In (ii) does it inform us that the Spanish design had its own superior advantages, am I right?

MR SMITH: That's correct Chair.

20 ADV LEBALA: Compared only to the German Meko 200 but not to the German Meko A200.

MR SMITH: That's correct Chair.

25 ADV LEBALA: Now page 9, let's look at the Military Value. Now if I may ask you the following without assuming, if I were to ask you to simplify in your own words what's the difference between the military performance and the military

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value, let's start with, you can give an example, please feel free to give example. What is the military performance?

MR SMITH: The military performance as given here is in fact the raw score if you will, it's the score that comes from the Part 2 Evaluation, that's the raw score, military performance. The military value as referenced here is basically the Figure of Merit, it's the raw score divided by the acquisition cost as referred to under paragraph (b) across the page on page 9 "Military Value" there's a (i), you will see the end of it being "Excellent value for money", in other words the value is the raw score divided by the cost.

ADV LEBALA: Now if one were to say that the difference between the two is that with the military performance you just look at the raw score and you look at those Part 2 Performance that we went through and in as far as the military value is concerned you take the raw score and divide it by cost.

MR SMITH: That's correct Chair.

ADV LEBALA: Now page 9 "Military Value". Of course I think it explains why the Spanish Bazán became number 1 because the cost element came in there, am I right?

MR SMITH: That's correct Chair

ADV LEBALA: So, in military performance we don't look at the acquisition cost, in the military value we look at the acquisition cost.

MR SMITH: That's as used here, that's correct Chair.

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ADV LEBALA: Now which one is more compelling? Okay, let me simplify it, which one carries more weight than the other between the military performance and the military value from your experience and expertise having been an officer, now being a civilian, being a ship designer of both submarines and Corvette's being in this space and (indistinct), if the commissioners were to ask you because I'm asking you on their behalf, which one carries more weight? What's your response?

5
10 MR SMITH: Chair, it's ... One can't say carry more weight, it's basically a division, it's the raw score divided by the cost and so it is, you can't, there's no weight assigned to, shall we say to the total raw score as opposed to the total cost, it's purely a calculation of raw score divided by cost and there's no distinction given, there's no, in terms of what was applied here there wasn't a weighting per se given to acquisition cost relative to the military performance.

15
20 ADV LEBALA: Now we now know that, assume we know everything that you have said, my question is so benign and you may not appreciate it because we still have to come back before the commissioners when they prepare their report and persuade and to either look at the military performance or the military value. I can tell you in my view they are undecided, they are still digesting this and I would like you to help them to digest this. Which one has to be given more consideration?

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Now let's forget about the weight because I'm using words that are subjective and evaluative, they say never ask an evaluative question. Now which one, if you were to choose with your cap on with the experience having looked at your CV, which one
5 has to be given more consideration between the military performance and the military value?

MR SMITH: Chair, I would not want to confuse the Commission in this regard. If you look across the page at page 8 at the table in the middle there and you see the column
10 headed "Ship Platform Score" and the column headed "Ship Platform Cost", what we are doing is we are dividing the ship platform score by the ship platform cost. Chair we're just doing that arithmetic calculation, however, the ... What would obviously play a role is the relative score and the relative cost
15 would have an influence on the outcome, therefore you can see on that column "Ship Platform Score", I'll take number 2 there, that's the Meko A200, scored the highest score, however, its cost relative to the Bazán cost was so much higher that when it came to Figure of Merit the result swung around because it was
20 the calculation, the relative cost.

So, I think it's, if you want to, what plays the greatest role, it is, it's to do with the relative, the cost differential and the score differential percentage that would throw the score around, the Figure of Merit around. I hope that
25 is clear, if not I beg your leave.

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ADV LEBALA: In actual fact you are answering an important question because you are asking, you are responding to that which was going to follow after you have responded, you haven't responded to the real question. The real question is you've clarified the difference between the military performance and the military value, up to so far it has become clear that in as far as the military performance is concerned the German GFC Meko A200 was superior and it took position 1, but in as far as the military value which relates to cost, because that's where we take the ship platform score and divide it by the ship platform cost, acquisition costs, the Spanish Bazán became superior and number 1.

Now if we look at page 8 and you look at the graph that falls under the Corvette Military Value, we have noted the ship platform makes the German Frigate Meko A200 number 1 above the Spain Bazán but the cost and the score ratio and the Figure of Merit makes Spain Bazán number 1. Now let's go back to my question. If you were to be asked which one carries more consideration, it means if you were to, if they were to put them in a comparative scale or weight ...

Okay let ... I keep on confusing you when I go to weight. If they were to test in your view and say which one has to take precedence above the other, which one would it be? Would it be the military performance or the military value, irrespective of the explanations that you have given us, you

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have given us the explanations and we are content with it, which one?

MR SMITH: Chair, if I understand the question correctly at the end of the day the military value is what you want to achieve, the highest military value because that, and to put it into different terminology that gives you the most bang for your buck, it gives you the most capability for the amount of money. The military value is, if I can put it in another way it doesn't help to have a ship performance score which is high but you can't afford the vessel or the vessel price is too high, so what is more important at the end of the day is the amount of capability you are getting, in other words the performance you are getting at the least price, the highest performance at the least price is the ideal. I hope that sort of sheds a little bit of light on the subject.

ADV LEBALA: Now to be precise, in your view military value takes precedence?

MR SMITH: Correct Chair.

ADV LEBALA: Simply put it's because you want to have a ship that you can afford.

MR SMITH: A ship you can afford but gives you the most capability at the lowest price.

ADV LEBALA: And we note on page 9 that the Evaluation Report has a signature of Kamerman, Captain Kamerman and it was moderated by Commander Howell, am I right?

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MR SMITH: That's correct Chair.

ADV LEBALA: And we note what is glaring is that there's no ARMSCOR's representative signatures, isn't it?

5 MR SMITH: That's correct Chair, although Chair I would want to point out across the page that it was eventually distributed to me, you could see under it says: "For Information", on page 10 "PM Sitron", that is the programme manager Sitron and I received according to this here, I received copy number 11.

10 ADV LEBALA: Chairperson, Commissioner Musi, if we look at the bundle that has just been given to you, page 9, you will note at the bottom that the designation of Admiral Simpson Anderson, the Chief of the Navy, and the date of November 1997 also appears there and we want the record to reflect this given the fact that there's a consideration also to lead his testimony on a number of issues pertaining to this self-same subject and the witness has just completed her testimony in as far as page 10 is concerned, we are not going to regurgitate it. Right, this report, we note in page 10, my
15
20 colleague draws my attention to something important. You mentioned that this document was given to you, am I right?

MR SMITH: This document was distributed to me after it was signed off and compiled, that's correct.

ADV LEBALA: Do you remember the date?

25 MR SMITH: No date is given here Chair, so I don't

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know when it was distributed to me, it would have been, I would assume shortly after it was signed off, I don't have a, I can't say when I received a copy of this.

ADV LEBALA: Fair enough, just to refresh you it would
5 have been around November 1997, am I right?

MR SMITH: That sounds correct Chair.

ADV LEBALA: Now when you received it after it was distributed to you did you read it?

MR SMITH: I would have definitely read it Chair.

10 ADV LEBALA: Were there some discrepancies that you noted about it?

MR SMITH: Not that I can recall Chair.

ADV LEBALA: Amongst members of the Evaluation Team who were instrumental in assisting with the information that
15 assisted in the production of this report was there any one who commented about any discrepancies pertaining to it?

MR SMITH: I can't recall Chair.

ADV LEBALA: Captain Kamerman, did he comment about any discrepancies to you and/or to members of the Evaluation
20 Team?

MR SMITH: Not as far as I can recall Chair.

ADV LEBALA: The moderator, did he draw attention to any discrepancies?

MR SMITH: Not as far as I can recall Chair.

25 ADV LEBALA: Did you hear Admiral Simpson Anderson

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commenting about any discrepancies?

MR SMITH: Not as far as I can recall Chair.

ADV LEBALA: Any member of the Integrated Project Team?

5 MR SMITH: Not as far as I can recall Chair.

ADV LEBALA: Now let's close by saying, I know that you have responded to this question, are you certain that there was never at any time where you picked up any discrepancy?

10 MR SMITH: I can't recall having picked up any discrepancy and if it was a significant discrepancy then I would have addressed it Chair.

ADV LEBALA: As at the stage when you are standing before the Commission have you picked up any discrepancy?

MR SMITH: In this report as it is, is that ...

15 ADV LEBALA: Yes, as you are standing before the Commission, it doesn't matter, yesterday, this morning, at any stage before you came to testify did you pick up any discrepancy?

20 MR SMITH: I haven't been able to pick up any discrepancy going through this report Chair. As far as I can recall the situation at the time I can't say I identified any glaring discrepancy that comes to my attention.

25 ADV LEBALA: Does it hold to say that as at the stage where you are testifying before the Commission this morning, yesterday, the day before yesterday, Tuesday, there's never

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been any member of the Integrated Project Team, neither Captain Kamerman, I don't know whether he's a captain or commander because I know that officers are very sensitive with their titles, Commander Howell, Rear Admiral Simpson
5 Anderson drew your attention to any discrepancy?

MR SMITH: I can't recall anybody drawing my attention to any discrepancy in this report Chair.

ADV LEBALA: Thank you. Now we are leaving the report. Do you want to say anything about the report at this stage?

10 MR SMITH: If I may Chair, just to contextualise things again you will have noticed that the outcome of this report which is an RFI report essentially is only the elimination of certain responses and in a nutshell it leads to a shortlist and that was the, really the only significant outcome of this report
15 because that's what was carried over to the next phase.

ADV LEBALA: Are you confident about what you are saying to this Commission, particularly this statement that you have just said?

MR SMITH: I feel confident with that Chair, the Part 2,
20 but just bear in mind once again, and I don't want to repeat but this is based on, it's an RFI based on information which could vary, it's budgetary information et cetera, it's very much in the realm of market survey, so the, though we've got an outcome in terms of military value which is of interest, and I'm sure that's
25 why they did it, the Navy, because they wanted to get a feeling

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of the military value. The most significant part of this report is the determination of which companies would proceed to the next phase of the process.

ADV LEBALA: I am confident that the commissioners will never allow me to ask you an unfair question, neither would Mr Masilo, nor Ms Zando, but you have just told the Commission that you are confident to say that the purpose of the RFI process that we went through was only to eliminate those offers that were military unacceptable to the South African Navy.

5
10 MR SMITH: What I'm saying as far as myself personally is concerned what came, what is the most significant thing to come out of this report is what was required for the next phase and that was a shortlist of companies that could be identified and receive request for offers.

15 ADV LEBALA: Yes, but that's where the problem is because this Commission's eyebrows are being raised because it was taken through the second leg not only to eliminate. We spent time demonstrating that the process also had to achieve a relative Figure of Merit for the military value for each of the acceptable offers as a military input, do you remember?

20 MR SMITH: I remember Chair.

ADV LEBALA: And it was a very tedious process, hence I ask you are there any comments, corrections, additions you want to make before we go to the RFO?

25 MR SMITH: No Chair.

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ADV LEBALA: Now are you corrected that the process that we went through dealing with the RFI, the RFI Value System, the RFI Evaluation Report and the scores, the matrix in as far as the ship platform is concerned was not only to
5 eliminate but it was also to achieve a relative Figure of Merit?

MR SMITH: That was the aim that the Navy had for the RFI, it had a two-fold aim if you can recall, aim 1.a was to eliminate unacceptable offers to the Navy and then they had a 1.b objective which was together, they wanted to get a, achieve
10 a Figure of Merit. If you go to page 2 Chair that was the aim, the one aim was to eliminate these offers, (indistinct) and paragraph 1.a and the second was to achieve a Figure of Merit. All I'm saying is that the Figure of Merit didn't play a role in terms of elimination in the RFI. The elimination took place on
15 those almost in the Part 1 section prior to that at this stage of the process.

It was never really, if you look at it the evaluation, we got a result or a figure for military value, that's, and that's interesting but it didn't lead to eliminating any offer or any
20 candidate on your shortlist, that was done at Part 1 and earlier, so all of these that achieved a military value or moved to Part 2 at the RFI stage were those that were shortlisted and were then sent RFO's.

ADV LEBALA: Now I think we have to go to the RFO but
25 before we do that let me appreciate what you are saying. You

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remember you talked about yourself that as far as you are concerned it had to do only with the a-part to eliminate those offers that were military unacceptable to the SA Navy, do you remember?

5 MR SMITH: I remember Chair.

ADV LEBALA: Do you agree that this has nothing to do with you but it has something to do with the interests which are legitimate of the South African Navy and the Defence Force?

10 MR SMITH: I agree Chair, that's why I just said this is a personal comment that what came out of this report was the shortlist, that's all that came out of the report as far as I'm concerned. The DoD had other objectives, they had another objective with this and that's their prerogative if you want.

15 ADV LEBALA: Fair enough, but that's why I ask you that before we leave this RFI process, RFI Value System, RFI Evaluation Report and the scores and the matrix is there anything that you want to say? Now I understand you to be telling the Commission that in as far as you are concerned, discounting the interest of the South African Navy and the
20 South African National Defence Force, as far as you are concerned this process was only intended to eliminate those offers that were military unacceptable to the South African Navy, am I right?

MR SMITH: As far as I was concerned, yes Chair.

25 ADV LEBALA: This is the comment that you want to

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make?

MR SMITH: This is the comment I want to make.

ADV LEBALA: So you are saying that in as far as your comment it was not intended to achieve the relative Figure of Merit?

MR SMITH: This was the objective of the Navy, the objective of the Navy in the report. I'm just commenting on their report and saying in terms of the process what we needed was a shortlist to come out of the RFI and, but the Navy had additional job objective with that and that's their objective and that's fine but it didn't play a role in the next phase, that part of this report.

ADV LEBALA: Now this is time for tea, I'm going to close this because when we come back after tea I would like to start with the RFO process. You are saying there is you, there's a South African Navy and the South African National Defence Force. As far as you are concerned it only matters when we look at the RFI, RFI Value System, RFI Evaluation Report, the scores, the matrix to remind ourselves that the process was just intended to eliminate those offers that were military unacceptable to the SA Navy .

MR SMITH: At this point that's correct Chair.

ADV LEBALA: In your comment you also say, I'm piggy-backing on what you said in the latter statement, the statement that you just made now before you responded to my question

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that the issue of achievement of the relative Figure of Merit as far as you are concerned did not play any role.

MR SMITH: That's correct Chair, we're sitting here with at this stage, with information that can change both in terms of performance, the military performance figure as well as the cost figure which was budgetary, so this is just very in the realm of indicative, at most it's of interest for sure, but it's based upon information achieved through a Request for Information, it is not based on firm offer information which would come in the next phase, so that's all I'm saying, it's of interest, it's indicative and it certain gives an early indication of probably the military value but it can't be considered to be definitive because it's based upon information which is not in the realm of an offer.

ADV LEBALA: Now we are breaking for tea. Those are your comments?

MR SMITH: Yes Chair.

ADV LEBALA: Chairperson and Commissioner Musi, when we resume we'll be going into the last leg, the RFO stage.

CHAIRPERSON: Thank you, we'll adjourn for 20 minutes or so. Thank you.

(Commission adjourns)

(Commission resumes)

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

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MR SMITH: I do.

CHAIRPERSON: Thank you.

ADV LEBALA: Thank you Chair, Commissioner Musi. Mr
Smith, before we go to the RFO let's complete the picture by
5 reminding ourselves that up to so far you have testified to the
RFI, the RFI Value System, the RFI Evaluation Report, the
scores and the matrix, am I right?

MR SMITH: Correct Chair.

ADV LEBALA: Now at this stage I would like us to go to
10 the RFO but before we go there let's look at the bundle
statement page 4, bundle statement page 4. I want us to start
on paragraph 4.1 page 4, bundle statement. Please read the
heading.

MR SMITH: "Request for Offers".

15 ADV LEBALA: Proceed to read paragraph 4.1 page 4.

MR SMITH: Paragraph 4.1:

*"On the 13th of February 1998 ARMSCOR
Procurement Secretariat issued a Request for
Offers ("RFO") to the 4 (four) ...".*

20 ADV LEBALA: We are on page 5 now.

MR SMITH: *"... to the four shortlisted countries for the
supply of Corvette's under offer no. EMAR/97/1464.
The closing date for offers was 11 May 1998".*

ADV LEBALA: Now I would like you to go to page 31 of
25 the self-same bundle Annexure "BS3". Let's see if the

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commissioners are on the self-same page? Annexure “BS3”
page 31 of the Statement bundle. I note that Commissioner
Musisi you are nodding, the chair is nodding, Annexure “BS3”
self-same bundle page 31. Please identify this document at the
5 top.

MR SMITH: “Armaments Corporation of South Africa
Ltd., ARMSCOR”, “Request for Final Offer”.

ADV LEBALA: Please read the offer number below that.

MR SMITH: Offer number EMAR/97/1464.

10 ADV LEBALA: And below that?

MR SMITH: “Closing at 11h00 on 11 May 1998”.

ADV LEBALA: Now this confirms what has been said in
page 5 paragraph 4.1 of your statement, am I right?

MR SMITH: That’s correct Chair.

15 ADV LEBALA: Now let’s read on, paragraph 4.2:

*“I was instrumental in the compilation of the main
RFO document which was then submitted, together
with associated annexures, ...”.*

Let’s pause there. What do you mean when you say
20 “compilation of the main RFO document”?

MR SMITH: Chair, if you will bear with me and go to
page 31 again you will note when I talk about the main
document and compiling there are parts of this document which
are inserted, obtained from other people, for instance the
25 industrial participation parts of this came from DTI or it came

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from the DIP division and I then just inserted it, I compiled the total pack as it were. Similarly the requirements that would have come from the financing team, they would have made their comments, I would have just inserted it in the document. The rest of the document is essentially, I wrote as an RFO, so all the bulk of the main document as it appears there, and that would be based on ARMSCOR's standard practices as well.

ADV LEBALA: Now I think let's refresh ourselves because we don't have to lose the momentum and appreciate where we are. At this stage if we go to page 4 paragraph 3.4 of the self-same bundle we know that the Evaluation Report that we went through told us about the, some results and scores, am I right?

MR SMITH: That's correct Chair.

ADV LEBALA: And just to piggy-back on those scores and matrixes paragraph 3.4 tells us that:

"The results of the evaluation are contained in the Military Evaluation Report dated 14 November 1997. A shortlist of four companies from 4 (four) European countries was developed, namely Bazán - Spain, German Frigate Consortium - Germany, GEC Marine Yarrow Shipbuilders - UK and DCN International - France".

MR SMITH: That's correct Chair.

ADV LEBALA: Now as at this stage were we talking about the two designs of the German Frigate Consortium or only one?

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MR SMITH: At this stage you are talking about the company, German Frigate Consortium, Germany, they had two designs on the table. I know I don't want to confuse the issue but later on you will find that one of the other companies also
5 delivered more than one design, so these are four companies that were on the shortlist as opposed to four designs that are on the shortlist.

ADV LEBALA: In effect we are talking about four companies but five designs, am I right?

10 MR SMITH: That's correct Chair.

ADV LEBALA: Because the German Frigate Consortium presented the Meko A200 and the Meko 200.

MR SMITH: That's correct Chair.

ADV LEBALA: Now when you went to the RFO stage we
15 know that we had to look at four, I beg your pardon, five designs.

MR SMITH: That was the expectation, that's correct Chair.

ADV LEBALA: This is confirmed by what we see on
20 paragraph 3.4.1 to 3.4.4, is that right?

MR SMITH: It's correct Chair.

ADV LEBALA: Now let's proceed to paragraph 4.2, you explained to us that compilation means you inserted the total pack, am I right?

25 MR SMITH: That's correct Chair.

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ADV LEBALA: Now you also inserted the associated annexures.

MR SMITH: That's correct Chair.

ADV LEBALA: Now this process gets completed by you
5 taking the document to the ARMSCOR Procurement Secretariat for distribution to the identified shipyards?

MR SMITH: That's correct Chair.

ADV LEBALA: Those four shipyards, am I right?

MR SMITH: That's correct Chair.

10 ADV LEBALA: A copy of the main RFO documents is attached here to mark Annexure "BS3".

MR SMITH: That's correct Chair.

ADV LEBALA: Now let's take the Commission quickly through the main highlights of this document, let's start on
15 page 31, the document starts from page 31 to page 162, I don't want us to waste time, if there is any interested party that wants to cross-examine on it they will do it but I just want to refer to the main highlights of this compilation process. Let's start on page 31. We know the closing date is 11h00
20 11 May 1998, please read the bottom sentence starting with "Offers to remain ...".

MR SMITH: *"Offers to remain valid for acceptance for a period of 180 days after the closing date"*

ADV LEBALA: Proceed to read further: "Offers for the
25 supply ...".

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MR SMITH: *“Offers for the supply of the goods and the rendering of services are invited in accordance with the provisions of the general conditions of contract (K-Standard 0020) and the rules applicable to prospective contractors (K-Standard KSTD 0010) as well as the requirements and conditions contained herein”.*

5

ADV LEBALA: Now you’ve told us that you inserted the total pack and we know that part of the RFO document, it’s a maindocument with standing, I suppose sections, am I right?

10

MR SMITH: That is correct Chair.

ADV LEBALA: Let’s go to page 32. Let’s quickly run through these sections, Section 1, read it.

MR SMITH: Section 1, “Introduction”.

15

ADV LEBALA: Section 2?

MR SMITH: Section 2 “General Solicitation Instructions and Conditions”.

ADV LEBALA: Let’s go to page 32A, the next page, Section 3.

20

MR SMITH: Section 3, “Technical Requirements and Conditions”.

ADV LEBALA: Now “Technical Requirements and Conditions” relates to where you played a role in the context of the military value, am I right?

25

MR SMITH: That’s correct Chair.

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ADV LEBALA: It does not ... I beg your pardon, let's pause, I see Commissioner Musi seems to be raising concerns.

JUDGE MUSI: Yes, I heard you talking of 32A and I don't have, but I understand the information appears on page 35.

5 ADV LEBALA: Commissioner Musi, thanks for drawing my attention to this discrepancy. On my page it's 32A, but if we are not lost let's continue by just looking at the sections on the self-same page. I note that on your page it's 33, I don't know why on my page it's 32A, I see on my colleague's it's 33, but
10 shall we proceed all by looking at the sections? I see the chairperson is not agonising. Thank you Commissioner Musi. Now Section 3 "Technical Requirements and Conditions" relate to the area in which you as a member of the Integrated Project Team, you as a member of the Technical Military Value Team
15 played a role, am I right?

MR SMITH: That's correct Chair.

ADV LEBALA: And this aspect has got nothing to do with the industrial p[articipation and the financing options, isn't it?

MR SMITH: That's correct Chair.

20 ADV LEBALA: I see Section 4 relates to the "Industrial Participation Requirements and Conditions".

MR SMITH: That's correct Chair.

ADV LEBALA: Read Section 5.

MR SMITH: Section 5, "Financing Requirements".

25 ADV LEBALA: Thank you, let's read paragraph 4.3.

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Please read paragraph 4.3 page 5 of the statement bundle,
paragraph 4.3.

MR SMITH: Paragraph 4.3:

5 *“The following extract from paragraphs 1.1.3, 1.1.4,
1.1.5 and 1.2.2 of the main RFO document is
considered to be relevant”.*

ADV LEBALA: Now let's pause. I would like us to go to
page 33 which according to my colleague and the
commissioners' index and pagination should be page 34. I
10 would like you to read paragraph ... Let's start with paragraph
1.1.1. Now that's where the Commission is going to start
appreciating where we started by the distinct part of the
frigate, the ship platform, the combat suite and the Maritime
Helicopter, am I right?

15 MR SMITH: That's correct Chair.

ADV LEBALA: Okay, on page 44 I would like you to read
it for the record, "Introduction" 1.1, please read for the record.

MR SMITH: 1.1, "Overview".

ADV LEBALA: Proceed to read paragraph 1.1.1.

20 MR SMITH: Paragraph 1.1.1:

*“The Request for Final Offer addresses the final
part of the Offer Preparation Phase for the
acquisition of four Patrol Corvette Vessels for the
South African Navy”.*

25 ADV LEBALA: I beg your pardon, let's take Commissioner

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Musi with us again, page 34 Commissioner Musi of the Statement bundle, not the Declassified bundle. The witness just read paragraph 1.1 headed "Overview" and read paragraph 1.1.1 that seeks to inform us that we are dealing with the final part of the offer preparation, am I right Mr Smith?

MR SMITH: That's correct Chair.

ADV LEBALA: We are in a phase where we are looking at the final part now, we are done with the RFI and its intricacies, am I right?

10 MR SMITH: That's correct Chair.

ADV LEBALA: And we are looking at five designs and four shipyards, isn't it?

MR SMITH: In essence yes, Chair.

ADV LEBALA: Proceed to read paragraph 1.1.2.

15 MR SMITH: Paragraph 1.1.2:

"The Patrol Corvette Vessels include two main hardware elements:

- *The Ship Platforms and their Integrated Logistic Support.*
- *The Combat Suite Systems and their Integrated Logistic Support".*

20 ADV LEBALA: I know that at one time we were vacillating between the submarines and the Corvette's but something which is significant which appears (indistinct) before the Commission is that the Integrated Logistic Support seems to

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play a role in this regard isn't it?

MR SMITH: That is correct Chair.

ADV LEBALA: And it's glaring in front of us in both the ship platforms and the combat suites.

5 MR SMITH: That's correct Chair.

ADV LEBALA: 1.1.3, let me read it:

"This Request for Final Offer (R.F.O) has as its primary purpose the solicitation of Offers which comply with the requirements as detailed herein and the selection of the most beneficial Offer in terms of:

- The supply of the four Vessels which include the Ship Platform and the Combat Suite elements ...".*

15 That were as at that stage, the South African Navy was looking for vessels, am I right?

MR SMITH: That's correct Chair.

ADV LEBALA: *"And the supply included the ship platform and the combat suite elements and their integrated logistic support".*

There it is again.

MR SMITH: That's correct Chair.

ADV LEBALA: What is significant, what comes out is industrial participation and financing arrangements.

25 MR SMITH: That's correct Chair.

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ADV LEBALA: Now that's where we start to see the different team, am I right, your team dealing with the technical aspect that looks at the first part and then comes the industrial participation that by now we know involves the DTI and then
5 comes the financing arrangements that involves Treasury team, am I right?

MR SMITH: That's correct Chair.

ADV LEBALA: Paragraph 1.1.4:

*"The Offer must include a complete definition of the
10 Offered Ship Platform element".*

What is significant having started with the RFI, we know that at this stage of the Corvette procurement what was significant was the ship platform in as far as your team is concerned, am I right?

15 MR SMITH: That's correct Chair, the RFI as you now know dealt solely with the ship platform.

ADV LEBALA: Now at this stage are we looking only at the ship platform?

20 MR SMITH: No Chair, we're looking at the ship platform, the combat suite, industrial participation and financing.

ADV LEBALA: That seems to be clear, hence we started where we started with the RFI and these distinctions have to be reminded but we know that in as far as your team is concerned
25 we were only interested in the military value, that is the

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technical side, not the industrial participation and the financing arrangements as there are other teams that were dealing with that, am I right?

MR SMITH: That's correct Chair.

5 ADV LEBALA: Now let's read 1.1.4:

"The Offer must include a complete definition of the offered Ship Platform element. A ceiling budget has been set at Rm 1470 (One thousand four hundred and seventy million Rand) for the combat suite element".

10

Now let's pause. It appears that what we went through earlier on and you testified about it that the only focus would be on the ship platform as the combat suite was already a ceiling budget on it, am I right?

15 MR SMITH: That's correct Chair.

ADV LEBALA: And we know that in as far as the combat suite is concerned local industry was going to be catered for isn't it?

MR SMITH: That's correct Chair.

20 ADV LEBALA: Now we know the following; these four Corvette's and these four shipbuilders with these five designs, we have to focus on the ship platform element as the combat suite we know that there is a standing ceiling amount, we need not even focus on that, am I right?

25 MR SMITH: That's correct Chair, at this stage you

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don't need to focus on that.

ADV LEBALA: Now let's read further, it's line 3:

5 *"... the Combat Suite Element and it is envisaged
that the final definition and specification will be
agreed during the negotiation phase before
incorporation in the vessel contract baseline".*

Now we know that when we talk about the vessel contract baseline we talk of the contract and its conditions, am I right?

MR SMITH: That's correct, plus the full specification
10 of the complete vessel.

ADV LEBALA: And it includes the life cycle of gravitating towards producing the product itself, am I right?

MR SMITH: That's correct Chair.

ADV LEBALA: You could look at the terms, references,
15 specifications, industrial participation, financing arrangements up until the product is produced.

MR SMITH: That's correct Chair.

ADV LEBALA: Now something is being mentioned here
with regard to the negotiations and those negotiations I think I
20 envisaged to address the question of the combat suite, am I right?

MR SMITH: That's correct Chair.

ADV LEBALA: Now the last line on paragraph 1.1.4:

25 *"Allowance must also be made in the offer for prima
contractor responsibility".*

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That is you are looking at the successful bidder, successful contestant who will be the prime contractor and its responsibilities isn't it?

MR SMITH: That's correct Chair.

5 ADV LEBALA: Paragraph 1.1.5:

"The intention is that there will be a teaming arrangement between the selected preferred contractor and the South African Combat Suite Contractor".

10 Now let's pause there. As at that stage ... I'm sensing that the commissioners are started to appreciate that, it appears that the combat suite was an issue that was going to be arrogated and reserved for the South African local industry, it has become clear. Now was there an already preferred interested
15 entity in as far as the combat suite is concerned as at that stage? Please apply your mind, apply your mind and take the Commission into your confidence. I may sound patronising, I know that probably Mr Masilo might raise an objection that I'm condescending and patronising you, please apply your mind.
20 Do you want me to repeat the question?

MR SMITH: It's not necessary Chair, I will take you, and hopefully explain it a bit. You will, as it says here in that 1.1.5 under page 34 "The South African Combat Suite Contractor to inform a vessel contractor". Chair, if you go over
25 the page the parties referred to in this document are listed

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there and the one is the combat suite contractor where it says:

“It’s envisaged that the combat suite contractor will be a South African industry consortium wherein Altech Defence Systems (“ADS”) plays a leading role co-responsible for the overall design, integration and supply of the combat suite element”.

I can maybe, just to expand on that a bit, if you go to Section 3 of the RFO which is on page 48, you will see a list page 48 paragraph 3.1.2 Chair which is applicable documents and you will notice the last document reference there is the SA Navy Patrol Corvette Combat Suite element costing and description document and that gives all the detail as to who the local companies are plus the systems that they were intended to supply.

If you can recall earlier in my testimony I referred to so-called nominated local subsystems and contractors, that is contained in that document and I think my colleague Mr Nortjé will be addressing that area.

ADV LEBALA: Now what are you telling the Commission?

The Commission has heard that there was a contestation in as far as the contractors are concerned, that is the prime contractor, that’s why we started with the RFI where we invited or rather we sent information, you declined that we cannot talk about an invitation. The requested information was sent to different countries, do you remember that?

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MR SMITH: That's correct Chair.

ADV LEBALA: Now are we being told at this stage that it appears that there was already a nominated South African combat suite contractor?

5 MR SMITH: Not a combat suite contractor as you stated on page 35, it says it will be:

"It is envisaged that the combat suite will be a South African consortium".

10 It is envisaged wherein Altech Defence Systems plays a leading role, it doesn't say that the combat suite contractor per se is nominated, it just mentions that it is envisaged that it will be a South African industry consortium wherein one of these companies being Altech Defence Systems plays a leading role.

15 ADV LEBALA: Please come back, come back, take the Commission into its confidence, let's look at what we read in 1.1.5 and I would like you to look at what you have referred us in paragraph 34. Now let's start to read paragraph 1.1.5 on page 33:

20 *"The intention is that there will be a teaming arrangement between the selected preferred contractor".*

25 Now we already know that that process started with the RFI where we had to choose and hence we had to start where we started and the Commission is not raising eyebrows, I think the commissioners are appreciating why we had to go through that

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tedious spiel, remember I kept on saying I wish we could go to conclusion, you remember? I wish, at this stage I wish I could go to conclusion and conclude your testimony. Go back. Why did we start by sending letters to different countries at the RFI? It's because what we see on paragraph 1.5, can you see? Paragraph 1.5 says:

"The intention is that there will be a teaming arrangement between the selected preferred contractor".

10 It recognises that there was a (indistinct) of having to select, can you see, in as far as the contractor is concerned.

MR SMITH: That is correct.

ADV LEBALA: Now let's go to the second part, ...

CHAIRPERSON: I'm sorry Advocate Lebala, just before I forget one point that I wanted the witness to clarify if you don't mind, can I come in at this stage?

ADV LEBALA: You may proceed Chair.

CHAIRPERSON: If I understood you well you are, you played some role in the preparation of the RFO. If that is the position when this clause was inserted in the RFO dealing with the combat suite, dealing with the combat suite, why was it necessary to mention one of these local industries who must be responsible for the design of the combat suite (indistinct), why was it necessary that (indistinct) should be mentioned upfront at the time when you were preparing the RFO documents and

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how, what process was followed in order to identify ADS as a company which must play a leading role as far as the design of the combat suite is concerned?

MR SMITH: Thank you Chair. In compiling this RFO document I would have to be aware that I shouldn't say something which conflicts with the annexures or supporting documents here too, otherwise I would be changing what is contained in those documents. That definition or shall we say that description on page 35 comes directly from the document I referred to on page 48 under "Applicable Documents", the SA Navy Patrol Corvette Combat Suite (indistinct) Costing and Description Document, so that, it ties up with what is the requirements that the Navy have given us in that document, so it ties up with the wording *et cetera* in that document and that is the only intention with this is to make sure that there is a one to one relationship with what is in that requirements documentation that has been included by the Navy.

CHAIRPERSON: Maybe as a follow-on, do you know why would the Navy put this type of a clause in the agreement or request that this type of a clause should form part of the RFO documents? It's just that in our own minds I'm trying to find a reason why the Navy prefer ADS to other companies. They say to people: "You give us a quotation on A, B, C and D, we need a ship platform and all that, but when you come to the combat suite you must work with this company". Now I'm trying to find

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why would they behave in that manner?

MR SMITH: Chair I ... You give me a difficult question because that is the content of this document, Combat Suite Element Costing and Description Document and I would request
5 that the other ... I can give you a short answer but I ..., that you'd defer that to my colleague Mr Frits Nortjé. All I can say is the following as I said earlier in the testimony, over the period leading up to the procurement of the project as incurred we were running with sort of projects in parallel if you will and
10 I'm thinking, I'm talking now specifically about the combat suite, so there was a lot of development work that was taking place prior to 1995 with regards to the local combat suite elements or components and in fact as I've referred to earlier is that because we couldn't switch these companies off when
15 we got to 1995 we were actually given authorisation to continue with the funding of the local combat suite elements in parallel to going out on RFI and *et cetera* and getting to the point of selecting a preferred contractor and then incorporating the combat suite.

20 Now in that there was a lot of investment and development done in those local combat suite elements the Navy saw fit to list those systems and suppliers in this document, Combat Suite Element Costing and Description Document, the term that they used there was nominated, they
25 actually selected, pre-selected if you will, all I was doing here

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is drawing the attention to what is already in the supporting document that Altech Defence was already playing a ..., was already, had this prominent role as defined by the Navy.

CHAIRPERSON: Yes, I'm not quite sure if my answer, if my
5 question has been answered, maybe that's a question that I should leave to the Navy. Up to now I cannot quite understand the reason why ADS was nominated by the Navy because if at all you want to make it a fair and competitive process why pick on one company and nominate it and try and say to whoever is
10 going to be the preferred bidder as far as the ship platform is concerned, this is the company that you are going to work with as far as the combat suite is concerned.

Because you know to me it appears as if you know the process that seems to have been followed has taken, has
15 undermined the principle of competition unless if at all there was another process that the Navy ran before they drafted that document which you used in order to insert into this RFO which documents deals with the combat suite.

MR SMITH: Chair, I understand the question.
20 Unfortunately I can't give an answer, that's a Navy decision in that requirements document and I think it would be best answered by them as to the contents of that requirements document.

CHAIRPERSON: Thank you.

25 ADV LEBALA: I think the chairperson has simplified the

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questions that we were going to direct to you, we are not going to repeat them, but except to put this on record. The chairperson and the commission recognises the following, that the RFO gets prepared around May or compiled around May
5 1998, am I right?

MR SMITH: Correct Chair.

ADV LEBALA: And as at that time our country had lots that dealt with procurement of goods and services for government departments, organs of state that included the
10 Navy, do you agree, do you know about that?

MR SMITH: My apologies, I'm not sure I understand.

ADV LEBALA: Okay. Put your cap on as a Naval, from a Naval officer as a programme manager. Are you aware that the South African Navy is an organ of state, when it sought the
15 Corvette's it had to follow a particular process of procuring them which is in line with the loss of the country, you don't just prefer one person and the chairperson talked about fairness and competition. Do you have an idea about that?

MR SMITH: I agree with the general comment that a
20 fair and transparent process is what we apply in the country.

ADV LEBALA: Now with those concerns from the chair I think my question is only one, I'm not going to belabour it, please look at page 48 that you referred us to, that paragraph referring to the, that is the last paragraph under paragraph
25 3.1.2.1: "Applicable Documents":

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*“Sa Navy Patrol Corvette Combat Suite Element
Costing and Description Document number 10400-
041 100 000-110002 Issue 2”.*

Can you see that?

5 MR SMITH: I can see Chair.

ADV LEBALA: Now in these documents is there anything,
and I think the Chair ignited this, is there anything that shows
that the South African Navy sat down and decided that no, we
are not going to follow this law of fairness, competition, giving
10 everybody an opportunity because the chair recognises
something that that’s allowed, hence the chair asks do you
know of any processes where the South African could have sat
down and said you know what, we are not going to waste time,
let’s just look at ADS Systems?

15 MR SMITH: Yes.

ADV LEBALA: My question is in relation to what you refer
us to, because this, with this paragraph you are telling us that
local company systems as they were applied, together with
nominated systems were considered from the applicable
20 documents. Now the chair asked a question, the answer is
either yes or no, do you know of any process where the South
African Navy sat down together with ARMSCOR, probably with
the National Defence Force and said you know what, albeit it
the law say that we should go on procurement to secure these
25 Corvette’s, to secure the combat suite, and let me tell you what

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concerns the Commission, why does the programme, and that's why we started where we started, why does the phase of programmes start with that competition where we invite different players, but when we come to the combat suite we
5 only look at one player, does it make sense to you?

MR SMITH: It does make sense Chair. Let me just say there is only one, Altech Defence Systems is the only one extracted. In this document as I have said earlier in my testimony it includes other systems, local systems and the
10 names and companies and systems, so it's not just Altech Defence Systems, (indistinct) different level you will find the others. The first part of the question which was am I aware of the process that was followed to achieve that, I am not aware of the process that was followed Chair.

ADV LEBALA: Yes, but that's the concern of the Commission that if you say that there were other local systems why only mention Altech Defence Systems? Hence the question is, and I'm happy that you understand the concern, the question that the chair posed is do you know as to whether the
15 South African Navy and/or ARMSCOR and/or the South African National Defence Force sat down and said we are not going to waste time because that process is allowed if it's there, that's why the chair asked, we are not going to waste time and go on
20 procurement, we can justify it, we will only look at Altech Defence System, forget about that other local systems out
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there because we can't see them, we only see Altech Defence System. Do you know of such a process, do you know of such a meeting, do you know of such a gathering, do you know of such deliberations where it was decided that we will only look
5 at the Altech Defence System in as far as the combat suite is concerned? I'm talking about the combat suite contractor.

MR SMITH: Chair, maybe a two-part answer to this one, two parts, the one is ...

ADV LEBALA: No, no, I beg your pardon, I think the chair
10 is going to call me to order, I know, I want a yes or no answer, I'm not going to allow you to go beyond that, I think you have explained yourself, I refuse, I'm not going to allow you to because I'm going to lose control, I'm leading this evidence and I'm saying this with humility, no. Yes or no?

15 And the chair started this questioning, do you know of any process where, and put your cap on as a former Naval officer, as a programme manager, it's an important role that you play, your seniority, you have been in ARMSCOR for 23 years, you have been throughout this process ...

20 CHAIRPERSON: Advocate Lebala maybe let me try and do this. Mr Smith, the question is simple, do you know why the Navy said Altech only for combat suite? Do you know the reason? If you don't know the reason, you don't know the reason, then we will have to go and find out from the Navy
25 people, please don't try and guess and don't speculate.

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MR SMITH: Chair I won't speculate, so I can't answer.

CHAIRPERSON: So you don't know why they did that?

MR SMITH: Chair if you want an explanation I can only say that the Altech Defence Systems was, in terms of the combat suite for the local suppliers was the, if you will the main integrating contractor for all the local systems therefore they played a sort of a prominent role if you will for the local systems, they played a, not an individual system role, they played an integration role, so therefore they played a prominent role for the combat suite, and as I said earlier they had been involved and a lot of investment had been done over the years prior to this, I'm just giving you this by way of explanation, as to why they decided to put it in this document I do not know.

CHAIRPERSON: Thank you. Advocate Lebala, he doesn't know.

ADV LEBALA: Now as you are standing before the Commission now does it bother you, and I'm asking this question cautiously, something about your instincts, I'm appealing to your belly now, it doesn't have to come from your brain, it has to come from your fairness instincts inside your belly, take it up to your brain, does it tell you something that the whole process starts with a selected process, very tedious. I think the Commission was taken through curves, twists, halves, up, down, I mean we even start at the RFI Value

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System, look at what you went through, we eliminate and then we go to the Figure of Merit to come to this selected preferred contractor. Now does it bother you that when it comes to the combat suite contractor we don't do that, does it bother you?
5 Does it tell you something?

MR SMITH: It certainly makes me feel uncomfortable
Chair.

ADV LEBALA: Why is that so?

MR SMITH: For the answer that I gave to the previous
10 question? The nomination of the equipment appeared in this document and I'm not aware of what acquisition process was followed to get those equipments nominated in that document.

ADV LEBALA: Now let's complete this with this question.
Look at page 34, the paragraph "Combat Suite Contractor".
15 Let's read it, page 34:

"It is envisaged that the combat suite contractor will be the South African Industry Consortium wherein Altech Defence Systems plays a leading role".

Let's pause there. I'm told that it's page 35, I beg your pardon
20 Commissioner Musi, I know you are raising concerns. There is something wrong with my pagination but I will correct it.

CHAIRPERSON: Advocate Lebala, haven't you exhausted
this topic because the witness says that you know: "I don't
know why the Navy did that, (indistinct) RFO because it's what
25 the Navy said". He referred us to a document which was

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prepared by the Navy, shouldn't we perhaps get to the next question and we still need some more clarity on why the Navy behaved in the manner in which they did and we get somebody from the Navy.

5 ADV LEBALA: Fair enough Chair, I think let's move on. Thank you Chair.

CHAIRPERSON: Thank you.

ADV LEBALA: We should not guild the lily Chair, I thank you. Let's look at paragraph 1.2.2 which starts on the self-
10 same page 33 at the bottom, page 34 I beg your pardon. The paragraph headed: "Request for Final Offer", please read paragraph 1.2.1.

MR SMITH: *"The scope of this RFO includes the
specification, design, production, testing, delivery
15 and final acceptance of the four (4) vessels and their Integrated Logistic Support".*

ADV LEBALA: In actual fact, I beg your pardon, to appreciate paragraph 1.2 we have to complete paragraph 1.1.5 without not asking you questions that the chair just advised
20 that we should leave, but let's read 1.1.5:

*"The intention is that there would be a teaming arrangement between the selected preferred contractor and the South African Combat Suite contractor to form a vessel contractor to supply the
25 integrated vessels and the integrated logistic*

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support as a complete and operational system”.

Do you agree that the South African Navy and ARMSCOR in as far as the integration is concerned played a significant role?

MR SMITH: It did Chair, and as I, I think in the first
5 day of giving testimony I mentioned that the original intention was that we, ARMSCOR and the Navy plus industry support would do integration and they only got about 96, we realised that this task was much bigger than one could cope with and that's why we went for a different contracting model which was
10 this vessel contractor-type of arrangement.

ADV LEBALA: Okay. I think 2.1 is very clear if you appreciate what 1.1.5 says, let's go to 1.2.2, let me take the liberty to read it:

*“The parties referred to in this document are as
15 follows:*

- *CUSTOMER : The South African Department of Defence.*

That's obvious.

- *BUYER*

20 The buyer is the tender board, that is Armaments Corporation of South Africa acting for and on behalf of the South African Ministry of Defence, the offerer. The OFFERER IS the company to whom the request for final offer is addressed and who has indicated that an offer will be submitted, at that stage we didn't
25 know, am I right?

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MR SMITH: That's correct Chair.

ADV LEBALA: CONTRACTOR, it's the successful offerer. We know that controversial combat suite. Let's complete it for the record because we only read a portion of it.

5 *"It is envisaged that the combat suite contractor will be a South African industry consortium wherein Altech Defence Systems (ADS) plays a leading role, co-responsible for the overall design and integration and supply of the combat suite element".*

10 We see that the South African Navy and ARMSCOR were still going to play a role in as far as the integration is concerned, am I right?

MR SMITH: Chair, it doesn't mention Navy and ARMSCOR in that paragraph, it mentions a combination of the, basically the preferred bidder in combination with this industry consortium being then fully responsible, fully responsible for the overall design integration and supply of the combat suite element, in other words we wouldn't play as it would have been earlier on in the project, we weren't going to play this integration role in that sense.

ADV LEBALA: Mr Smith, once we talk about the integration of the vessel we talk where we integrate the ship platform and the combat suite, am I right?

MR SMITH: That's correct Chair.

25 ADV LEBALA: And the South African Navy and ARMSCOR

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play a significant role isn't it?

CHAIRPERSON: Just hold on, maybe just to be fair to the witness Advocate Lebala, if I understood his evidence very well initially that was the plan, initially the plan was that you know
5 the question of integration as far as the integration is concerned ARMSCOR and the South African Navy will play a role, but then once the SDPP kicked in, then they came up with a different contracting model and I think as far as this is concerned and this model, the question of the Navy and
10 ARMSCOR playing a major role is out of the question. Maybe just try and find out exactly if at all what I'm saying is correct, just try and put proper propositions or correct propositions to him.

ADV LEBALA: Fair Chair, fair, fair, I would be unfair to
15 the Commission and to the witness if I were to put unfair propositions. Please feel free Chair, Commissioner Musi to call me to order if I do that because that would be unfair to this witness and to the Commission and we would be defeating the purpose why we are here and I appreciate it. Do you
20 appreciate what the chairperson has said, is that true?

MR SMITH: That's true Chair.

ADV LEBALA: I will address the Chair and Commissioner Musi at the appropriate time to demonstrate to them that we hold a different view but it doesn't matter. Let's soldier on,
25 VESSEL CONTRACTOR, page 35:

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“The vessel contractor is the prime supplier of the vessels including the integrated logistic support”.

MR SMITH: That’s correct Chair.

ADV LEBALA: Now here we are looking at the Integrated
5 logistics support in as far as the ship platform and the integrated logistic support part of it is concerned and the combat suite and the integrated logistic support part is concerned.

MR SMITH: That’s correct Chair, in other words the
10 integrated logistic support for the full vessel, complete vessel.

ADV LEBALA: Now once again the integrated logistic support plays a role.

MR SMITH: It is mentioned here yes, correct Chair.

ADV LEBALA: Let’s look at page 6 paragraph 4.4. I beg
15 your pardon Chair, page 6 of the Statement bundle, page 6 of the witness’s statement bundle paragraph 4.4 Commissioner Musi, Chair, I beg your pardon. We are looking at paragraph 2.1.6, let’s go to page 38 of the RFO where this paragraph is located. It would be page 39 I suppose. Paragraph 2.16, the
20 heading is “Offer Evaluation”. Please read paragraph 2.16.1.

MR SMITH: 2.16?

ADV LEBALA: It’s page 39 Chair, Commissioner Musi, paragraph 2.16 headed “Offer Evaluation”, I would like you to start reading paragraph 2.16.1. You may proceed Mr Smith.

25 MR SMITH: Thank you Chair. 2.16.1:

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“The offers would be evaluated in terms of specific value systems covering each aspect of the offer which in combination will determine the preferred vessel contractor”.

5 ADV LEBALA: Now we note that at this stage it's not elimination, it's adjudication.

MR SMITH: That's correct Chair.

ADV LEBALA: It's noted that with the RFI one way or the other we evaluated and we also adjudicated to get to the Figure
10 of Merit.

MR SMITH: Yes, based upon the, on binding information that was provided with the RFI.

ADV LEBALA: And we'll be following the same process, am I right?

15 MR SMITH: Yes Chair, you will see that it's a very similar process to the RFO.

ADV LEBALA: Now 2.16.2, may I take the liberty to read it:

20 *“The minimum qualification for the evaluation are the critical technical requirements in Section 3, the minimum industrial participation requirements in Section 4 and the critical financing criteria in Section 5”.*

25 That's where the different teams starts to play a role, am I right?

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MR SMITH: That's correct Chair.

ADV LEBALA: And your team was only in as far as the critical technical requirements in Section 3 are concerned?

MR SMITH: Correct, Chair.

5 ADV LEBALA: And we went through that to demonstrate to the Commission, hence we arrived at the conclusion of asking you a difference as to what matters between military participation and the military value, you remember?

MR SMITH: Yes Chair.

10 ADV LEBALA: *"Failure to meet these minimum requirements may render an offer ineligible for consideration".*

MR SMITH: Yes Chair.

15 ADV LEBALA: Now at this stage we start to appreciate that the question of industrial participation NIP and DIP, and the financial options play a very important role.

MR SMITH: That is correct Chair.

20 ADV LEBALA: Does it tell us as at this stage that if for instance the shipyard, DIP and NIP elements do not satisfy the criteria, then they will not be considered?

MR SMITH: Yes Chair, in principle yes, as it is stated in the last sentence:

"Failure to meet these minimum requirements may render an offer ineligible for consideration".

25 ADV LEBALA: Now we are going to real nub and I think

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we should wait for 14h00 because I see it's already lunch. We are going to the Corvette Military Value System where the Commission is going to note something that will make it appreciate where we started you with the RFI, RFI Value
5 System, RFI Evaluation Report, the matrix and the scores and the Commission for the record will note that it's a repetition more or less of that process we went through, am I right?

MR SMITH: That's correct Chair.

ADV LEBALA: Thank you. I think it's an appropriate time
10 for adjournment Chairperson, Commissioner Musi.

CHAIRPERSON: Thank you, we'll adjourn until 14h00.

(Commission adjourns)

(Commission resumes)

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

MR SMITH: I do.

CHAIRPERSON: Thank you.

ADV LEBALA: Thank you Chair, Commissioner Musi. Before we adjourned for lunch we went through the offer of
20 valuation that introduced the subject of the specific value systems, you remember?

MR SMITH: Yes, I do.

ADV LEBALA: And we went through the critical requirements in terms of Section 3 in the context of where your
25 team and yourself play a role in the military value in relation to

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industrial participation and the financing criteria, you remember?

MR SMITH: I remember Chair.

ADV LEBALA: Now that was an introduction to what you
5 see on page 6 of the Statement bundle paragraph 5 page 6, of
the Statement bundle, paragraph 5, we'll start there. And in as
far as the Declassified bundle is concerned Chair you will
remember that Mr Smith's testimony and he himself mentioned
it to the Commission that from page 1 of the Declassified
10 bundle to page 123 we were dealing with the RFI, RFI Value
System, RFI Evaluation Report, the matrix and the scores. Now
we are starting to deal with the RFO Value System on page 124
to page 174, we'll try to speeding up his testimony because it's
a reputation you will note Chair, Commissioner Musi, and of
15 significance is the Value System itself. Now the basis is found
on page 6 of the Statement bundle paragraph 5, headed "The
Corvette Military Value System". Please read paragraph 5 Mr
Smith.

MR SMITH: Paragraph 5 "Corvette Military Value
20 System":

*"On 11 May 1998 Project Sitron RFO Corvette
Military Value System was prepared by the SA Navy
and was approved by the Chief of the SA Navy and
Chief of Acquisition respectively".*

25 ADV LEBALA: Let's pause there, let's pause there. I

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would like you to look at page 124 of the Declassified bundle
Commissioner Musi, Chair, page 124 of the Declassified
bundle.

CHAIRPERSON: Page 124 hey?

5 ADV LEBALA: Page 124 of the Declassified bundle Chair.

I'm sensing that Commissioner Musi is already on the page,
we'll note if you are on the page Chair. The old bundle, not
the new one that we gave you, you remember Commissioner,
Chair, Commissioner Musi and Chair we advised you that the
10 new bundle that was given was just to assist you in relation to
those inconspicuous part, parts on the part of the Declassified
bundle. I would just request you to put it away and just
concentrate on the initial one that was handed to your good
selves.

15 JUDGE MUSI: What happened is that I let my bundle go
because I thought this was a replacement, only to find that this
one ends at 123, the one I have.

ADV LEBALA: It confirms the following Commissioner
Musi in relation to what we said earlier that that one was
20 intended just to assist you in as far as the RFI is concerned
and to address those pages that were very inconspicuous and
in line with your fairness instincts you insisted with the chair
that you would like us to bring a set that is very conspicuous
so that the testimony of this witness should be properly
25 completed. I sense that it has been placed in your possession.

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Thank you Commissioner Musi. I'm indebted to Ms Zando too for her erudite instincts that made provision of this document. We are starting on page 124 to 174. Now you will appreciate that from now on Chair, Commissioner Musi we are only dealing
5 with the RFO Value System, we have parted ways with the RFI, RFI letters, RFI information, RFI Value System and RFI Evaluation Report, RFI matrix and RFI scores, now we are in the RFO Value System and the introductory paragraph informs us that on the 11th May 1998 page 6 paragraph 5 Project Sitron
10 RFO Corvette Military Value System as prepared by the SA Navy was approved by the Chief of the SA Navy and the Chief of Acquisition respectively.

Now the date of the 11th of May is very critical because that's the day on which two things happened, the RFI,
15 the RFO Value System was prepared and was also approved, am I right?

MR SMITH: That is correct Chair.

ADV LEBALA: Now let's simplify it by looking at the RFI itself Commissioner Musi, Chair, page 124 to 126 of the
20 Declassified bundle. Let's start on page 124.

CHAIRPERSON: I'm sorry Advocate Lebala, maybe just try and avoid confusing our record. You keep on saying RFI, RFI, I thought we've long passed that stage.

ADV LEBALA: I appreciate Chair actually, thanks Chair.
25 RFO. I appreciate Chair and may the record reflect that we are

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from page 1 to 4 onwards is the RFO and we are starting with the RFO Value System on page 1 to 4. Please read it for the record, go to the title Mr Smith.

MR SMITH: The title Chair is "Project Sitron Corvette
5 Military Value System".

ADV LEBALA: Now we know that you played a role in the initial phase that leads to this as you compile the RFO, am I right?

MR SMITH: That's correct Chair.

10 ADV LEBALA: Now we see as you go down, please read the date of original issue?

MR SMITH: Date of original issue is 8 May 1998.

ADV LEBALA: What does this mean in relation to what you say when you say it was prepared and approved on the
15 11th of May 1998?

MR SMITH: Chair, the 11th of May is maybe sort of slightly ambiguous there but on the 11th of May this document was finally signed off and approved.

ADV LEBALA: Now, and that's very important, if you look
20 at page 125 please read what you see at the top?

MR SMITH: Top of the page Chair is "Approval Page".

ADV LEBALA: Compiled by who?

MR SMITH: J E G Kamerman, Project Officer Project Sitron, Captain.

25 ADV LEBALA: The date?

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MR SMITH: 2nd of May 1998.

ADV LEBALA: Now below that please read.

MR SMITH: *“Responsible Authority A N Howell, Chief of Naval Staff Plans, Rear Admiral J G”.*

5 Chair, the actual date is indistinct to me but it’s May 1998. On my copy it’s a bit indistinct.

ADV LEBALA: Would I be right to say it also reflects similarly the 8th May 1998?

MR SMITH: I would agree with that Chair.

10 ADV LEBALA: And this is in line with what we see on page 124 as the date of original issue?

MR SMITH: Correct Chair.

ADV LEBALA: And below please read “Approval”. What under “Approval”, please state for the record.

15 MR SMITH: “Approval”:
“This document is authorised for issue as the Military Value System for the evaluation of international offers for the Patrol Corvette Vessel Element as solicited by the Government on
20 *13 February 1998”.*

ADV LEBALA: And read below the name and the date.

MR SMITH: R C Simpson Anderson, Chief of the SA Navy, Vice Admiral, date 11 May 1998.

ADV LEBALA: Now what becomes clear is that your
25 statement is correct that it was approved on the 11th May 1998,

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am I right?

MR SMITH: That's correct Chair.

ADV LEBALA: But if you go back to 124 for the sake of clarity and completeness what does the date of original issue
5 signify as the 8th May 1998 concretised by, compiled by Captain Kamerman on the self-same date of 8th May 1998 and the responsible authority signing on the 8th May 1998 and the responsible authority for the record being Rear Admiral Howell.

MR SMITH: The date of original issue Chair is
10 generally the, you will see the bottom of that page you see an "Issue G", that's the date on which that Issue G came into being.

ADV LEBALA: The question is what does the date of original issue mean in relation to "Compiled by" and
15 responsible authority signing on the 8th of May 1998?

MR SMITH: Normally Chair the original document would have this printed in and normally it would be before signatures are finally applied, it's to do with the control of the actual document itself.

20 ADV LEBALA: Thank you. But would I be right to say the document has to be prepared before it was issued?

MR SMITH: That's correct Chair.

ADV LEBALA: So the, and this could be just, it's not fatal, I think we should address it positively for the record and
25 I'm certain that someone might like to pick you up on it,

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nothing turns around it. Now if it was issued on the 8th May 1998 why was it prepared after it was issued? Am I making sense? We note that it was according to your statement paragraph 5, it was prepared and approved, we've
5 seen that it was approved on the 11th May and because Rear Admiral Simpson Anderson approved it on the 11th May as denoted by page 125, that has become clear, but what is of concern is why should it be issued before it's prepared, could that be a mistake?

10 MR SMITH: That's why I said it's ambiguous and I apologise for that in my statement as prepared is ambiguous, it goes about the approval, it wasn't prepared on the day of 11th of May, it was prepared in the period leading up to the date of issue and you will note Chair that on the page 124 date
15 or original issue is 8 May when that document was released at Issue G and it was on the same day, it would appear, that the document was signed off by the compiler as well as the responsible authority.

ADV LEBALA: Thanks for that clarity Mr Smith and fair
20 enough, fair enough. Now something significant happens, turns over to page 125. I beg your pardon, 126, I beg your pardon Chair, of the self-same bundle. Please read at the top.

MR SMITH: *"Chief of Acquisition Approval. This
document is authorised for issue as the Military
25 Value System for the evaluation of international*

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offers for the Patrol Corvette for the South African Navy as solicited in the request for final offer issued on the 13th of February 1998”.

ADV LEBALA: Now at this stage we are talking to where
5 you as a programme manager, the Evaluation Team and the
Technical Team played a role because it relates to the Military
Value System, am I right?

MR SMITH: Correct Chair.

ADV LEBALA: We are now talking to the industrial
10 participation, we are not talking to the financial options isn't
it?

MR SMITH: That's correct Chair.

ADV LEBALA: Now at the bottom who signs it?

MR SMITH: S Shaik, Chief of Acquisition.

ADV LEBALA: Unfortunately the date is inconspicuous,
15 am I right, or is it conspicuous on that document?

MR SMITH: Chair, it seems to be clearer on the next
page which is identical, page 127 if I'm not ... I stand
corrected there, that's 11 May, it's the same date, the date it
20 was approved.

ADV LEBALA: Thank you for that assistance Mr Smith.
Now we know the following; that the RFO Value System was
approved on the 11th of May 1998 albeit it could have been
prepared earlier than that, am I right?

MR SMITH: That's correct Chair.
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ADV LEBALA: Now let's continue, page 6 paragraph 5
line number 2.

5 *"The RFO Military Value System address mainly the
technical aspects of the offers excluding industrial
participation and financing elements".*

You have confirmed this because that's where you played a
role, am I right?

MR SMITH: That's correct Chair.

10 ADV LEBALA: Now I would like us to read paragraph 6,
just read paragraph 6, the heading, page 6 paragraph 6
Chairperson, Commissioner Musi.

MR SMITH: Paragraph 6, the heading "Evaluation
Process and Recommendation for the Preferred Bidder".

15 ADV LEBALA: Now at this stage we are looking at the
RFO Value System of the ship platform, not the combat suite,
not the Maritime Helicopter and only focusing on the technical
value, that is the military value, am I right?

MR SMITH: That's correct Chair, at this point it's just
the ship platform.

20 ADV LEBALA: Paragraph 6.1, for expedience let me read
it:

25 *"The evaluation process advocated the separation
of evaluation teams using a silo team method in
terms of which each team was not allowed to
compare notes or to sit jointly".*

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Now one would say that this intended to achieve fairness, am I right?

MR SMITH: That's correct Chair.

ADV LEBALA: Transparency I suppose.

5 MR SMITH: That's correct Chair.

ADV LEBALA: You did not want one team to influence the other unfairly.

MR SMITH: Correct Chair.

10 ADV LEBALA: Now this includes that you'd even not allow a common denominator, one person to vacillate between the teams?

MR SMITH: Chair in general yes, you will see later in my statement I for instance, the information for instance from Finance, the acquisition cost which I extracted from the offers
15 had to be of course communicated to the Financing Team because it was on that basis that they would work out their financing *et cetera*, so I was, not that I participated there, I didn't even participate in the evaluation of financing or, and you will see later on DIP, but where information, some
20 information needed to pass from one team to the other I was, probably say the postman for that information.

ADV LEBALA: Now would I be right to say you were not coordinating with a view to influence?

25 MR SMITH: Correct Chair, I only played a coordination role, it's purely a matter of taking the document or the

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information across to the other team, giving it to them and walking away.

ADV LEBALA: Why would it be improper, permit me to use this expression, in actual fact I'm not supposed to ask this question in this manner because that would be unfair, would it be proper or improper for there to be a common denominator that coordinates with a view to influence?

5

MR SMITH: With a view to influence, definitely Chair.

ADV LEBALA: But let's part with a view to influence, would it be proper to have a common denominator who coordinates? We've appreciated the context in which you played a role as far as costs are concerned it makes sense, in all fairness to you it makes sense, you've just explained to the Commission that you were not intending to influence, it's just that your background and expertise allowed you to do this, am I right?

10

15

MR SMITH: That's correct Chair, and I was given special permission to do that in fact.

ADV LEBALA: Now let's agree that you were not influencing, I think it has become clear because from the onset you kept on telling us that with your cost expertise, because you could extract this cost you had to do that because you had to inform this team and this team and that team, am I right?

20

MR SMITH: That's correct Chair.

ADV LEBALA: To be precise you had to inform the

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Technical Evaluation Team about those cost extractions, you had to inform the Industrial Participation Team and the Financial Option Team.

MR SMITH: Just a bit of detail Chair, and it will come out later, in fact even in the technical evaluation part you will note I stated there that the costs were not known to the rest of the team, I extracted the cost, put it in tabular form and the only people that would know about the cost would be me myself and the project officer, there is no need for the rest of the Evaluation Team to know the costs and those costs of course I then also passed on to typically the Financing Team.

ADV LEBALA: Thank you. Let's go to paragraph 6.2 page 6, let me read it for the sake of expedience.

"The evaluation process included the establishment of four evaluation teams which would submit their scores to a committee known as the Strategic Offers Committee (SOFCOM) under the chairmanship of Chief of Acquisition of the Department of Defence Mr Shamin (Chippy) Shaik and the general manager Aero Maritime of ARMSCOR Mr Hendrik De Walt Esterhuyse, and included representatives from the Department of Defence, ARMSCOR, the Department of Trade and Industry and the Department of Finance".

I think that's very clear, am I right?

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MR SMITH: That's correct Chair.

ADV LEBALA: But what is significant is that there were scores that had to be submitted to SOFCOM.

MR SMITH: That is correct Chair.

5 ADV LEBALA: Which scores are those, are they those scores that we have taken you through in as far as the RFI is concerned, the matrix and those scores?

MR SMITH: Correct Chair, you will see later the scores is once again, the score that went to the SOFCOM would have
10 been the Military Value or another way to put it the Figure of Merit which is basically the raw, the total raw score divided by the acquisition cost, that result would be normalised to 100 for the best one and those results would be passed through to the SOFCOM.

15 ADV LEBALA: Now paragraph 6.3 page 7, the four teams now are in precision set out, the four teams that were mainly informed by the evaluation elements namely the Technical Defence Team, that's where you played a role?

MR SMITH: That's correct Chair.

20 ADV LEBALA: And that's where your team was looking at the military value, am I right?

MR SMITH: Correct Chair.

ADV LEBALA: And DIP Team, you are still going to give us examples of DIP, we know that you are an expert in that
25 area, am I right?

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MR SMITH: Correct Chair.

ADV LEBALA: And the National Industrial Participation Programme Team?

MR SMITH: That's correct Chair.

5 ADV LEBALA: This is the team from the DTI, am I right?

MR SMITH: That's correct Chair.

ADV LEBALA: And the Finance Team from the Department of Finance?

MR SMITH: That's correct Chair.

10 ADV LEBALA: Now why was the DIP Team so important?

MR SMITH: The DIP Team, one of the elements as you know Chair in the formulation that was used at SOFCOM included the three elements of military value, industrial participation and financing, the value at that level had to be added, so the DIP Team in conjunction with the National Industrial Participation Team then got a result which was passed on to the SOFCOM.

15

ADV LEBALA: Thank you.

MR SMITH: Now let's be practical about the Value System. You remember there was testimony by Mr David Griesel who informed us that the Value System, now I'm being general, I'm not talking about the RFI Value System, I know that we are talking about the RFO. The value system gets tabled, am I right?

25 ADV LEBALA: Correct Chair.

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MR SMITH: Before the ARMSCOR Procurement Secretariat will release an offer that they received at that, in those days is now slightly different, different organisation, but in those days they would not release the contents of an offer to me as a programme manager until they had received the value system and this value system had (indistinct).

ADV LEBALA: Now already you are telling us that this value system has to be sealed.

MR SMITH: Correct Chair.

10 ADV LEBALA: And then it gets given to the ARMSCOR Procurement Secretariat?

MR SMITH: Correct Chair.

ADV LEBALA: Waiting for the return of the offers.

MR SMITH: Correct Chair.

15 ADV LEBALA: That's the only way we can simplify it now, it goes through four stages, it gets tabled, sealed, goes to the ARMSCOR Procurement Secretariat waiting for the offers.

MR SMITH: That's correct Chair.

20 ADV LEBALA: Now let's look at what we know, we know that the Value System, now we are talking about the RFO, was prepared, probably earlier than the 11th but what we know is that on the 11th it was approved and signed.

MR SMITH: Correct Chair.

25 ADV LEBALA: Now let's look at paragraph 6.4 page 7:
"Offers were received from each country and in

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certain cases a number of design variants were proposed”.

Now we are looking at those four countries with five designs, am I right?

5 MR SMITH: In principle yes Chair, you will find a bit later in fact that, I think in one or two of the other cases those companies decided to offer additional designs but we will come to that detail a bit later.

ADV LEBALA: Now just for the sake of completeness
10 what does “design variance” mean, it means different designs?

MR SMITH: Correct Chair, the example that we really know of here is that the German Frigate Consortium had two designs, they had the A200 Meko and they had the 200 Meko, these ships look totally different in design.

15 ADV LEBALA: “The technical evaluation followed shortly after receipts of the offers over the period 12 to 29 May 1998”.

Now that’s where your team played a role, am I right?

MR SMITH: Correct Chair.

20 ADV LEBALA: Now something significant is happening here. Mr David Griesel told us that the Value System gets tabled, sealed, the ARMSCOR Procurement Secretariat receives it and it waits for the offers. Now in line with that we know the following; the value system was probably prepared earlier than
25 the 11th of May 1998 but what we know is that it was approved

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and signed on the 11th of May 1998, am I right?

MR SMITH: That's correct Chair.

ADV LEBALA: Now something informs us on paragraph 6.4 line number 2, and let me read it to you, for the sake of
5 completeness I'm repeating it:

"The technical evaluation followed shortly after receipt of the offers over the period 12th to the 29th May 1998".

What does it tell us? The evaluation started the next day?

10 MR SMITH: That's correct Chair.

ADV LEBALA: Now let's go back. Was there time to table, seal, refer this to the ARMSCOR Procurement Secretariat?

MR SMITH: That's correct Chair, as has been picked
15 up here you will notice that the offers closed on the same day, the offers closed on the 11th of May 1998 and the same day according to what we're reading here, the value system was approved and it was submitted to the Procurement Secretariat, so it all happened on the same day. I can assure you that the
20 Procurement Secretariat would not have released that to, they basically release the offer to me, the technical offer, they released it probably the next day on the 12th, they would not have done that if they didn't have the value system in their possession and sealed.

25 ADV LEBALA: Yes, but that's where I think we need to be

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assisted. Look at page, Annexure "BS3" page 31, "BS3" of the self-same bundle, that is the Statement bundle. Yes, it's page 31. Now there's a reason why we take you through this document, you mentioned at the top that it's an ARMSCOR document, it's called "Request for Final Offer", it's an RFO we now know. The closing date is the 11th May 1998 at 11h00, that has become clear.

MR SMITH: Correct Chair.

ADV LEBALA: What time did Mr Shaik ... Apologies. The Value System, are you aware?

MR SMITH: No Chair.

ADV LEBALA: What time did Rear Admiral Simpson Anderson approve the Value System?

MR SMITH: I do not know Chair.

ADV LEBALA: Is there anyone who has an idea?

MR SMITH: I wouldn't know based on the documents in front of us.

CHAIRPERSON: I think I can help you to answer that question. (Indistinct) wouldn't know what time they signed the document. I don't think you know we should try and ask the witness to speculate because he wasn't in their office when they signed the two documents, so I think the fairest way of dealing with it is to find out from the witnesses themselves what time did they sign these documents. I see the point that you are trying to make but then you know it's a very critical

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point but then unfortunately this witness will not be in a position to help us.

ADV LEBALA: Thank you Chair. Mr Smith, this is self-assuring that I would never be allowed to ask unfair questions, you could sleep comfortably on that. Let's soldier on. As you are standing before the Commission does it appear strange to you that the RFO Value System gets approved on the 11th May 1998 and the next day on the 12th the evaluation thereof starts?

5
10 MR SMITH: Chair, if I can answer it this way it would appear that the 11th was quite a busy day of May in that you got offers received, you've got value systems tabled, but it's not strange that the next day we would have been applying pressure on the Procurement Secretariat to release the offer to us immediately so that we could get on with our job and they complied and they gave it to us the very next day and that, and yes, we commenced immediately reading up and commencing with our work.

15
20 ADV LEBALA: Now I'm going to handle this cautiously, Mr Masilo might object, the chair may call me to order. Do you have proof whether the Secretariat sealed this Value System?

MR SMITH: Chair, I, although I don't, I wasn't there I have confidence in the ARMSCOR procedure and I am sure that the Value System was sealed if you will, or stored by the Procurement Secretariat of ARMSCOR before they released the

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offer, they've got a very rigid process in this regard, it's non-negotiable.

ADV LEBALA: I think the chair has drawn my attention to the fact that some of these questions that one might put to you cannot be responded by you, but we know that the technical evaluation was from the 12th to the 29th May 1998. Were you part of that process?

MR SMITH: I was part of that process Chair.

ADV LEBALA: The evaluation process took approximately 17 days?

MR SMITH: Correct Chair.

ADV LEBALA: Now let's go to paragraph 6.5.

"The technical evaluation was executed by a Navy Evaluation Team ...".

You were part of that team, am I right?

MR SMITH: That's correct Chair.

ADV LEBALA: *"... under the leadership of then-Captain Jonathan Kamerman with Director Naval Acquisition Rear Admiral Anthony Howell acting as the moderator and Chief Acquisition Mr Shamin Shaik as coordinator between the Military Industrial Participation and financing teams when the need arose".*

Let's pause there. You have testified that the evaluation process advocated the separation of evaluation teams using a

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silos team method, you remember?

MR SMITH: I do Chair.

ADV LEBALA: And you told us that this is with a view, you conceded actually that this is a view to ascertain fairness and a lack of undue, or to eliminate undue influence isn't it?

5

MR SMITH: That's correct Chair.

ADV LEBALA: And you conceded that you in as much as your role in as far as cost extractions are concerned did make you to interlope with the DIP Team, the Industrial Participation Team and the Finance Team.

10

MR SMITH: That's correct Chair.

ADV LEBALA: And we know that you did not bear any undue influence.

MR SMITH: That's correct Chair.

15

ADV LEBALA: Now we see that Mr Shaik was the coordinator between the Military Industrial Participation and Financing Team if the need arose.

MR SMITH: That's as I stated there Chair.

ADV LEBALA: Now have you seen him playing this coordination role?

20

MR SMITH: No I didn't, I in fact, as I said the last sentence in that paragraph this, that text in 6.5 is taken from the report, I didn't see that role but the role is mentioned, if you go to page 168 of the bundle under the ..., there's a paragraph, there's a heading called "Execution" page 168 of

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the Declassified bundle paragraph 15, and you will see the words I've used there is almost a cut and paste of paragraph 15. I've taken that wording from there but I was not, I was not privy to and I don't, I am not aware of any role, coordination
5 role that was taking place.

ADV LEBALA: Now are you telling the Commission that whilst you were part of the Evaluation Team playing all these exercises you were not aware that Mr Shaik was the coordinator?

10 MR SMITH: I was not aware of this Chair.

ADV LEBALA: When did you know that Mr Shaik is the coordinator?

MR SMITH: Chair, when this report we've got in front of us here in page 168, it's a report that came to my attention
15 while compiling this statement. For the first time I saw a copy of this and that was the first time that I saw that he played a coordination role in this paragraph between those different teams.

ADV LEBALA: Now does this coordinating role as you are
20 standing before the Commission take you backwards as in does it ... I beg your pardon, let me correct myself. English is not my first language nor is it my mother tongue, does it take you aback?

MR SMITH: I'm not sure what coordination role was
25 necessary Chair because the teams, all the teams need to do is

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to do the mechanism or the evaluation and pass the results through to SOFCOM. I'm not aware and no one has sort of mentioned a coordination role between the teams and the significance of this role.

5 ADV LEBALA: True. And ...

CHAIRPERSON: I'm sorry Advocate Lebala, just on that point, you were the member of the Technical Team and then there were other two teams, the Industrial Team and the Finance Team, and if I'm not wrong you said that part of your
10 functions was to give to the various teams certain items which had something to do with costs and in that process when you give the various teams items which have got something to do with costing did you utilise the services of Mr Shaik at that stage or not?

15 MR SMITH: No Chair, I did not.

CHAIRPERSON: Good. Now a follow-up question, if you did not, what was Mr Shaik doing as a coordinator as far as you, because you were part of the Technical Team, as far as your team is concerned what function did the coordinator perform?

20 MR SMITH: I don't know Chair, the first time I saw this was in this report and I can't recall any function that Mr, that was necessary in terms of coordination, as we said earlier it was, the process was to keep these teams in silos and to get the results out of those silos as it were and pass it on to the
25 SOFCOM and there was maybe one or two details that had to be

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passed between the teams, that's not a coordination function, they just needed that to complete their evaluation and Mr Shaik was not part of that transmission of data that I can recall.

CHAIRPERSON: Let me make the last statement. Will I be
5 right to say that if at all there was a coordinator who was running in between the three evaluating teams that exercise will be undermining the principle of keeping the three or four various teams in silos?

MR SMITH: I would find that role unusual Chair.

10 CHAIRPERSON: Thank you. Advocate Lebala.

ADV LEBALA: Thank you Chair for simplifying our further questions. Now before you came to testify have you heard any members of the Evaluation Team or any other team, the DIP Team, the Finance Options Team or the Industrial Participation
15 Team commenting about the role of Mr Shaik?

MR SMITH: They haven't commented to me on this particular role no, I am not, I don't bear any knowledge of that Chair.

ADV LEBALA: Now let's read on, paragraph 6.5:

20 *"The results of the technical evaluation ...".*

That is line number 5:

*"The results of the technical evaluation are contained in the Corvette Military Evaluation Report dated 25th June 1998 which was compiled by
25 Captain Jonathan Kamerman. The information in*

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this section is taken from the report”.

Now I think this is the stage where we need to gravitate towards the report. I would like you to look at page 159 of the bundle before you, that is the Declassified bundle Chair, Commissioner Musi. We now know about the RFO Value System, it has been established that it was prepared earlier than 11 May 1998 but we know that it was approved and signed on the 11th May 1998 and we know that a day after on the 12th to the 29th May your team started evaluating the offers, am I right?

MR SMITH: That is correct Chair.

ADV LEBALA: Now this is the Evaluation Report that informs the results of your offers, I mean the offers that you evaluated, am I right?

MR SMITH: That's correct Chair.

ADV LEBALA: Now we now know something, if you look at page 173 of the self-same bundle, that the Evaluation Report was signed by Captain Kamerman.

MR SMITH: That's correct Chair.

ADV LEBALA: And it was moderated by Rear Admiral Howell.

MR SMITH: That's correct Chair.

ADV LEBALA: On 26 June 1998.

MR SMITH: That is correct Chair.

ADV LEBALA: Now on this page we don't see any

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signature of the representatives of ARMSCOR.

MR SMITH: That's correct Chair.

ADV LEBALA: Please look at page 174. Does this page
... Please read it for the record to assist those who would only
5 be looking at the record.

MR SMITH: This page deals with the distribution of
this document. "For Action : The Chairman of the SOFCOM
(For Copying, Distribution to Committee Members via Captain
(indistinct)". That's copy number 1. For Information to Chief
10 of the Navy, copy number 2. Internal is the file
"BSH/S/302/6/S1431, copy number 3, three copies.

ADV LEBALA: By the way as at that stage who was the
chairman of SOFCOM?

MR SMITH: If I recall correctly we said earlier there
15 was a chair, chairmanship of Chief of Acquisition and the
general manage Aero Maritime of ARMSCOR.

ADV LEBALA: Now will you say that in actual fact
ARMSCOR was represented as at that stage?

MR SMITH: At SOFCOM level, yes Chair.

20 ADV LEBALA: Through Esterhuysen?

MR SMITH: I would assume that Chair if he was still in
ARMSCOR at that particular date, I would assume that's
correct.

ADV LEBALA: And Mr David Griesel was the co-secretary
25 of SOFCOM.

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MR SMITH: Yes, we learnt through Mr Griesel's testimony that he took over from Hanafey as the secretary of the SOFCOM.

ADV LEBALA: Now what is significant is that we know
5 that ARMSCOR did not sign the Evaluation Report but it was distributed to ARMSCOR.

MR SMITH: It was distributed to the ARMSCOR members I would assume at SOFCOM.

ADV LEBALA: Now let's start on page 159. I would like
10 you to read it into the record, the title.

MR SMITH: The title Chair is "The International Equipment Offer Evaluation: Corvette Military Evaluation Report".

ADV LEBALA: Now look at the date of original issue.

MR SMITH: Bottom of the page Chair date of original
15 issue is the 25th of June 1998.

ADV LEBALA: Now in simple terms what does the date of original issue mean?

MR SMITH: Chair, as we've said this is the date at
20 which this document in its original text form was finally released.

ADV LEBALA: Of course, you are right. On page 173 we see that it was signed off on the 26th June 1998.

MR SMITH: That's correct Chair.

ADV LEBALA: Now you were a member of the team that
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prepared the basic scores that informs this report, am I right?

MR SMITH: Correct Chair, in terms of the evaluation value system, the appendix, the parameters and matrix I was involved in that.

5 ADV LEBALA: Now when these scores were being discussed was Mr Shaik available?

MR SMITH: If the question is when, was he part of the, was he in attendance to the team when we did this evaluation I can't recall, I doubt it very much that he would have been there because the record was kept of any person that was a participant in that evaluation.

ADV LEBALA: Outside ...

CHAIRPERSON: I'm sorry Advocate, I think these last few words, can you just repeat your answer?

15 MR SMITH: Chair, I'm not a hundred percent sure about the question but if the question was did Mr Shaik, was Mr Shaik part of the Evaluation Team, no, he was not part of the Technical Evaluation Team, the members of the Evaluation Team are recorded in this document and their roles and functions on page 168 paragraph 16.

CHAIRPERSON: Thank you.

ADV LEBALA: Thanks for the detail and information but that's not my question, do you want me to repeat my question?

MR SMITH: Yes please.

25 ADV LEBALA: When the basic scores were being

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discussed was Mr Shaik part of that discussion?

MR SMITH: I don't know Chair, I was not aware of anything that happened beyond the evaluation. Post ...

CHAIRPERSON: I'm sorry, I'm sorry Advocate Lebala,
5 (indistinct) referring to because he was not part of that Evaluation Team and then we know that the scores must have been discussed at SOFCOM level and we know that he was one of the chairpersons of SOFCOM. Now when you say to the witness when the scores were discussed was Mr Chippy Shaik
10 present or not, which level are you referring?

ADV LEBALA: Thank you Chair. I think I've asked you broad questions, let me tailor it. What has become common cause and that's not in dispute, is that Mr Shaik was not part of the Evaluation Team, am I right?

15 MR SMITH: Correct Chair.

ADV LEBALA: And page 168 tells us who the members of the Evaluation Team are. Of significance is what we see on page 169 paragraph (h) and (i), I have an interest on those two names and probably on (k) and the Commission's record should
20 reflect why I'm interested in (h) because that's "Mr B Smith – Costing Management and IP Aspects", are you seeing that?

MR SMITH: I do Chair.

ADV LEBALA: Now that's your role because you had to extract the costs, am I right?

25 MR SMITH: That's correct Chair.

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ADV LEBALA: And what informs this paragraph (h) is that you also had to, one way or the other interact with the integrated, what you call the Industrial Participation Team in as far as costs are concerned.

5 MR SMITH: No Chair it wasn't as far as costs, I didn't get to this example but the DIP, I had nothing to do with National Industrial, but the DIP Evaluation Team and particularly on the so-called Direct-DIP, they were dealing with all the projects and they are not technically au fait with the
10 terminology that is used by the Navy *et cetera*, so they would seek clarification typically of the meaning of something that would have been sent through to them as part of the DIP offer, particularly with regards to the directive, so on occasion they would ask for just clarity on what a particular word or sentence
15 or whatever meant in the information that they had received and were evaluating and I was given then special authority to act as where those questions arose, not to be part of the DIP Evaluation but if there are questions that require, they require clarity on dealing with the technical part of the vessel *et*
20 *cetera*, that I could give them some assistance in terms of understanding what the terms were used *et cetera*.

ADV LEBALA: Mr Smith, you remember during your testimony in as far as the RFI's are concerned, we drew your attention to your role as a member of the Evaluation Team in
25 as far as the RFI's were concerned, you remember?

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MR SMITH: I do Chair.

ADV LEBALA: And there was a caution where more or less the same itemised detail that has to do with costing was referred to you in as far as the RFI Evaluation Team is concerned.

MR SMITH: That is correct Chair and if you can recall there was no DIP or IP involved in that, in the RFI phase.

ADV LEBALA: Yes. Isn't it true that you mentioned that you extracted costing and even went beyond the technical team where you played a role by also interloping where necessary with the Industrial Participation Team and the Finance Team?

MR SMITH: That's correct Chair.

ADV LEBALA: Now and you remember you told us that we will see that the RFI Valuation, Value System process is more similar as a RFO Valuation System process.

MR SMITH: We use the word "similar" Chair, there are differences and you will see even in the results, the results will reflect the differences as well. There are slight variations and which is quite common between what is the Value System, you will find even in the specifications that were delivered by these shipbuilders would have been slightly different to what they delivered during RFI, and of course fundamentally the cost would have been different as well because now they committed to the figures, so you would find variations in the figures and the information that's provided in RFO, these are committed

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values.

ADV LEBALA: Assume I agree with everything that you are saying, now answer my question please. You did say that we will see that the processes in as far as the mechanics of the RFI Valuation System where we started dealing with the two-pronged system of the filter and the evaluation scores is similar as that of the RFO, am I right?

MR SMITH: That's correct Chair.

ADV LEBALA: That's all that I wanted to establish. Now we are seeing more similarities here because in the Evaluation Team in as far as the RFO is concerned costing is there, can you see it?

MR SMITH: Yes Chair.

ADV LEBALA: Now let's take these similarities further. Do you agree that you were also playing a significant role in as far as extraction of costing is concerned?

MR SMITH: Yes Chair.

ADV LEBALA: And you would assist where necessary without coordinating, without interfering, the IP Team, the DIP Team and the Finance Team in as far as costing is concerned?

MR SMITH: In as far as costing is concerned it's the financing, in as far as the DIP Team is concerned it's clarification of technical details.

ADV LEBALA: Is the question to my answer [sic] yes or no?

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MR SMITH: Yes.

ADV LEBALA: But that's why I referred you to (h) and I said to you that there's IP, relates to Industrial Participation.

MR SMITH: That's correct Chair.

5 ADV LEBALA: I need to get my train of thought back on track, I'm derailed. Can you please permit me just to breath in Chair, Commissioner Musi, sometimes oxygen overwhelms me. Now let's go back to what I was taking you through to demonstrate to the Commission that your role in the Evaluation
10 Team in as far as the RFO Value System and the RFI Value System is concerned is similar, let's look at the mechanics now. The technical aspects of the RFO, please look at page 129. We have located the value system, now we are looking at the technical aspects thereof. We know what the RFI Value
15 System technical aspects told us and we will compare where necessary. Read "Introduction" page 129, the Declassified bundle paragraph 1. Please read for the record.

MR SMITH: Paragraph 1, "Aim".

20 *"The aim of the Patrol Corvette Military Value System is to enable the military evaluation of international offers for Patrol Corvette's for the SA Navy, submitted in terms of the request for final offer issued on 13 February 1998 in order to:*

25 *a. Eliminate those offers that are military unacceptable to the SA Navy and;*

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b. *Achieve a relative Figure of Merit (“FOM”) for the military value for each of the acceptable offers”.*

5 ADV LEBALA: Now this language content or context, substance, is similar to that of the RFI Value System, am I right?

MR SMITH: That’s correct Chair.

ADV LEBALA: Paragraph 2, “Scope”:

10 *“Although it is expected that the offers for the Patrol Corvette element will be made at the vessel level. i.e. for complete ships including their combat suites, the combat suite element has been fully and identically specified and costed by the South African Navy to all contenders. The scope of this*
15 *value system is therefore primarily aimed at evaluating the offered ship platform”.*

Is it the same language, form, content, substance?

MR SMITH: Same language Chair.

ADV LEBALA: Paragraph 3, “Derivation”:

20 *“This document is derived entirely from the previous value system established for the evaluation of Request for Information solicited internationally by the Minister of Defence on the 23rd September 1997, document VSH/S/302/6/S1431 dated*
25 *21st October 1997”.*

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Now what is significant is that at this stage the RFO starts to inform us how important the value system for the evaluation of the RFI's are, am I right?

MR SMITH: Yes Chair they already, basically already
5 existed at the RFI stage.

ADV LEBALA: No, you are not responding to my question, I'm reading so that the Commission should appreciate the following; that the RFO is underpinned and derived from something, it's in front of you and my question is simply that
10 does this paragraph inform us how important that RFI Value System we took you through is in relation to what you are doing at this stage?

MR SMITH: Correct Chair.

CHAIRPERSON: Advocate Lebala, just for my own
15 understanding, if at all the RFO Value System is almost similar as the RFI Value System what purpose is the second, is the RFO Value System (indistinct) which cannot be, which could not have been served by the RFI Value System?

MR SMITH: Chair, that is a good question. I can only
20 say that at the time of the RFI, because of the history of this project the Value System had already been well established and detailed and was therefore automatically used during the RFI but as a value system in its entirety, Part 1 Part 2, it was only, it only comes into its own really during the offer phase
25 because there you want to make a decision on what is the best,

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the best offer. As I said earlier we ..., I wasn't quite, although it was used in the RFI the Part 2 apparently didn't serve any purpose at that stage because although it was there and existed it's actually more relevant to the RFO because there
5 you want to make a final decision on which is the best offer.

CHAIRPERSON: Mr Smith let me go back to my question, let's leave out the text, let's leave out RFI or RFO, let's leave them out. What information did you get which you, what information did you get after the RFO which you could not have
10 received during the RFI System? Let's leave out the two texts, whether this other one is a Request for Information or is an offer, let's look at the information, is there any information that you received after the RFO procedure which you could not receive during the RFI procedure, is there any new information
15 that were given at a later stage during the RFO process?

MR SMITH: Chair, thank you. Yes, as I've said the RFI was based on non-binding information in terms of the specification, in terms of the costs, ...

CHAIRPERSON: Can I interrupt you again Mr Smith, leave
20 out the question of whether the other one was binding or not binding, I said to you let's leave out the text. I'm trying to find out whether is there any information that you could not have received or which you did not receive during the RFI process which you received only after the RFO process. Forget about
25 the others being binding and the others not binding, I'm not

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asking about the legal effect thereof, I'm asking whether is there any other further information that you received at a later stage which you could not have received during the RFI process.

5 MR SMITH: Chair, in a broad sense, no.

ADV LEBALA: But I want to show you that you are not taking the chair into your confidence. Isn't it true that from the RFI we managed to see the best military value which showed that Spain was number 1?

10 MR SMITH: At that stage, yes.

ADV LEBALA: Isn't it true that from the RFI Valuation Report we saw the best military performance which demonstrated that the German Frigate Consortium was number 1 in as far as the A-Meko 200 [sic] design is concerned?

15 MR SMITH: Correct Chair.

ADV LEBALA: I'll leave it for the Commission when we make our submissions, when the commissioners prepare their report, I'm not going to waste time on it, but I'll tell you why the chairperson's question is very important, it pre-empts what we are going to take you through on page 129 and the chairperson wants to know the following; and I don't want us to waste time because we are huffing and puffing and your testimony is very helpful Mr Smith, don't be mistaken, I'm not saying we are wasting time when we ask you questions but
20
25 though we could avoid repeating questions, we can, if there's a

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concession that what the RFO Value System is serving, has already been served by the RFI Value System, the chair wants to know why am I taking you through it because I could go to specifics, do you understand?

5 MR SMITH: I understand Chair.

ADV LEBALA: Thank you. But let me demonstrate to you how important this question that the chair has asked you comes in. Let's read paragraph 3, page 129, I'm going to start from the beginning so that you should appreciate A, B, C in the
10 context in which the Chair asked why these two value systems are being rehashed. "Derivation":

*"This document is derived entirely from the previous value system established for the evaluation of Request for Information solicited internationally by
15 the Minister of Defence on 23rd September 1997".*

I've mentioned that document.

"In essence it is identical to the latter".

Except for something informs us about incidences and coincidences:

20 *"(a), minor changes necessitated by minor corrections to the ship platform requirement specification made in order to improve the clarity of the latter for contenders, i.e. this document is based on Issue 2 of the specifications, the previous value
25 system was based on Issue 1B.*

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Now I'll tell you why this is important in the context of the question raised by the chair, you conceded that the RFI Value System is more or less similar in terms of its application to the RFI Value System, am I right?

5 MR SMITH: That's correct Chair.

ADV LEBALA: Now what starts to inform us is it appears that those who were eliminated at the RFI stage must have been treated unfairly because at the RFO stage minor changes come in, can you see?

10 MR SMITH: If those minor changes affected those that were eliminated earlier yes, that would be correct Chair.

ADV LEBALA: Now let's look at (b):

15 *"A minor adjustment to the scaling of a few criteria in Part 2 which were found to be inappropriate during the last round of evaluation".*

Would you agree that that affects the Italian Fincantieri that was eliminated at that stage in as far as the RFI Value System is concerned?

20 MR SMITH: It may have Chair, we would have to look at the detail as to what, whether it did impact that.

ADV LEBALA: Fair enough. (c):

25 *"A simplification of the logistic evaluation criteria as a result of confidence in the logistic processes of the shortlisted shipyards, i.e. this value system concentrate on the degree of logistic compliance*

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rather an assessment of the confidence in the shipyard's logistic processes".

Now these logistic processes, do they relate to the Integrated Logistics Systems?

5 MR SMITH: That's correct Chair.

ADV LEBALA: Now the integrated logistic system's importance comes again but something that comes to the fore is there are some changes that came in after a similar process which is being followed has eliminated ... Let me finish. Has
10 eliminated one of the countries that was, that received the request for information, do you agree?

MR SMITH: I agree Chair, there were these changes that were made to the Value System at this stage.

ADV LEBALA: Now let's soldier on. The description of
15 the Value System, there it comes. Now I'm not going to waste time, it's a two-part value system like the RFI, am I right?

MR SMITH: That's correct Chair.

ADV LEBALA: Part 1 I'm not going to take the chair through because they have seen Part 1, it's similar, am I right?

20 MR SMITH: That's correct Chair.

ADV LEBALA: Page 130 Part 2, it's similar isn't it, the 12 groups, am I right?

MR SMITH: That is correct Chair.

ADV LEBALA: Rates and scaled, is it similar?

25 MR SMITH: It looks similar Chair.

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ADV LEBALA: Scoring?

MR SMITH: Chair, it looks similar, as I said this report is only relatively recently come into my possession but I notice a slight anomaly here. My eye falls upon line 3 under "Scoring"
5 and I don't know, someone else au fait with this document would need to point out, you see a total score in line 3 of 140, it appears also in page 131, however, if you ...

ADV LEBALA: Just to assist you, to assist you, you could go to page 130 and page 16, page 16 of the self-same bundle.
10 Look at page 16 paragraph 5 and look at page 130 paragraph 5, look at page 16 paragraph 6 and look at page 130 paragraph 6.

MR SMITH: Yes Chair, I see that they're similar but what I was going to point out is that somewhere in this document it talks about a total score of 1 080, in this Value
15 System.

ADV LEBALA: In actual fact to assist you, paragraph 6 on page 130 talk about the normalisation to a score out of 100 and on page 16 it talks about normalisation to a score out of 10.

MR SMITH: Yes. Chair, I'm talking about the total
20 score out of 1 040. My eyes just ... Oh. Chair, if you look on page 170 for instance, paragraph 22 it talks about weighted score of a possible of a 180 points, and it talks of a score and the table there scores a score out of 1 080, I just draw this to your attention, so there is, there seems to be a cut and paste
25 error or whoever compiled this document didn't take note of the

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fact that the total score for the Value System Part 2 in fact seems to have increased.

ADV LEBALA: Come back, come back Mr Smith. You are comparing the incomparable. You are comparing a report
5 against the Value System, at the moment I'm looking at two value systems. If you look at page 16 it's a value system, if you look at page 130 it's a value system. Page 16 and 130 are talking about the technical aspects of the offers addressing the value system, do you agree?

10 MR SMITH: I agree Chair.

ADV LEBALA: Page 170 is talking about Evaluation Report, the RFO's, am I right?

MR SMITH: That's correct Chair, but it's giving you the figure of a total possible points of 1 080.

15 ADV LEBALA: Thanks for that information and I think you have responded to my question. And then the Figure of Merit, let's look at page 130 and page 16. There are changes there and there, but the content is the same. For instance the initial introductory part whether you look at it at page 130 or page 16
20 is the same, the cost of the offer will be reduced to a common Rand baseline, am I right?

MR SMITH: That is correct Chair.

ADV LEBALA: The total score achieved in Part 2 will then be multiplied by the inverse of this cost to achieve an
25 offer/cost performance military Figure of Merit, again

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normalised to a figure of 100 on page 130 and 10 on page 16,
that's the only difference, do you agree?

MR SMITH: I agree Chair.

ADV LEBALA: This military Figure of Merit ("FOM") will
5 then be factored into the top level value system with a
weighting factor of 33.33% together with the industrial
participation, 33.33% and financing 33.33%, FOM's for an
overall offer FOM to higher authority. What's different there is
just the percentages. Do you agree?

10 MR SMITH: Yes Chair.

ADV LEBALA: But the substance and the content is the
same isn't it?

MR SMITH: In the two documents it appears to be the
same Chair, yes. Sorry, in the two documents it appears to be
15 the same up to that point Chair.

ADV LEBALA: If you look at the Graphic Representation
on page 131 paragraph (a) and on page 16 paragraph 8 it is the
same, am I right?

MR SMITH: It's correct Chair.

20 ADV LEBALA: The only distinction for the edification of
the Commission is on page 131 the total score is out of 1 040
and on page 16 it's out of 10, am I right?

MR SMITH: Up to this point that's correct Chair.

ADV LEBALA: Now explain something to the Commission,
25 and I know that the commissioner have cautioned me to not

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(indistinct) the record. What's the difference between the RFO Value System of the Corvette's and the RFO Value System of the submarines because with the submarines we don't go through this two-pronged process.

5 MR SMITH: That is correct Chair, if I recall correctly they didn't go to a two-part process and it certainly didn't go into the detail of the value system that was used in the Corvette's.

ADV LEBALA: You are confirming my question, now
10 answer it to assist the Commission, why is that so? Are you able to respond?

MR SMITH: Chair, as I've said before these projects are quite different in their approach, the Corvette's had a history of five years' worth of work and technical specification *et cetera*, and background up to this point, as we've heard they've
15 already at least gone out on RFI and so it was a relatively mature project at this stage. The submarine project was only really activated at the point of around about the SDPP, it didn't have that history, so there is a difference and you will find that
20 will all the projects there are slight variations in the way that the project teams dealt with ... In principle it's exactly the same but there were, there will be variations and each project have these variations.

ADV LEBALA: I'm struggling to appreciate why you say
25 the principle is the same. If you say the principle is to arrive

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at the military value and the military performance then I agree with you, is that what you are saying?

MR SMITH: That's what I'm saying Chair.

ADV LEBALA: But the applications are different isn't it?

5 MR SMITH: That's correct Chair.

ADV LEBALA: Now let's look at the Evaluation Report page 160. But before we do that I would like to draw your attention to what you wanted to deny before the Commission. Look at page 7 of the Statement bundle paragraph 6.6. I would like you to read it to the Commission.

MR SMITH: *"My specific involvement was to extract the relevant total acquisition costs from the offers and convey these to the Financing Evaluation Team. This costing information was also communicated to the Project Officer but not to the rest of the Military Evaluation Team. I was also given special clearance to interact with the DIP Evaluation Team on the clarification of technical aspects. I was not part of the DIP Evaluation".*

15
20 ADV LEBALA: Now we note that in as far as your role in costing is concerned you extract the costing even in the area of (indistinct) Financing Evaluation Team, albeit you are not a DIP Evaluation expert you would also interact in as far as the industrial participation wing is concerned, but only as far as
25 the DIP element is concerned, am I right?

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MR SMITH: That's correct Chair.

ADV LEBALA: Now that completes my attention to you on page 169 paragraph (h). Can you see?

MR SMITH: I can see Chair, yes.

5 ADV LEBALA: I've lost my train of thought again, please let me gather it. I beg for your indulgence Chairperson, Commissioner Musi. Now let's look at the Evaluation Report page 160, I want us to run through it, we are in the injury stage of your testimony. Now we are looking at the basic scores that
10 were prepared by your team that were given to the Evaluation ..., I beg your pardon, that was given to the team that prepared this report, am I right?

MR SMITH: That's correct Chair.

ADV LEBALA: To refresh ourselves this report has been
15 prepared by Captain Kamerman and moderated by Rear Admiral Howell, am I right?

MR SMITH: That's correct Chair.

ADV LEBALA: Page 160. I would like us, I would like you to read for the record at the top "The Department of Defence",
20 and come down up until the date. Page 160 of the Declassified bundle Chair, Commissioner Musi.

MR SMITH: The title Chair is "The Project Sitron Corvette Military Evaluation Report".

ADV LEBALA: Now I would like you to read before that to
25 the right "The Department of Defence", start there and

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complete with the date.

MR SMITH: Department of Defence Pretoria 0001,
25th of June 1998.

ADV LEBALA: Please read the "Enquiries".

5 MR SMITH: Enquiries is Captain SAN JEG Kamerman.

ADV LEBALA: You have read the topic "Project Sitron
Corvette Military Evaluation Report" (indistinct) to the subject
Reference A, Corvette Military Evaluation Report dated
14 November 1997, this is the report that we are talking to,
10 that we've talked to in as far as the RFI's are concerned, am I
right?

MR SMITH: That is correct Chair.

ADV LEBALA: Now we don't have to be confused,
reference to A refers to the Evaluation Report in as far as the
15 RFI's are concerned, not the RFO's, isn't it?

MR SMITH: That's correct Chair.

ADV LEBALA: This seeks to inform us about what was
considered towards the preparation of this Evaluation Report,
am I right?

20 MR SMITH: That's correct Chair.

ADV LEBALA: B, Request for Final Offer was also
considered, am I right?

MR SMITH: That's correct Chair.

ADV LEBALA: C, Project Sitron Corvette Military Value
25 System dated 8 May 1998 was also considered.

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MR SMITH: That's correct Chair.

ADV LEBALA: D. I think let's pause there. I'm certain that everybody would raise eyebrows who appreciated what were saying. DCN1 [sic], which country's shipbuilder is it?

5 MR SMITH: It's France Chair.

ADV LEBALA: Patrol Corvette Offer, 98/3522 May 1998, Received 1 May 1998, can you see?

MR SMITH: That's correct Chair.

10 ADV LEBALA: Now isn't this remarkable because the Value System, and that's why we were surprised by this date raised that the Value System gets prepared, we know, around the 8th May 1998 isn't it?

MR SMITH: That's correct Chair.

15 ADV LEBALA: It gets approved and signed on the 11th May 1998, am I right?

MR SMITH: That's correct Chair.

ADV LEBALA: Are you able to explain to the Commission how come that the French's offer is received on the 1st May 1998?

20 MR SMITH: Chair, that offer would have been put into the ARMSCOR Tender Box probably on the 1st of May 1998, it would have then been secured by Procurement Secretariat of ARMSCOR until all the offers were received and until the Value System was in their possession.

25 ADV LEBALA: Fair enough, because the closing date was

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the 11th May 1998 isn't it?

MR SMITH: That's correct Chair.

ADV LEBALA: Fair enough. E, GFC Patrol Corvette Offer which was received on the 11th May 1998.

5 MR SMITH: That's correct.

ADV LEBALA: F. Bazán Proposal 02729/M97 REF 01, received 11 May 1998.

MR SMITH: That's correct Chair.

10 ADV LEBALA: G, GEC Marine Patrol Corvette, offer received 11 May 1998.

MR SMITH: That is correct Chair.

15 ADV LEBALA: Let me ask you the following question; is it a coincidence that the offers of three of the shipbuilders are only received the day before the offers are considered by the Evaluation Team on the 12th and the other is received on the 1st of May 1998?

20 MR SMITH: No not really Chair, other than it was a very, what indicates were a busy, a very busy day on the 11th of May for them to have to get all the franking done on all those documents and the stamping done on all those documents because that's what happens with the Procurement Secretariat, before they release the documents to the Project Team each page has to be franked and dated, so they would have had their work cut out for them to make sure that the documents were
25 available the next day.

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ADV LEBALA: Then to complete also Appendix "A, B, C", just to complete the record Appendix "A" is a summary of the Military Performance Evaluation Scoring, it's what was also considered when this Evaluation Report was prepared.

5 MR SMITH: That's correct Chair.

ADV LEBALA: And B, The Corvette Offers Military Performance Evaluation Scoring Detail?

MR SMITH: Correct Chair.

ADV LEBALA: C, Corvette Offers Cost Breakdown.

10 MR SMITH: That's correct Chair.

ADV LEBALA: Now "Introduction" paragraph 1, "Background", please read it.

MR SMITH: Paragraph 1, "Background", ...

CHAIRPERSON: Sorry Advocate Lebala, shouldn't you to
15 read that tomorrow morning?

ADV LEBALA: Thank you Chair, thank you. In actual fact
Chair we should have drawn your attention to the fact that
we're told about some storm which is going to assail the city,
so we thought that we'd leave after the storm is gone, I don't
20 know whether the storm is in procession or it has gone over,
but this is the right time to adjourn.

NOTE: Caucus.

CHAIRPERSON: Would it be a problem if we go up until
16h00 today?

25 ADV LEBALA: Chair, we can go up until 04h00 in the

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morning, I'm just putting myself in your position if there are challenges. Through your permission we'll go on up until 16h00.

CHAIRPERSON: Okay, thank you.

5 ADV LEBALA: Thank you Chair, Commissioner M usi.

Please read the paragraph headed "Introduction" on page 160 before the chairperson interposed.

MR SMITH: Chair, under "Introduction" paragraph 1 "Background":

10 *"Four (4) European countries were shortlisted to supply the Corvette's to the SA Navy by an adjudication process carried out in September, December in 1997: France (DNCI), Germany (German Frigate Consortium), Spain (Bazán) and UK*
15 *(GEC Marine), Reference A. Final offers were accordingly solicited by the Department of Defence from these countries on the 13th of February 1998 with the tender closure date of 11 May 1998".*

ADV LEBALA: Now something significant comes again,
20 the date of the 11 May 1998 starts to play in our minds and we know the following; around the 8th May it was the original issue of the RFO Value System, am I right?

MR SMITH: Issue of the document, correct.

ADV LEBALA: On the 11th May 1998 also the RFO Value
25 System was approved and signed, isn't it?

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MR SMITH: That's correct Chair.

ADV LEBALA: Now this begs the question that I left and gave you credit for. Do you want to explain if you can why the French offer is received on the 1st May 1998?

5 MR SMITH: Chair, I don't know why they decided to deposit it in the ARMSCOR Tender Box a week or so earlier but it appears according to this then that they did, they deposited it already in the tender box on the 1st of May of that year.

ADV LEBALA: Let me assist you Mr Smith. The Value
10 System, permit me to use this expression, I don't have to testify, appears to be sacrosanct, very holy in line with the processes of receipt of offers, isn't it?

MR SMITH: That is correct Chair.

ADV LEBALA: That's why it gets tabled and one
15 appreciates this, I'm not going to repeat what Mr David Griesel said, it gets tabled, it gets sealed, it gets given to the ARMSCOR Procurement Secretariat, then it waits for the offers to come isn't it?

MR SMITH: That's the preferable way to do it Chair,
20 yes correct.

ADV LEBALA: No, that's not the preferable way, that's the way to do it isn't it?

MR SMITH: That's the way to do it Chair, but in this particular case as we now know is that it was approved on the
25 same day that the offers were received.

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ADV LEBALA: No, that's not what I'm driving you to. Mr David Griesel told us about this process that the Value System has to be sealed to wait for the offers isn't it?

MR SMITH: Before the offers can be released, correct.

5 ADV LEBALA: Now the Value System gets approved on the 11th May 1998, can you see?

MR SMITH: I can see Chair.

ADV LEBALA: And its original issue is the 8th May 1998.

MR SMITH: That's correct Chair.

10 ADV LEBALA: Which tells us that it was prepared around the 8th.

MR SMITH: Probably leading up to the 8th, that's correct Chair.

ADV LEBALA: No, it was prepared on the 8th, not leading
15 to the 8th. Do you want me to take you back to the documents? I'm going to resist you making (indistinct), I refuse. I put it to you now, I hate putting things to witnesses because a witness can say: "You can put it anywhere Mr Lebala", I know you can say: "You can put it anywhere". Now I'm going to put it to you,
20 I'm telling you that we are told, and the record is stubborn before us, isn't it true that the original issue informs us that it was prepared around the 8th?

MR SMITH: It was issued on the 8th, that's correct.

ADV LEBALA: Now can you see that the French offer gets
25 received even before it was prepared?

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MR SMITH: The French submitted their offer to the ARMSCOR Tender Box before the Value System was released and issued, that's correct.

5

ADV LEBALA: No, my question is precise. Even before it was prepared.

10

MR SMITH: As I pointed out earlier the preparation of the Value System would have gone over a period, it was finally released on the 8th, it wasn't prepared on the day of the 8th, it was released, Issue-whatever it was, G, was released on the date of the 8th.

15

ADV LEBALA: You ought to remember that I'm following up on what you tell the Commission in your sworn statement, I am not here to say anything about your *bona fides*, I'm not questioning them, you've been an honest witness, you've tried to assist this Commission, it is not easy. You said look at page 6 paragraph 5 of your statement, the paragraph headed "The Corvette Military ...".

20

CHAIRPERSON: Advocate Lebala, just before you go there I've got another point that I want to clear up with the witness, maybe I might end up forgetting that point. Mr Smith, am I right to say that according to your evidence the RFO Value System was approved on the 11th of May 1998?

25

MR SMITH: That's correct Chair.

CHAIRPERSON: Am I right to say that this document that you are referring to, page (indistinct) from the French, the

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offer from the French, that according to this document it was received on the 1st of May 1998?

MR SMITH: That's what it says here, that's correct Chair.

5 CHAIRPERSON: Which means that they submitted their written offer even before the approval of the RFO Value System.

MR SMITH: Correct Chair, in terms of dates that's correct.

10 CHAIRPERSON: How is it possible that they should get it right and lodge their final offer even before the approval of the Value System, what method did they use in order to prepare their final offer if they did that before they see the Value System? Are you in a position to help us with that?

15 MR SMITH: Chair, firstly of course DCN is a company as we said in France, they had no insight into the Value System. The Value System is a DoD document used for evaluation, they had no insight into that Value System, so as a company they were required to, or asked, requested rather to
20 submit an offer, they then submitted their offer, they could have submitted it on the 11th and they decided for whatever reason, it may have been that their courier only arrived early on the 1st of May and that happens all the time Chair, it goes into the tender box, it gets stored and sealed by ARMSCOR
25 Procurement Secretariat until the actual closing date because

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all offers have to be in by the 11th, and then it closes. What then happens is a process, each page gets dated and franked on that, on the closing date or shortly thereafter and then that, those, that documentation pack gets given to the Project Team.

5 I think what appears to be here now, everything seems to be happening on the same day of the 11th in terms of, I'm not talking about DCN but certainly in terms of the approval of the Value System as well as the closing date which is not the best, is not what you would want.

10 JUDGE MUSI: Maybe I can resolve this dispute. If you look at that very same paragraph 1, page 160 the RFO's were already issued on the 11th of February 1998, in other words these companies as at May when the Value System was approved the RFO's had already gone, these people had
15 already been invited and (indistinct) and what happened here seemingly is that the Value System was approved after the invitation to submit final offers had already gone out.

MR SMITH: That's correct Commissioner Musi.

CHAIRPERSON: Yes, but then that still doesn't answer my
20 question. What criteria will you use in order to put together your offer, you don't know what the Value System is going to be? If at all by the time that the Value System was approved you had already submitted your offer, if you had already submitted your offer what criteria would you use in order to
25 know what information to give? That is my difficulty and in

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general it doesn't happen that you know offers, that the person was sent an offer even before the Value System has been approved, one would expect that the offers will follow the approval of the Value System. Is that not general how things should happen?

MR SMITH: That's correct Chair.

ADV LEBALA: Any incremental question Chair, Commissioner Musi?

JUDGE MUSI: Well, maybe we might be at loggerheads here, but, and I understand that (indistinct) you would have your Value System in place before you invite competitors to submit their offers, I think that's accepted. But isn't the critical thing that the Value System must be in place before you start evaluating those offers? You may have already received the offers but before you can look at them you must put your value system in place. It appears to me from what I read here that by the time the Value System was put in place some of the offers have already been received, but the Value System would work in order to evaluate those offers.

MR SMITH: If I can say Commissioner Musi, in the procedure that is applied today in ARMSCOR your RFO cannot be issued without a value system complete and in store. We see what happened here at the time of the SDPP which was at variance with where it happens in ARMSCOR procedures today.

JUDGE MUSI: Thank you. I think it is resolved.

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ADV LEBALA: Now you will see something that should please you how independent the commissioners are, and it's in line with their training but we will come back and make them see how we see it, not how you see it, but let's complete the picture by asking you the following question; is it true that the offers don't wait for the Value System?

MR SMITH: In this particular case that's correct.

ADV LEBALA: The RFO Value System waits for the offers, isn't it?

MR SMITH: The RFO Value System has to be in place before the offers at this (indistinct), in this particular case at SDP before the offers were released to the project teams they were held in isolation until the value systems were registered and lodged with the Procurement Secretariat.

ADV LEBALA: You are confirming that the offers don't wait for the Value System, am I right?

MR SMITH: In this particular case they didn't, correct.

ADV LEBALA: You are conceding that the RFO Value System waits for the offers?

MR SMITH: I wouldn't say wait, it just, the timeline here was as stated, yes.

ADV LEBALA: No, no, no, come back. Do you disagree with what Mr David Griesel said, you want me to remind you what he said? Is it true that Mr David Griesel said the Value System gets tabled, do you agree, yes or no?

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MR SMITH: I agree the Value System gets tabled.

ADV LEBALA: It gets sealed, do you agree or not?

MR SMITH: It gets sealed, that's correct.

ADV LEBALA: It goes to the ARMSCOR Procurement
5 Secretariat, do you agree or not?

MR SMITH: Correct, I agree.

ADV LEBALA: And it waits for the offers, isn't it?

MR SMITH: And it waits for the offers, that's correct.

ADV LEBALA: So, the offers don't wait for the Value
10 System, isn't it?

MR SMITH: If you put it that way, correct.

ADV LEBALA: The RFO Value System waits for the
offers, am I right?

MR SMITH: That's correct.

15 ADV LEBALA: Now is it true here that it appears that the
DCN offer which was received on the 1st of May 1998 waited for
the Value System?

MR SMITH: That's correct.

ADV LEBALA: Is it strange in line with what Mr David
20 Griesel said, not in line with what I said? You will remember
what I said Mr David Griesel said, you disputed?

MR SMITH: No, I don't dispute it.

ADV LEBALA: Now, do you agree that here the French
offer waited for the Value System, it was the other way around?

25 MR SMITH: It was the other way around, it's correct

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Chair.

ADV LEBALA: This contradicts the ARMSCOR tender process isn't it?

5 MR SMITH: The current ARMSCOR tender process, it does contradict that process as I said earlier, the RFO , the Value System must be in place before you issue the RFO.

ADV LEBALA: Now has anyone found this strange before you came to testify? Let's confine it, members of your Integrated Project Team?

10 MR SMITH: I can't recall Chair, I don't know if anybody found that strange, as I said this report has just recently come into my possession as well.

ADV LEBALA: You, before you came to testify, did you find this strange or you only noted it when you came to testify?

15 MR SMITH: When I came to testify I noted that the Value System was approved on the same day as the closing date, yes.

ADV LEBALA: No, you are not responding to my question. I'm talking about this dichotomy and the strangeness of the French offer waiting for the Value System.

20 MR SMITH: Chair, I don't want to belabour the point as it were, I don't find this too strange, the reason is as I said that the receipt of offers is a very controlled process in ARMSCOR, so the procurement secretariat would have received
25 these offers, it happened to receive it on the 1st of May, the

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offers could have been received on the 10th of May, they would keep, seal those offers and not make them available until the actual closing date and in this particular case it would appear rightly or wrongly that the Value System was approved on the same date. Yes, that's all I wanted to say there Chair.

CHAIRPERSON: Mr Smith, let's leave that question because you are confusing me even more now. You are talking about the French, maybe their offer having been received on the 10th of May when this document clearly says it was the 1st of May. I think it's because you know, you don't have an answer you are starting to speculate. The fact of the matter is that the normal ARMSCOR process is that the Value System waits for offers and not the other way around. Here what happened is very unusual and I think just leave it there, don't try and explain why this unusual thing happened.

MR SMITH: Thank you Chair.

CHAIRPERSON: Thank you.

JUDGE MUSI: Can I just follow up on this. Nor do I think one can put the blame on the bidder because in February already the bidders were invited to submit their final offers.

MR SMITH: Yes Chair.

ADV LEBALA: Well Commissioner Musi leaves a little bit thirsty to ask you the following question; is it true that bidders were invited to submit their offers as early as February 1998 before the Value System was put in place?

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MR SMITH: That's correct Chair.

ADV LEBALA: But was that strange?

MR SMITH: In terms of the process today it is strange,
that was the process that was followed at this point here with
5 the SDPP.

ADV LEBALA: Now my final question, do you find this
process of ARMSCOR that Mr David Griesel told us about
strange as you are standing before the Commission, of the
Value System waiting for the offers?

10 MR SMITH: No, that is the process that is followed
today.

ADV LEBALA: Now let's read on, I see it's 16h00 Chair,
Commissioner Musi.

CHAIRPERSON: Maybe I think let's adjourn until tomorrow
15 morning. Advocate Lebala, for how long are you going to be
still with this witness tomorrow?

ADV LEBALA: We'll be done by lunch tomorrow, and
Chair just for your own edification and Commissioner Musi's,
there's an application that I don't know you are alive to,
20 brought by Mr Richard Young to cross-examine the
Commission's next witness Mr Frits Nortjé. Now there's been
some housekeeping amplified challenges that Mr Frits Nortjé is
facing. We thought that we could have led his testimony had
we not had the interventions that we had the previous week
25 which we all know were unfortunate, where does it leave us

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Chair? We are facing a perfect storm in the sense that we may end up not leading Mr Frits Nortjé in line with the Commission's timetable. Now my colleague, if I'm not mistaken, and without misleading you let me speak under correction and I will be open to corrections, my colleagues Mphaga SC and Ms Ramagaga may interlope and lead witnesses before we lead the last witness on the frigate process who is Mr Frits Nortjé.

To complete the picture, in as far as the process of the Navy is concerned on acquisition of the products, the submarine product and the Corvette's and the combat suite programme and the ship platform programme we are going to lead only three witnesses, Mr Vermeulen, Mr Smith and Mr Frits Nortjé. Now the last witness may not come in line with the sequence as anticipated and we are going to request your indulgence. We learnt the following, Mr Frits Nortjé is in the process of moving to Mosselbay and there's an application where Mr Richard Young seeks to, permission to cross-examine Mr Frits Nortjé.

Now Mr Richard Young says he is not going to be available in the course of next week because he's involved in litigation in the Cape Town Provincial Division. Now we've been requested to grant him that indulgence, we are still sorting this out with the ARMSCOR legal team. We don't have a difficulty but we know that we don't want to inconvenience the Commission. Now the record is going to be scattered, it's

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going to have interlopes where you will see the testimony of the last witness on the Navy in as far as the acquisition of the Corvette's and the submarines are concerned being intercepted by the Air Force witnesses in as far as the acquisition process
5 of the Gripen's and the Hawk's are concerned. Now with this in mind please bear with that reality Chairperson and Commissioner Musi, it's beyond our control but we'll await your wise guidance in this regard.

CHAIRPERSON: Okay, thanks a lot. I think we'll discuss
10 that tomorrow morning. I'm not sure whether tomorrow should we start at 09h00 just to make sure that you know we do finish with Mr Smith tomorrow.

ADV LEBALA: Yes Sir, we are, we'll be available to start at 09h00 Chairperson, Commissioner Musi.

15 CHAIRPERSON: I'm sorry, maybe 09h30. We're told that we should make it 09h30 rather than 09h00. If we start at 09h30 tomorrow will you be able to finish with this witness tomorrow?

ADV LEBALA: We are certainly finishing with this witness
20 tomorrow Chair, we are in the last leg of the testimony. We can tell you that from here he's going to give examples of DIP and he'll be done. And just, I beg your pardon Chair, if I may interpose, and just one or two responses from the critics, you know the foundation, you and Commissioner Musi Chair, what
25 some critics are saying. We'll just be punching some one or

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two criticisms from the critics.

CHAIRPERSON: Okay thank you, then let's adjourn until tomorrow morning at 09h30. Thank you.

5

(COMMISSION ADJOURNS)