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

MR SMITH: I do.

CHAIRPERSON: Thank you.

5 ADV LEBALA: Chairperson, Commissioner Musi, before we start I'm reminded that I should have advised you that I'm without my jacket not out of disrespect to both of you, I'm certain that this does not (indistinct) of any scheme from your noses Commissioners, and the witness requests to take off his
10 jacket also. Thank you Chair, thank you Commissioner Musi.

CHAIRPERSON: Advocate Lebala, I hope you are not (indistinct).

ADV LEBALA: Chair, as long as it is not beachwear Chair. Shall we proceed? Mr Smith yesterday we had started
15 with the RFO Evaluation System testimony and we noted that the RFO Evaluation of the ship platform was approved and signed on the 11th May 1998, do you remember?

MR SMITH: I remember Chair.

ADV LEBALA: And it became clear when we took you
20 through the documentation that it was issued, prepared, compiled around, the 8th May 1998.

MR SMITH: Correct Chair.

ADV LEBALA: And that satisfied us that we could say that it was actually prepared around the 8th May 1998.

25 MR SMITH: Finally on the 8th of May 1998, that's

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correct Chair.

ADV LEBALA: And we noted that after it's prepared, issued, it's a process for it to be approved, hence it got approved on different dates from the date on which it was prepared.

5 MR SMITH: Correct Chair.

ADV LEBALA: And we noted that the evaluation process started on the 12th May 1998 to the 29th May 1998.

MR SMITH: That's correct Chair.

10 ADV LEBALA: And it's a process that followed because after the approval of the RFO Value System the evaluation process followed suite, am I right?

MR SMITH: That's right Chair.

15 ADV LEBALA: And it became clear that you are part of the Evaluation Team with Mr Frits Nortjé who is going to be one of the witnesses who talks to the acquisition process of the Corvette platform.

MR SMITH: That's correct Chair.

20 ADV LEBALA: Now this is confirmed by what we saw on page 169 of the Declassified bundle paragraph 16, you remember? I think we could go there, it's very critical. The Declassified bundle page 169 paragraph 16, that's where we noted the role that you played in as far as the costing extraction is concerned, am I right?

MR SMITH: That's correct Chair.

25 ADV LEBALA: And we refreshed you by saying this

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confirms what we noted in as far as your role also in the RFI Evaluation process where you also extracted costs as reflected on page 3 paragraph 2, if you look at page 3 paragraph 2 of the bundle, Declassified bundle. Are you at page 3 paragraph 2?

5 MR SMITH: I am Chair.

ADV LEBALA: And for instance if you look at paragraph 2.g your name is there, Mr Smith and reference is made to costing aspects.

MR SMITH: That's correct Chair.

10 ADV LEBALA: And it became clear that in as far as costing aspects are concerned this relates to the extraction of costs where you are not an expert in the industrial participation, the DIP part, the financial option, the finance part but you also assisted those teams in as far as the
15 extraction of costing is concerned.

MR SMITH: The extraction of costs for the financing side Sir, Chair and, but costs weren't the issue with the DIP side, that was to clarify technical details.

ADV LEBALA: Indeed. That's why reference is being
20 made on page 169 to cost management and IP, which stands for Industrial Participation aspects, am I right?

MR SMITH: That's correct Chair.

ADV LEBALA: And we went through ARMSCOR's process of evaluating the RFO's, remember?

25 MR SMITH: I remember Chair.

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ADV LEBALA: We followed up on what Mr David Griesel said about the Value System process.

MR SMITH: That's correct Chair.

ADV LEBALA: You ended up conceding that the RFO
5 Value System waits for the offers and the offers don't wait for the RFO's.

MR SMITH: Yes Chair, if the Value System, could I just ask for that question to be posed again please?

ADV LEBALA: Let me simplify it for you. Look at page 4
10 paragraph 3.3, it will refresh you, I know at this stage we are looking for, we are looking at Request for Information and not the RFO's but this will refresh you. Look at paragraph 3.3, especially the line before, that's the Statement bundle, I beg your pardon Chairperson, Commissioner Musi, the Statement
15 bundle paragraph 4, I beg your pardon, page 4 paragraph 3.3. And just for the sake of completeness, I see the commissioners are already on the paragraph, let's read it from the top:

*"The evaluation of the responses was executed at
20 Naval Headquarters from 3 to 9 November 1997 under the leadership of the then project officer, Captain Jonathan Kamerman ("Project Officer"), who was seconded to the Secretary of Defence organisation by the SA Navy, to lead the project acquisition process against a RFI Corvette Military
25 Value System which was approved prior to receipt*

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of the proposals”.

Can you see?

MR SMITH: I can see Chair.

ADV LEBALA: Now you did concede yesterday that the
5 RFI process in as far as the evaluation system and the
evaluation as seen from the graphic, the depiction that we saw
on page 16 of the Declassified bundle, please just go to page
16, that I would like you to look at against page 131 of the
Declassified bundle because they interrelate. Are you at page
10 16 paragraph 8 of the Declassified bundle, “The Graphic
Representation of the Military Evaluation Process”, and on
page 31 you also see “The Graphic Representation of the
Military Evaluation Process”, am I right?

MR SMITH: That’s correct Chair.

15 ADV LEBALA: The one relates to the RFI Evaluation
process and the other relates to the RFO Evaluation process.

MR SMITH: That’s correct Chair.

ADV LEBALA: We only know that in all fairness the
differences is the scores, for instance if you look at the RFO
20 Evaluation Process Graphic Representation the score is out of
1 040 and in as far the RFI is concerned the score is out of 10.

MR SMITH: On the graphic that’s correct Chair.

ADV LEBALA: And we don’t have to go deeper, you
conceded that the processes are the same.

25 MR SMITH: As per this graphic, that’s correct Chair.

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ADV LEBALA: Not only that, you remember that the chairperson asked a question that if these processes are the same, short of saying the RFI Technical Evaluation Process as depicted by the Graphic Representations then why do we have to repeat them, you remember that part of the testimony and what followed thereafter? I will refresh you if you don't remember.

MR SMITH: Chair, as I stated previously the graphic representation is the same, there are variations between the two evaluation processes in the RFI and the differences in between processes between the RFI Evaluation and the RFO Evaluation and I pointed out that the RFI, the information received and evaluated is non-binding information and in fact did change, the information did change by the time we got to the RFO in order for (indistinct).

ADV LEBALA: Yes, we know that those changes only pertained to processes, but in as far as the substance and the content of their makeup they are similar, am I right?

MR SMITH: The Value System, there ... is similar, there are differences, is similar but the evaluation of that RFO eventually was based on firm offer information and at some point I could go into the detail of it to point out the variations but it is based on different information to what was received during the RFI.

ADV LEBALA: Yes, but thanks for that detail. Come

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back, come back, come back. I've just demonstrated to you that the distinction is very clearly stubborn before us and the Commission is (indistinct), one talks of a score out of 1 040, the others talk of a score out of 10, am I right?

5 MR SMITH: That's correct Chair, in terms of the graphic.

ADV LEBALA: And the processes are the same isn't it? I don't think we are going to waste time and go back there, I'm going to resist it, I am going to resist it and I don't want to make Mr Solomon restless because he will think that I'm
10 condescending and probably patronising him. I'm not going to show this Commission that they are the same, that's why we wasted time, twisted and turn, huffed and puffed to demonstrate that they are similar. If you want to resist please
15 look at page 131 and page 16.

CHAIRPERSON: Advocate Lebala if you don't mind can I intervene. I think we were (indistinct) this exercise yesterday and I think the witness did mention the fact that there are very small differences, those two processes are almost similar. I
20 think you have already passed that stage, if you don't mind can we get to the next one because you have canvassed this point extensively yesterday.

ADV LEBALA: Thanks Chair. Now I would like to conclude by saying am I right to say given the similarities
25 between the RFI Value System and the RFO Value System and

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we confine ourselves to these graphics, let's test what you told the Commission and what occurred, bearing in mind that you ended up conceding as confirmed by the chair that the RFO Value System is similar to the RFI Value System except for those distinctive differences. Now let's test what occurred. Please go to page 12 of the Declassified bundle, RFI Value System. Can you note that the RFI original date of issue is the 21st October 1997?

MR SMITH: That's correct Chair.

10 ADV LEBALA: And if you go to page 13 you will see that it was signed and approved on the 21st October 1997.

MR SMITH: That's correct Chair.

ADV LEBALA: Please go to the Statement bundle and here we can just refresh each other by reminding ourselves that you remember the RFI letters that we took you through from pages 11 to 18 were dated the 23rd September 1997?

MR SMITH: Sorry Chair, which page are we on now?

ADV LEBALA: Go to your Statement bundle, the Statement bundle, not the Declassified bundle, we'll take the letter of the 11th, the letter on page 11, the letter addressed to, the RFI letter sent out to Germany. Can you see that's dated the 23rd September 1997?

MR SMITH: I can see that Chair.

25 ADV LEBALA: Now you could look from page 11 to page 18, they are all dated 23rd September 1997.

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MR SMITH: That's correct Chair.

ADV LEBALA: Look at the RFI document itself on page 19, page 19 of the self-same bundle. Can you see?

MR SMITH: I can see Chair.

5 ADV LEBALA: It is dated the 31st October 1997.

MR SMITH: That's correct Chair.

ADV LEBALA: And it informs us ...

MR SMITH: Sorry Chair, it's the closing, the date there is the closing date on the 31st of October 1997.

10 ADV LEBALA: In actual fact I'm misleading the record and I stand corrected, I appreciate Mr Smith. The closing is at 11h00 on the 31st October 1997. Can you see?

MR SMITH: I can see Chair.

15 ADV LEBALA: Now two things come out clear, come out clear here, the RFI original date of issue is the 21st October 1997, it gets signed and approved on the 21st October 1997 and it closes on the 31st October 1997.

MR SMITH: That's correct Chair.

20 ADV LEBALA: Now does it tell us that the RFI Value System waits for the RFI offers to, or RFI responses to close on the 31st October 1997?

MR SMITH: It does show that it was in place before the RFI's were received, that's correct Chair.

25 ADV LEBALA: And this is confirmed by what I read to you on your statement on page 4 paragraph 3.3, you remember?

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MR SMITH: I remember Chair.

ADV LEBALA: Now it tells us that the RFI Value System from what we see, RFI Value System is dated the 21st October 1997, that's the date on which it's issued, prepared and signed.

MR SMITH: Correct Chair.

ADV LEBALA: And the RFI responses come on the 31st October 1997.

MR SMITH: That's correct Chair.

10 ADV LEBALA: Now am I right to say that the RFI responses don't wait for the RFI Value System?

MR SMITH: That's one way to put it, that's correct Chair.

15 ADV LEBALA: Am I right to say the RFI Value System waits for the RFI responses to close on the 31st October 1997?

MR SMITH: That's one way to put it Chair.

ADV LEBALA: Now is there another way to put it Mr Smith in all fairness?

20 MR SMITH: Chair, it's just a matter of terminology, the RFI Value System should be in place and approved at least prior to receipt of the RFI.

25 ADV LEBALA: But you are confirming what I said, I'm interested in another way to say it because I'm piggy-backing on what you said, this is not what I said, this is what you said, you said it appears that this is the other way to look at it. Now

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I would like you to complete that by showing us the other ways to look at it, it appears that there are other ways, am I right?

MR SMITH: No Chair, no other way.

ADV LEBALA: So that's the only way to look at it, am I
5 right?

MR SMITH: That's correct Chair.

ADV LEBALA: Now yesterday we hustled and bustled with the RFO Value System which it has become clear that it is prepared and approved around the 8th, let's say around the 8th,
10 the 11th May 1998.

MR SMITH: Correct Chair.

ADV LEBALA: Look at Annexure "BS3" page 31 of the Statement bundle. We note on this page that the closing date of the RFO's is 11 May 1998 at 11h00.

MR SMITH: That's correct Chair.
15

ADV LEBALA: Now would you agree with me that we see a similar pattern you could say, process of the unfolding of how the RFI, how the value systems are dealt with? It appears that the value systems get approved, signed and the closing dates
20 (indistinct) to the following after the approval and the signatures.

MR SMITH: That's correct Chair.

ADV LEBALA: In all fairness what we know is that the RFO was issued, there's a concession that it was prepared
25 around the period from the 8th to the 11th.

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MR SMITH: Correct, Chair.

ADV LEBALA: What became clear is that the closing date was also on the 11th.

MR SMITH: That's correct Chair.

5 ADV LEBALA: And we were concerned about that, we'll leave it to the Commission, you may not answer it, they did not prefer for us to take you back to that. When we make closing submissions to the Commission we'll debate with the commissioners, I'm certain that they have questions to raise
10 and you could note that they are independent, there's a thinking already based on the questions that Commissioner Musi asked as against the Chair, but what becomes clear, now tell us whether you agree or not because we have to leave this part and complete your testimony. Do you agree that the
15 preparation of the Value System precedes the closure, the closure date of the responses?

MR SMITH: That's correct Chair.

ADV LEBALA: Now let's continue with where we were yesterday. We were on page 160 of the Declassified bundle
20 and I would like you to read ... I see the commissioners are raising concerns.

JUDGE MUSI: No, what page?

ADV LEBALA: Page 160 of the Declassified bundle Commissioner Musi.

25 ADV LEBALA: Now we are at the stage where we know

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the following, we are evaluating the ship platform, you were a member of the Technical Evaluation Team that only dealt with the military value, that is the issues that do not pertain to financing an industrial participation, am I right?

5 MR SMITH: That's correct Chair.

ADV LEBALA: And we know that only four shipbuilders were shortlisted but we know that the designs were five, am I right?

MR SMITH: That's correct Chair.

10 ADV LEBALA: This ...

CHAIRPERSON: I'm sorry Advocate Lebala, which page did you say it was?

ADV LEBALA: We are on page 160 of the Declassified bundle. Declassified bundle.

15 CHAIRPERSON: 160?

ADV LEBALA: 160, yes. Thank you Chair, I think Commissioner Musi and the chair are with us now. We are just giving a background before we started taking the witness through this page. Now what we know is that the German
20 Frigate Consortium presented two designs, the A-Meko 200 [sic] and Meko 200, am I right?

MR SMITH: That's correct Chair.

ADV LEBALA: Now we have seen yesterday what the background told us and the background confirms what you are
25 just saying. Please look at page 160 paragraph 1 that you read

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into the record yesterday headed "Background", you remember?

MR SMITH: I remember Chair.

ADV LEBALA: Now let's read paragraph 2, "Aim", I will read it:

5 *"The aim of this evaluation was to assess the final offers for the military value as one of the three criteria of the overall value system that includes industrial participation value and financing value in order to recommend a preferred Corvette option to*
10 *the political level".*

MR SMITH: That's correct Chair.

ADV LEBALA: Now to the political level I suppose they refer to the South African Cabinet, am I right?

MR SMITH: I would assume that's what the author of
15 this document wanted to convey, that's correct Chair.

ADV LEBALA: Yes, and that's the reason why if you remember Mr David Griesel took us that three-tier system that was confirmed by Mr Rob Vermeulen, you remember?

MR SMITH: I remember Chair.

20 ADV LEBALA: Where they start with Level 1, the Technical Evaluation Team, where your team is and where there is also the Industrial Participation Team and where there is also the Financial Options Team.

MR SMITH: That's correct Chair.

25 ADV LEBALA: And we know that it pitches up to go to the

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level to where SOFCOM is.

MR SMITH: That's correct Chair.

ADV LEBALA: And from there we know it pitches to the last Level 3 where the Cabinet level and the ministerial
5 committees is.

MR SMITH: That's correct Chair.

ADV LEBALA: And we know the distinction between where it's a cardinal project, how it goes and ends up at the Ministerial Cabinet level.

10 MR SMITH: Correct Chair.

ADV LEBALA: To complete your testimony and to rehash what the previous witness has said we know that it is, if it is above R80 million, that's where it pushes higher to Level 1.

15 MR SMITH: For cardinal project, yes Chair. Just note that this was applicable in the situation of the SDPP, in the normal sense it doesn't necessarily apply but in the SDPP case yes, it did.

ADV LEBALA: Thank you. And we know that at the lower level where you played a role after your, the Evaluation Team
20 to which you were a member together with members of your Integrated Project Team where you have completed the spade work, the basic scores, before they go to SOFCOM they go past a moderating team, am I right?

25 MR SMITH: Mention was made of the role played by a moderator, that's correct Chair.

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ADV LEBALA: Now we ended up calling that team that we know, the moderator if I'm not mistaken, was it Admiral Howell or Reed in the case of Corvette's?

MR SMITH: It was Admiral Howell.

5 ADV LEBALA: Yes. Where he is together with Captain Kamerman.

MR SMITH: Correct Chair.

ADV LEBALA: Now is it true that your team gave those basic scores to that Moderating Team before they go to
10 SOFCOM?

MR SMITH: That's correct Chair.

ADV LEBALA: Now this completes the picture of what is being rehashed on paragraph 2 to draw a separation between the teams at that level, teams that include the Industrial
15 Participation Value and the Financing Value at that lower level, do you agree?

MR SMITH: I agree Chair.

ADV LEBALA: Now paragraph 3, "Pre-Submittal Meetings", please read the paragraph for the record.

20 MR SMITH: Paragraph 3, "Pre-Submittal Meetings":

"Pre-Submittal meetings were held as follows:.

*a. January, February 1998. Separate two-day meetings were held with each of the four contenders, the aim being to debrief each
25 contender on the evaluation of their RFI*

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response in order to assist them to improve their technical offer in the final round.

b. 31st of March to 3rd of April 1998 separate one-day meetings were held with Bazán, DNCI and GFC in order to clarify any RFO issues. GEC Marine declined the invitation to participate reporting that they had no need of further clarification”.

5

ADV LEBALA: Were you part of those meetings?

10 MR SMITH: I would have been part of those meetings
Chair, yes correct.

ADV LEBALA: Was Mr Shaik part of those meetings?

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

15 ADV LEBALA: Are you alive to the fact as to whether Mr
Shaik was briefed of these meetings?

MR SMITH: No Chair.

ADV LEBALA: Were members of the Integrated Project
Team part of these meetings?

MR SMITH: Correct Chair.

20 ADV LEBALA: Were members of the Evaluation Team part
of those meetings?

MR SMITH: The members of the IP Team that was part
of the Evaluation Team were in these meetings Chair.

25 ADV LEBALA: We are on page 161 of the Declassified
bundle, let me read for expedience paragraph 4 headed “Value

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System”:

“The Corvette Military Value System applied during this evaluation was approved jointly by the Chief of the Navy and the Chief of Acquisition”.

5 Now we have seen that on page 126 of the bundle, am I right? We could go back just for the sake of completeness, I see you want to go back. Look at page 126.

MR SMITH: I’ve got 126 Chair.

ADV LEBALA: Page 126, for instance page 125 confirms
10 that the Value System was approved by the Chief of the South African Navy Rear Admiral Simpson Anderson, am I right?

MR SMITH: That’s correct Chair.

ADV LEBALA: Page 126 demonstrates that the Value System was approved by the Chief of Acquisitions Mr Shamin
15 Shaik isn’t it?

MR SMITH: That’s correct Chair.

ADV LEBALA: Now what is said in paragraph 4 has just been concretised, let’s read further:

*“It was derived directly from the Value System
20 applied during the RFI phase”.*

Let’s pause there. Now it’s coming back again, can you see that the similarities between the RFI phase and the RFO phase are surfacing again?

MR SMITH: In terms of the Value System that’s correct
25 Chair.

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ADV LEBALA: I missed that point?

MR SMITH: In terms of the Value System that's correct
Chair.

ADV LEBALA: But we have demonstrated that it's not
5 only the Value System where there are similarities, am I right?

MR SMITH: I've pointed out that there are differences
Chair and I can go into that detail but there are significant
differences between the evaluation that took place, and the
offer and the evaluation that took place during the RFI.

10 ADV LEBALA: But we've also demonstrated that there are
similarities, am I right?

MR SMITH: There are similarities, correct Chair.

ADV LEBALA: Now perhaps we should close this story by
reading you again what is being said on page 129 of the self-
15 same bundle. Please go to paragraph 3 and I think I should
read it to you. Let's see whether the commissioners are on
page 129 paragraph 3. We note that Commissioner Musi is on
the self-same page. Yes, the paragraph is headed
"Derivation":

20 *"This document is derived ...".*

Remember at this stage we are dealing with the RFO ... I beg
your pardon Commissioner Musi?

JUDGE MUSI: No, no, I'm speaking to myself.

ADV LEBALA: We are dealing with the RFO Value
25 System, am I right?

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MR SMITH: That's correct Chair.

ADV LEBALA: Now the paragraph says, is headed
"Derivation":

5 *"This document is derived entirely from the previous
value system established for the evaluation of
requests for information solicited internationally".*

Let's pause there. It doesn't tell us that it refers to the RFI
Value System, it says, it relates to the evaluation of the
Request for Information, do you agree?

10 MR SMITH: As stated there Chair, correct.

ADV LEBALA: And we know that there is a process of the
RFI and then there's a process of RFI Value System isn't it?

MR SMITH: That's correct Chair.

15 ADV LEBALA: This this is being rehashed there and I
don't think I need to repeat it. Let's continue on paragraph 4
page 161 line number 3:

20 *"It was derived directly from the Value System
applied during the RFI phase being essentially
identical to the latter with minor typographical
corrections and scaling adjustments".*

MR SMITH: As stated there, correct Chair.

ADV LEBALA: And we know that there were minor
changes that were effected also, am I right?

MR SMITH: Correct Chair.

25 ADV LEBALA: *"The Value System was duly registered and*

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*sealed by the ARMSCOR Secretariat on the
11th May 1998 before the receipt of the offers”.*

MR SMITH: As stated there, correct Chair.

ADV LEBALA: Now that completes the picture that we've
5 been hustling about, it's very clear that the Value System was
sealed and it waited for the offers, am I right?

MR SMITH: As stated there, correct Chair.

ADV LEBALA: Now is there another version to that
because if you say “as stated there” you seem to be having
10 another answer to what is being said here.

MR SMITH: Well Chair, as I've said before I didn't
write this report, this is a Navy report, it says that the
ARMSCOR Secretariat on the 11th of May before the receipt of
the offers, I take that as read that the Value System as we
15 know was approved on the 11th of May, the same day, so I take
it as read that the offers that was therefore on the same day
before 11h00 of that day.

ADV LEBALA: Now our concern is you say “as stated
here”. Are you saying that you do not have a different version
20 from what is being stated here?

MR SMITH: I don't have a different version, I don't
have enough ... I can't speak to that particular sentence there
Chair in more detail.

ADV LEBALA: Now let's complete the picture. Do you
25 dispute what is being stated here?

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MR SMITH: I don't dispute what is stated there.

ADV LEBALA: Do you know of any other version and truth other than what is being stated here?

MR SMITH: I do not know of any other truth Chair.

5 ADV LEBALA: "Offers Received". Please read paragraph 5.

JUDGE MUSI: Before you ... I just want to point out a discrepancy there, if not a contradiction. That statement says:

10 *"The Value System was duly registered and sealed by ARMSCOR Secretariat on the 11th of May 1998 before the receipt of the offers".*

And that is not correct because one of us received already on the 1st of May, so there's a contradiction there.

15 MR SMITH: Commissioner Musi, you are correct in the literal sense of what ... That's why I hesitated about that, the way you could interpret that sentence. If you literally say before receipt of the offers an offer was, as you quite correctly pointed out, received on the 1st of May but that offer was not opened or made available to the Project Team until after the

20 11th of May, so that receipt of offers is sort of, I would be more definitive to say a value system was duly registered and sealed by the ARMSCOR Secretariat on 11th of May before opening of the offers and distribution to the team, that's the way I would have interpreted it.

25 JUDGE MUSI: Thank you.

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ADV LEBALA: Now what addresses Commissioner's Musi's question and deals with what you are saying follows in the subsequent paragraphs, the heading is "Offers Received". Please read paragraph 5.

5 MR SMITH: "Offers Received" paragraph 5:

"Offers were received via the ARMSCOR Secretariat on the 11th of May as follows; ...".

ADV LEBALA: Let's pause. Let's pause there. What has become clear is that only three offers were received on the 10 11th of May 1998, am I right?

MR SMITH: Only three offers were put into the ARMSCOR Tender Box on the 11th of May, correct Chair.

ADV LEBALA: And we know that one offer was received as early as the 1st of May 1998.

15 MR SMITH: That's correct Chair.

ADV LEBALA: And that was the offer of the DCN Lafayette, that is the French ship design.

MR SMITH: That's correct Chair.

ADV LEBALA: Now let's read (a). Let's proceed to read 20 5(a).

MR SMITH: *"(a) France. Two designs were offered Reference Di, the DCN Patrol Corvette ...".*

Incorrectly named Lafayette by DNCI during the RFI phase:

"... as solicited in a combined diesel and gas turbine (CODAG) propulsion configuration with 25

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5 *various main engine options. Documentation received was very limited in detail and not in accordance with the RFO, particularly the logistic documentation which consisted of a single slim volume. Despite this the offer was judged of sufficient detail to be evaluated".*

ADV LEBALA: Now what we know is there were limitations in as far as the DCN Lafayette's offer is concerned, am I right?

10 MR SMITH: That's correct Chair.

ADV LEBALA: Because the documentation received was limited and not according to law, is that right?

MR SMITH: It would appear that the detail here ...

15 ADV LEBALA: I beg your pardon. Not ... I want to say not in accordance with the RFO, I beg your pardon.

MR SMITH: That's correct Chair.

ADV LEBALA: And it's specific that particularly the logistic documentation isn't it?

MR SMITH: That's correct Chair.

20 ADV LEBALA: Does this relate to the Integrated Logistics Systems?

MR SMITH: That's correct Chair.

25 ADV LEBALA: Now let's clarify this, if you are able to respond say so, if you can't say so. Now we know that the French offer was received earlier than the 1st of May 1998, that

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has become common cause. What does this paragraph tell us, does it tell us that it was opened on the 11th of May or it was received on the 11th of May?

MR SMITH: I don't know what, the only interpretation I can put on that on the 11th of May the offers were opened by ARMSCOR Secretariat and duly processed and then conveyed to the team. I was on the team side, so I was, I was in receipt of the offers on the 12th, so that's my, the extent of my involvement is I received the offers on the 12th of May.

5
10 ADV LEBALA: Now as you are standing before the Commission now would you say that what is being said on paragraph 5 is correct, giving what we have established earlier with regard to the offer that was received on the 1st of May 1998?

15 MR SMITH: As we saw yesterday Chair, according to the reference in this document it would appear that the DNCI offer was put into the tender box on the 1st of May, it would appear so, though the sentence on the paragraph 5 here says that we received by the ARMSCOR Secretariat on the
20 11th of May is maybe not fully correct, they were actually received, this particular one was received on the 1st of May.

ADV LEBALA: Now before you came to testify was this issue addressed by any other members of the Evaluation Team, the incorrectness of what is being said here?

25 MR SMITH: No Chair, well as I've said before the first

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time that this report came into my possession was in the process of compiling my statement, that's the first time I had sight, insight into this report, it's a report compiled by the DoD and that's the first time I had insight into that and at that stage in any case it was already approved and submitted, but yes, and I have to say as well that I was not involved in the process up to and including in terms of the offers received by us, I'm not part of the Procurement Secretariat, the Procurement Secretariat is an independent organisation. We were as a project team, as a programme manager my activities began on the 11th, on the 12th of May and so I was not privy to when an offer was received by the Procurement Secretariat and certainly, and the processing thereof on the, by the Procurement Secretariat on the 11th of May. My involvement started then again on the 12th of May, Procurement Secretariat would provide me with the offer information which they duly processed the previous day.

ADV LEBALA: Now in all fairness to the ARMSCOR legal team the Commission has to know, may the record reflect that this document was obtained after your statement was prepared and signed, am I right?

MR SMITH: This document was declassified. I did obtain insight into this document as I was preparing my statement Chair.

ADV LEBALA: Yes, but we all know that the ARMSCOR

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legal team and ourselves and the Commission accessed this document after your statement was already signed and prepared, isn't it?

MR SMITH: It was added to the bundle after the statement was signed.

ADV LEBALA: Now let's read further, (ii):

"An unsolicited DCN Lafayette ...".

CHAIRPERSON: I'm sorry Advocate Lebala, I think we must bear in mind that the witness is not an author of this document, only put questions to him, let's bear in mind that he is not the author of this document and then two; as he rightly pointed out these activities only started on the 12th of May when those offers were opened. I mean let's just bear that in mind that he is not the author of this document, we are now taking him through a report written by somebody else and we expect him to explain some of the discrepancies that appear in this report. I think just bear in mind that he is not the author of this document, if at all he can help us and give us some explanation of what is meant in this report let him do so, but then keep in mind he is not the author of the document okay? Thank you.

ADV LEBALA: Thanks Chair, we appreciated that from the onset, hence it's on record and we will come back at a later stage when we make our closing submissions as to prepare our report, to refresh you also that this witness did testify that some of the detail and information which is here he

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participated in providing it, not discounting what you say Chair,
we are alive to it. Shall we proceed on (ii):

“An unsolicited DCN Lafayette Class design ...”.

Now please explain to the Commission what do you mean by an
5 “unsolicited DCN Lafayette Class design”?

MR SMITH: I think what the author is referring to here
Chair, the offer, the RFO went out as you are aware for one
design, for the, on the French side, they responded with an
unsolicited design which is (ii), in addition to (i) which was the
10 design as solicited, so they responded with an unsolicited
design as well.

ADV LEBALA: Now are you able to tell the Commission as
to whether this unsolicited DNC Lafayette Class design wasn't
placed during the RFI stage?

15 MR SMITH: I cannot at this stage without going into
the detail Chair provide further clarity on that.

ADV LEBALA: Now let's assume it was, if it was would
you agree that that would be fair to all those who were
eliminated as early as the RFI stage if it was there during the
20 RFI stage. Remember we are at the RFO stage now, if it was
during the RFI stage, those who were eliminated at the RFI
stage could have even looked at it, would have known that it is
there, they would have known that it competed and it would
have been fair to them and the whole process of the RFI stage,
25 do you agree?

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MR SMITH: If I understand the question correctly what arrives in the offer you are only aware of when you receive the offer and what was included in the French offer was an unsolicited proposal, that is, just becomes evident when you receive the offer and that's all I can comment on Chair.

ADV LEBALA: You are confirming our concern because we are looking at the offer now, the RFO. Let's go back and look at what we went through, we are not asking you a question in the abstract, we went through the RFI, then you participated in the RFI process, we know that now. The question is if this offer which is unsolicited was there at the RFI stage all those who were eliminated at the RFI stage, I'm thinking of the Italian Fincantieri Falco, would have been treated fairly, do you agree?

MR SMITH: Chair, if I can just say again I'm part of the project team who received offers on the 12th of May. In the offer pack for the French they included an unsolicited, an apparently an unsolicited design as well and you will see over the page on 162 according to the author under paragraph 6.a they were not considered for further evaluation as a, and they give a number of technical reasons, that's all I can say to that question Chair.

ADV LEBALA: Thanks for the information, but you are not answering my question. Let's assume that you started noting this unsolicited offer on the 12th of May 1998, it's one thing.

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I'm asking this question that let us assume that this unsolicited offer because it's unsolicited, it was there, even at the RFI stage, it means they presented the solicited one and the unsolicited one at the RFI stage, that would have been fair
5 for all parties who were at the RFI stage, do you agree?

MR SMITH: The RFI stage they submitted whatever they wanted to submit because they wanted, it's marketing survey type information, so they would put in all the different possible options that they had to satisfy what they thought the
10 requirement to be.

ADV LEBALA: Mr Smith come back, please. Didn't you tell the Commission that you did not know whether this unsolicited offer was presented at the RFI stage? You just told us now that you can't tell us, am I right?

15 MR SMITH: I said I'd have to look at the detail to, Chair, to see if this particular unsolicited proposal also appeared at the RFI stage, that was my answer Chair.

ADV LEBALA: No, that's not true. That's not true, that's not what you said, if you had said that I would have given you
20 time but let's look at it, we are going to the designs, I know that you could find it somewhere but at this stage hence I'm saying let us assume that it was there because I also wanted to put a proposition that let us assume that it was not there, we could assume that it was there and we could also assume that
25 it was not there. You said that you can't tell us whether it was

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there or not at the RFI stage. Now I said to you that let us assume that it was there at the RFI stage because ...

CHAIRPERSON: Advocate Lebala, how is that assumption going to help us because we want to know exactly what
5 happened and if I understand this witness very well he says that this unsolicited offer from the French in any event was never considered, so that fell off the table now, why should we still bother with it if it wasn't considered at all, unless if there's a point that you want to make which I don't quite follow
10 up to now. That offer from the French, whether it was solicited or unsolicited, it fell of the table. This is what I seem to understand the witness to be saying and if that is the position why should we bother about it because it's no longer in the equation, unless if at all there's a point that you want to make
15 that I'm not following.

ADV LEBALA: Chair, if the whole process was fair the outcome would be fair. For instance if an unsolicited offer surfaces at the RFO stage can you imagine about a party that does not know about it that was eliminated at the RFI stage?
20 And remember the witness told us and we demonstrated to you that there were certain discrepancies that only surfaced, that were noted at the RFO stage that might have impacted the RFI stage. Now some parties, one party that we know, the Italian Fincantieri was eliminated at the RFI stage, we don't know
25 whether it was given the leverage to present an unsolicited

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offer too. Now it goes to fairness and we'll deal with this when we deal with our submission Chair.

CHAIRPERSON: You might be right but then I told you that this witness didn't prepare this report and those offers as I understand the process, they all go to the Secretariat Division of ARMSCOR, not to this witness, this witness by the time that they get involved is when they open the offers, how they came there they would not know. I really don't think that you know in my personal view that we should push this point of this unsolicited ..., I don't think that it takes us any further. I think maybe you should get to the next point. Thank you.

ADV LEBALA: Chair, we will remind you when we make our closing submission, we note your concern with its validity but permit us to close by saying the following; this witness was part of the Evaluation Team, he told us that all these things that are taking place here, to be specific the scores, the detail, he might not have participated in preparing this report but they fed the information to the scribe. He was part of that process, we are not talking to a person who does not know about what took place here.

For instance he can relate to most of the things, he knows that the French design was there and he refreshes himself, hence we asked him would you remember whether the unsolicited offer was there at the RFI stage or not, he says: "I can't remember", then we say to him okay, let's assume it was

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there, if it was there then the DCN, the Italian Fincantieri would have known about it because it was there, they competed there, now they are no longer there, the Fincantieri, an unsolicited offer surfaces at the RFO stage, that's our point, but Chair you'll see the relevance of this when the right time comes, we will proceed on, we'll leave it for submissions. Thank you Chair.

JUDGE MUSI: I still don't understand.

ADV LEBALA: I see that Commissioner Musi might like to raise ...

JUDGE MUSI: Well, I think we don't understand you.

ADV LEBALA: Thank you Commissioner Musi, I could just say we'll do our best at the submission stage to raise this point and we'll make note of it Commissioner Musi, thank you. Just to refresh you Commissioners, we were told about something that we would like you to appreciate before we proceed. We were told that at the RFO stage, and this one is very critical, there were certain changes that were not effected at the RFI stage. Now you can imagine the party that did not enjoy the leverage of these changes, but we'll also leave this to closing submissions, and this is part of the process, it involves what one would qualify as establishing fairness as to whether, and the test of fairness one cannot measure it as to whether the party that got eliminated at the RFI stage, the Italian Fincantieri Falco, was it treated fairly because it never enjoyed

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ADV LEBALA: Now let's look at the German (b), two designs up to so far that we know as solicited were offered, Reference A, the GFC Meko 200 (CODAG) with proper propulsion and this GFC Meko A200 (CODAG) with propeller plus water jet propulsion (WARP).

"Unlike the RFI phase when GEN engines were offered the baseline turbine offered for both designs was the Rolls Royce SM1C, although the GELM 2500 engine was listed as a non-costed option".

Can you see a limitation there?

MR SMITH: I can see a limitation Chair.

ADV LEBALA: Now we know the first limitation in as far as the German design is concerned that the engine was listed as a non-costed option. Let's read further.

"As previously MTU ...".

What does "MTU" stand for?

MR SMITH: "MTU" is (indistinct). It's a manufacture of diesel engines located in Germany Chair. It's just a shortened, they call themselves MTU.

ADV LEBALA: *".. MTU were offered for diesel propulsion. Offer documentation was outstanding with detail and quality virtually at a contract baseline level and which followed the requested specification response exactly".*

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Now in as much as there was limitation we are told that the documentation was outstanding. Remember we are looking only at the offers received, we are not looking at the military performance, we are not looking at the military value yet, am I right?

MR SMITH: That's correct Chair.

ADV LEBALA: Spain, (c), please read it.

MR SMITH: Sub-paragraph (c):

"Spain has solicited the Bazán 590 Bravo CODAG design was offered with the GELM 2500 turbine and Bazán B12 diesel engines. A costed option of the Rolls Royce, RRSM1C was also offered (Reference F). Offer documentation was very complete and followed the requested specification response thoroughly".

ADV LEBALA: Now what we know about the Spanish Bazán offer, it was complete and with thorough response specifications, am I right?

MR SMITH: That's correct Chair.

ADV LEBALA: And it had no limitations?

MR SMITH: That's correct Chair.

ADV LEBALA: We know that the Germans had limitations, am I right, as at the offers received stage.

MR SMITH: As recorded here Chair, correct.

ADV LEBALA: We also note that the French had

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limitations.

MR SMITH: Correct Chair.

ADV LEBALA: Page 162 paragraph (d), the UK:

“As solicited the GEC Marine F3000 (CODAG) ...”.

5 Now we know now that we refer to the Yarrow Shipyard, isn't it?

MR SMITH: That's correct Chair.

ADV LEBALA: *“... design was offered with RR ...”.*

That stands for Rolls Royce isn't it?

10 MR SMITH: Correct Chair.

ADV LEBALA: *“...SM1C turbine and Royston RK270 diesels as the baseline ship with the GELM 2500 as a costed option. CODAG and CODAT propulsion configurations were also offered as costed options. Offer documentation was very complete and followed the requested specifications response thoroughly”.*

15

Now we know that there's no limitation in as far as the UK offer is concerned, am I right?

20 MR SMITH: That's correct.

ADV LEBALA: They are within costed options and their response is thorough with regard to the specification, that is a thorough specification response.

MR SMITH: That's correct Chair.

25 ADV LEBALA: Now it appears that there were proposals

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not considered for evaluation, let's deal with them, paragraph 6 page 162. We are done with offers received, that's the first stage where we look at the offers as they stand, am I right?

MR SMITH: That's correct Chair, this is, that's the first stage, Part 1, yes.

ADV LEBALA: Now proposals not considered for evaluation, we've received the offers, we looked at them, we looked at the documents, we know the limitations, now we look at those that were not considered for evaluation:

10 *"The following proposals were not considered for evaluation, the DCN Lafayette ...".*

That's the French design isn't it?

MR SMITH: That's correct Chair.

ADV LEBALA: *"... as an unsolicited offer. This decision was not evaluated but would have been rejected anyway due to:*

- (i) *It's CODAG propulsion system.*
- (ii) *Failure of minimum speed requirements.*
- (iii) *Offer of only three vessels.*
- 20 (iv) *Level of documentation for a valid evaluation".*

Now that's the Chair's concern. I think it balances itself, the karma comes in there that because it was unsolicited it was not even considered for evaluation.

MR SMITH: That's correct Chair.

25 ADV LEBALA: Let's complete:

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"F3000 CODAG".

Which design is that, is it the British?

MR SMITH: That's the British UK design Chair.

ADV LEBALA: That is the Yarrow shipbuilder.

5 *"It was rejected due to the South African Navy specification of gas turbine propulsion".*

MR SMITH: That's correct Chair.

ADV LEBALA: Now we know that there were four shipbuilders with five designs, two were not considered for
10 evaluation, that is the French and the British.

MR SMITH: In the British case it was the CODAD, just the one option of propulsion configuration that was not considered Chair.

ADV LEBALA: What does that mean, two are outstanding
15 isn't it? That is two were the ones that were considered for evaluation isn't it?

MR SMITH: Those are two design options and it was not considered, that's correct Chair.

ADV LEBALA: Well, if two were not considered it means
20 two were considered.

MR SMITH: That's correct Chair.

ADV LEBALA: Now let's read "Proposals Failing some Critical Performance Requirements but Allowed to be
25 Evaluated". Now something comes out clearly, is it true that the fact that the proposals on paragraph 6 were not considered

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for evaluation, it doesn't mean it ended up there, we go lower, it appears that they are still being looked at, am I right?

MR SMITH: No Chair. I don't think that is the case, if you can just bear with me, it's the, those that are under paragraph 6 were not even put into the process of evaluation, as the heading says "not considered for evaluation", so they weren't put into the process of evaluation. Under, the heading under paragraph 7 reads "Proposals Failing some Critical Performance Requirements but were Allowed to be Evaluated", so these were actually evaluated, the ones that were, are mentioned under paragraph 7.

ADV LEBALA: Actually you are right Mr Smith, these are different ones under 7, yes. Let's read paragraph 7, read the heading for the record.

MR SMITH: The heading is "Proposals Failing some Critical Performance Requirements but Allowed to be Evaluated".

ADV LEBALA: Read paragraph 7.

MR SMITH: Paragraph 7:

"The following proposals failed certain critical minimum performance required by Part 1 of the Value System but were nevertheless evaluated".

ADV LEBALA: Now let's pause. At the RFI stage did you come across such a situation where we looked at some critical performance requirements that nonetheless allowed them to be evaluated?

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MR SMITH: If I recall correctly I think the RFI also allowed this sort of thing yes, that's correct.

ADV LEBALA: Would you like to refresh us which shipbuilder was it? Let's not, I think let's not agonise much
5 about it, all that we are seeking to establish is that ... You see, finance cannot be selective, we'll leave that, we don't have to bother you about this, I don't have to testify. I'm just asking this question with a view to ultimately come and address the commissioners, this one is not about you, it was just to
10 elicit a response but you have just responded that this process might have even been followed in as far as the RFI phase is concerned.

MR SMITH: It may have been Chair, correct.

ADV LEBALA: Now please read (a).

15 MR SMITH: Paragraph 7.a:

"DCNI Patrol Corvette failed the minimum ballistic protection requirement which can be corrected with slight cost implication".

ADV LEBALA: Now that's a total failure. That limitation
20 is a total failure here, am I right?

MR SMITH: As stated there Chair it failed the minimum ballistic protection requirement.

ADV LEBALA: Yes, but you were there, you were part of that. Now this information which is written here, do you
25 remember you participating in providing the Evaluation Team

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with it?

MR SMITH: Yes, I was part of that team. Correct
Chair.

ADV LEBALA: And we know that in all fairness to you we
5 are looking at something that took place in 1998, in all fairness
to you.

MR SMITH: That's correct Chair, and I'd also like to
point out in this regard, I don't want to pre-empt the point but
just refer you back to the Military Value System and the
10 process followed and I'd like to draw your attention to page 120
..., page 130.

CHAIRPERSON: Is it page 120 of the same bundle?

MR SMITH: The same bundle Chair.

JUDGE MUSI: 130.

15 MR SMITH: My apologies. Page 129 and I can just
refer you to refresh ourselves, that's under the Value System
there's the RFO Value System, the bottom of the page there
129 4.a, but reading from the last sentence:

"This part of the value system uses a filter".

20 This is Part 1 Critical Performance Filter:

*"This part of the value system is used as a filter for
further evaluation. Any proposal failing to comply
with each of the critical performance requirements
may be deemed to be military unacceptable to the
25 SA Navy and may be discarded for further*

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evaluation unless at the discretion of the chairman of the Naval Evaluation Team there are good grounds in favour of the SA Navy to continue to Part 2”.

5 ADV LEBALA: Yes, to refresh ourselves we know that at the RFI stage the Italian Fincantieri Falco did not pass that stage.

MR SMITH: You are quite correct yes, that’s correct Chair.

10 ADV LEBALA: And the chairperson could not exercise that discretion favourably to suit the Italian Fincantieri Falco.

MR SMITH: If I recall correctly, that’s correct Chair.

ADV LEBALA: Now what we know is that the DCN Patrol Corvette failed the minimum ballistic protection requirement.
15 Let’s look at the GEC F3000. We know that this is different from what we looked at, at paragraph 6, am I right?

MR SMITH: That’s correct Chair.

ADV LEBALA: Now please read “GEC F3000”.

MR SMITH: Sub-paragraph 7.b:
20 *“GEC F3000 failed the specific radar signature which cannot be corrected without major cost and redesign implications and failed the minimum ballistic protection requirement which can be corrected with a slight cost implication”.*

25 ADV LEBALA: Now I know you explained to the

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Commission what the signature is. Now let's go to (a), the minimum ballistic protection requirement, what does it relate to?

MR SMITH: It relates to the physical protection that the offered ship platform has to an explosion, either a missile or some other projectile, it's the protection, inherent protection in the offered ship platform for ballistic protection.

ADV LEBALA: Now we know that:
"The GEC F3000 failed the specific radar signature which cannot be corrected without major cost and redesign implications".

Now let's proceed to (c), the GFC Meko A200. Please read it for the record.

MR SMITH: Sub-paragraph 7(c):
"GFC Meko A200 failed the specified engine compartment vulnerability separation requirement due to the CODAG WAMP warp design. This design, however, (indistinct) several compensating vulnerability advantages and does not need to be corrected".

ADV LEBALA: Now we note that the German designed Meko A200 had limitations that are being addressed as failure and for the record you have clarified that. Now let's be precise, there is one shipbuilder who has not failed critical performance requirement as at this stage, am I right?

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MR SMITH: As recorded here, that's correct Chair.

ADV LEBALA: That is the Spain, Bazán.

MR SMITH: Spain, Bazán. Chair, I note here that according to this and with your forbearance I'm looking at this report again, you will note that the GFC Meko 200 is not listed as one which failed the critical performance requirements.

ADV LEBALA: Now we stand corrected, we know that there are five designs, only three failed which means that in as far as the German Frigate Consortium Meko 200 design is concerned together with Spain Bazán, both of them never failed the critical performance requirement.

MR SMITH: That's correct Chair.

ADV LEBALA: Paragraph 8 ... Is this an appropriate time for tea Chair?

CHAIRPERSON: Let's adjourn for tea and then we'll come back after 20 minutes or so. Thank you.

(Commission adjourns)

(Commission resumes)

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

MR SMITH: I do.

CHAIRPERSON: Thank you.

ADV LEBALA: We are ready to proceed Chair. Before we adjourned for a tea break you talked to the critical performance requirements with regard to the proposals that failed that were

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allowed to be evaluated, do you remember?

MR SMITH: I remember Chair.

ADV LEBALA: Now for the sake of completeness let us
look at page 131 of the self-same bundle. Paragraph 8 refers
5 to "The Graphic Representation of Military Evaluation Process"
that we talked to both on the RFI side, now we are looking at it
from the RFO side, do you agree?

MR SMITH: I agree Chair.

ADV LEBALA: And when we look at the critical
10 performance requirement we are looking at the Critical
Performance Filter as depicted on paragraph 8 on page 131, am
I right?

MR SMITH: That's correct Chair.

ADV LEBALA: That's where we look at the critical
15 performance with regard to the criteria and critical performance
without scores, isn't it?

MR SMITH: That's correct Chair.

ADV LEBALA: And in as far as the RFO Value System is
concerned let's complete by saying we look at pages 132 to
20 135. You could quickly look at that page 132 to 135. We are
not going to take you through that because they are similar to
those that we dealt with in the RFI process. Are you
refreshed?

MR SMITH: I'm refreshed Chair, that's covered by
25 page 142 to pages 145 Chair. Correct.

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ADV LEBALA: And just for the sake of completeness when you look at the relative performance evaluation in as far as the RFO's are concerned we look at Part 2, that is covered by the 12 groups isn't it?

5 MR SMITH: That's correct Chair.

ADV LEBALA: And that's covered by pages 146 to 157.

MR SMITH: That's correct Chair.

ADV LEBALA: Now we look at the proposals failing at that stage where we only look at the criteria and the critical performance without scores isn't it?

10

MR SMITH: That's correct Chair.

ADV LEBALA: You remember in the RFI we equated to those failures where we noted that in actual fact the Italian Fincantieri Falco had 15 failures and the German Frigate Consortium, the two designs and the Spain Bazán had only two failures.

15

MR SMITH: I recall Chair, and stated there by the advocate is correct.

ADV LEBALA: Now that's why even at this stage it's written, if you look at page 162 the paragraph: "Proposals Failing some Critical Performance Requirements". Does it refresh you?

20

MR SMITH: It refreshes me Chair.

ADV LEBALA: Now let's look at paragraph 8, we have laid a foundation for that, paragraph 8 on page 162 of the self-same

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bundle Chair, may I read it for the record for expedience.

*“five proposals were therefore evaluated through
Part 2 ...”.*

Now we are in Part 2.

5 *“... of the Value System to determine their military
performance”.*

Now is it true that when we talk to Part 2 it's where we talk of
the relative performance evaluation?

MR SMITH: That's correct Chair.

10 ADV LEBALA: Just to refresh the commissioner let's look
at page 131 of the self-same bundle, paragraph 8 “The Graphic
Representation of the Military Evaluation”. The commissioners
have noted that with the Critical Performance Filter that's
where we looked at the criteria and the critical performance
15 where we were just concentrating on the failures. Now we are
in the relative performance evaluation where we want to
determine the military performance, am I right?

MR SMITH: That is correct Chair.

ADV LEBALA: That's where we gravitate towards looking
20 at the Figure of Merit isn't it?

MR SMITH: That's correct Chair.

ADV LEBALA: Now is it true, to refresh ourselves and to
assist the Commission, I know most of these things are
mechanical and technical, when you look at the military
25 performance we look at the performance capability of the ship

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platform.

MR SMITH: That's correct Chair.

ADV LEBALA: We just look at the raw score, for instance if you look at page 132, I beg your pardon, page 131, we look
5 at that raw score out of 1 040 isn't it?

MR SMITH: As represented on the graphic that's correct Chair, but you will see in the actual report itself it was actually a total of 1 080 points. If you look at page 170 of the bundle Chair, paragraph 22 it would appear that the maximum,
10 if you see there in line 3:

"To obtain a weighting score out of a maximum of a 100 of the 1 080 points".

It's also reflected in the table below that. So, it would appear there's a mistake on this graphic on page 131, probably
15 because it's a cut and paste from somewhere else, but it seems to be a slight discrepancy there.

ADV LEBALA: What paragraph were you looking at that refers to 1 080, paragraph 22 on page 170, am I right?

MR SMITH: That's correct, paragraph 22 on page 170.

20 It says there:

*"The proposals were evaluated for their military performance in accordance with the criteria and weighting of Part 2 of the Value System to obtain a weighted score out of a maximum possible 1 080
25 points".*

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ADV LEBALA: Now were other members of the Evaluation Team and the Integrated Project Team alive to this reality you are addressing?

5 MR SMITH: Chair, I'm just in assisting the Commission I'm just pointing out that this report reflects something different to what's in that graphic, it's just as I said earlier, this report only came to me recently, so I'm just highlighting that there is this, I won't call it discrepancy but it's not as reflected on the graphic on page 131.

10 ADV LEBALA: Thanks for this information Mr Smith. Please do not doubt, be rest assured, let me self-assure you once again that you are very helpful to the Commission but come back now, respond to my question, thanks for the information. Were other members of the Evaluation Team and
15 the Integrated Project Team alive to this discrepancy?

MR SMITH: I don't think so Chair, it's something I've just been able to highlight because of this report which I received recently, so I can't say they were alive to this discrepancy.

20 ADV LEBALA: Now what are you saying, are you saying that the scores were punched based on the right formulation and wrong score?

MR SMITH: No, I can't make that observation Chair. I'm just pointing out that it would appear that the total score
25 was in fact 1 080 and not 1 040 as reflected on page 131.

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ADV LEBALA: No, that part is becoming clear now. I think it's stubborn standing before us, I'm taking it beyond that. What are you saying now, let's look at what are you saying arising from this discrepancy of 1 080 instead of 1 040.
5 Are you saying that the computation of the scores based on the total score of 1 040 instead of 1 080 was incorrect? Yes or no?

ADV SOLOMON: Chair, sorry, before the witness answers could I just raise this objection, I think in fairness he should
10 be asked if he is aware if the scoring was done out of 1 040 or out of 1 080, if he has an independent recollection of that or if he doesn't. If he doesn't have an independent recollection he's simply reading something from a document and pointing out a discrepancy and that's all he's doing. If he has some
15 recollection then he should be asked and that can be explored further, but not simply asking him again from reading from a document which he was not the author of.

ADV LEBALA: Chair, the recollection I will test but I have tribulations with this objection. We are not talking to a witness
20 who is in the dark completely, this witness tells us at the outset without even struggle that: "Let me draw attention to the following Commission, the 1 040 computation score is incorrect as against the 1 080", unsolicited, it means he's refreshed already, but I note the following, I think my learned friend Mr
25 Solomon has a point, I will try to refresh the witness in all

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fairness Chair, that I will do, on this basis the objection is neither here nor there, except that Solomon SC makes sense, I need to refresh this witness in all fairness.

CHAIRPERSON: And then Advocate Lebala as I said earlier
5 on the witness is not the author of this document. If this document contains information which does not tally with information within his personal knowledge, in all fairness I don't think we should try and find out from him why this document is wrong. Try and find out from him what does he
10 know, if at all what is within his personal knowledge differs from what is contained in this report, then you can take the matter further with the author of this document and not with him.

ADV LEBALA: Fair enough Chair. Then in line with what
15 Solomon says and what you are saying this witness can respond to the question, the witness knows that it's 1 040 instead of 1 080, hence we asked the witness are you saying that if it's 1 040 instead of 1 080, if it was computed on 1 040 it's incorrect, he could say yes or no, and then that witness will
20 come, we agree with you Chair. If you permit me Chair, this question is critical and remember Chair, and it's what you and Commissioner Musi know, we still have to come back to you and make submissions and I'm certain that my learned friends would re-examine this witness and clarify these discrepancies
25 if need be, but I want to assure this witness once again Chair

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that once the commissioners are there we will never put unfair questions to this witness, and thanks for refreshing us that we do not have to take the witness for granted, otherwise we would be defeating the purpose of this Commission, and I'm

5 confident that yourself and Commissioner Musi would never allow us to lower those standards. On those basis Chair this question is very fair on our part, unless you overrule us Chair.

CHAIRPERSON: Advocate Lebala I had already made a ruling on this point and I think there's a second ruling that I

10 made on almost an identical point.

ADV LEBALA: Thank you Chair. Let's proceed Mr Smith. We are at the stage where we are looking at the military performance that goes to the military value, am I right?

MR SMITH: That's correct Chair.

15 ADV LEBALA: And that's where your team that deals with the technical evaluation plays a role.

MR SMITH: That's correct Chair.

ADV LEBALA: At this stage to refresh ourselves we are looking at the ship platform, am I right?

20 MR SMITH: That's correct Chair.

ADV LEBALA: We have nothing to do with the military helicopter [sic], we have nothing to do with the combat suite.

MR SMITH: In terms of evaluation, that's correct Chair.

25 ADV LEBALA: At this stage.

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MR SMITH: At this stage Chair, correct.

ADV LEBALA: We have nothing to do with the industrial participation, the DIP, we have nothing to do with the financial options.

5 MR SMITH: That's correct Chair.

ADV LEBALA: We soldier on, thank you. Now at this stage of the military performance we are not concerned with the criteria and critical requirements, we are not interested in the failures, we are looking at the scores isn't it?

10 MR SMITH: That's correct Chair.

ADV LEBALA: Now we are going towards the scores because we know the proposals that were looked at, we looked at the offers received, we looked at the proposals failing some critical performance (indistinct) requirements where we look at the criteria and the critical requirements, now we are looking at the real performance, physical performance of the platform.

MR SMITH: That's correct Chair.

ADV LEBALA: And we are going to punch the scores as you have said.

20 MR SMITH: That's correct Chair.

ADV LEBALA: Now let's read from paragraph 8, the next sentence: "Outboard Profiles":

"The main particulars of these designs are shown in shipyard alphabetical order, order of the evaluation overleaf".

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Now:

“Further details can be seen in references D to G”.

Let's pause there. Now because you want to establish the performance capability of this ship platform we are going to look at the Outboard Profiles and particulars.

MR SMITH: Yes, the author saw fit to include the Outboard Profiles as part of his report.

ADV LEBALA: You see, I think in all fairness and to appreciate Solomon SC's objection and the chairperson's concerns, let's start here. Is it true that when the value system gets tabled, sealed, sent to the ARMSCOR Procurement Secretariat waiting for the responses to come back and the responses come back, at one time or the other the secretariat gives them over to you as a member of the Evaluation Team.

MR SMITH: They provide us with the ... Yes Chair, they provide us with the offers, the responses that are coming.

ADV LEBALA: And it's obvious that you analyse them, apply your mind and evaluate them isn't it?

MR SMITH: That's correct Chair.

ADV LEBALA: And you evaluate them against the Value System.

MR SMITH: That's correct Chair.

ADV LEBALA: The same process happened with the RFI's isn't it, where the RFI's came and you evaluated them against the RFI Value System.

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MR SMITH: That's correct Chair.

ADV LEBALA: And in this instance you evaluated the offers against the RFO Value System.

MR SMITH: That's correct Chair.

5 ADV LEBALA: Now let's look at page 163. Now refresh ourselves that at this stage we want to see whether this ship platform performs, we look at its performance capability isn't it?

MR SMITH: That's correct Chair.

10 ADV LEBALA: And to appreciate that we are going to look at the designs, hence we look at the design Outboard Profiles and main particulars.

MR SMITH: As represented here, that's correct Chair.

15 ADV LEBALA: And this is what you looked at as a member of the Evaluation Team.

MR SMITH: There's a wealth of other documents, that's correct Chair.

20 ADV LEBALA: And you are confirming what you said that when the Arms Procurement Secretariat gave you these documents, amongst these documents were the design Outboard Profiles and main particulars?

MR SMITH: That's correct Chair.

ADV LEBALA: Both at the RFI stage and at the RFO stage.

25 MR SMITH: That's correct Chair.

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ADV LEBALA: Let's start with page 163 of the self-same bundle. Now what we see here, am I right to say that this is a design outboard and profile of the Spain Bazán design?

MR SMITH: That's correct Chair.

5 ADV LEBALA: Now we are looking at it from the RFO angle isn't it?

MR SMITH: That's correct Chair.

ADV LEBALA: Is it true that there is also the RFI angle to it?

10 MR SMITH: They would have provided similar type information (indistinct), correct Chair.

ADV LEBALA: And you might have seen that information after you have received it from the Arms Procurement Secretariat?

15 MR SMITH: Correct Chair.

ADV LEBALA: Yes, that's true. I would like you to look at page 163 together with page 199. I'm going to request the Commissioners to do some (indistinct) footwork and some ambidexterity. Please, we've got to look at page 119 and 163
20 together. I beg your pardon, 118 and 163 together Commissioners. Let's start with page 118. Now this is what was looked at in as far as the Outboard Profile and the particulars of the Spain Bazán is concerned under the heading "When we were looking at the RFI's, am I right?"

25 MR SMITH: 118 is the RFI Outboard Profile and

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summary of characteristics, that's correct Chair.

ADV LEBALA: Now let's analyse it. At the RFI stage on page 118 when the Arms Procurement Secretariat gave the Evaluation Team the details this is what the Evaluation Team
5 analysed, it found that the full load displacement was 3 125 tons, am I right?

MR SMITH: That's correct Chair.

ADV LEBALA: Chair, Commissioner Musi, you will see to your left on page 118 is the outline, at the top is the outline
10 profile of the Spain Bazán 590B design and below that it's headed Spain Bazán 590B, do you confirm that for the sake of those who might be reading the record Mr Smith?

MR SMITH: That's confirmed Chair.

ADV LEBALA: And below that to your left you will see
15 that it's written "ULL" which I assume stands for Full Load Displacement, am I right?

MR SMITH: That's correct Chair.

ADV LEBALA: May the record reflect that it's only "ULL" but the witness confirms that it stands for Full Load
20 Displacement. Now what is the total once again of the full load displacement on page 118 at the RFI stage?

MR SMITH: It is indicated as 3 125 ton.

ADV LEBALA: Let's go to page 163 at the RFO stage. Page 163 of the self-same bundle Chair, Commissioner Musi.
25 Do you agree for the record, for those who would be looking at

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the record who are not here that the self-same page reflects the same design of Bazán 590B?

MR SMITH: In Outboard Profile overall it looks the same Chair.

5 ADV LEBALA: Thank you. But do you confirm that it's the self-same as in, as what is depicted in 118?

MR SMITH: In as far as it's in this sketch indicated, of course we don't have the detail and without a doubt the detail would have been changed, updated by Bazán in between the
10 RFI and the RFO phase.

ADV LEBALA: Thanks for that detail but in all fairness to you what we see in 163 is an addition of what one would say is a changed dimension. At the top is what is similar to what we see on 118 and below is another reflection of the dimension,
15 am I right?

MR SMITH: Another reflection and dimension, correct Chair.

ADV LEBALA: And this is the only difference isn't it?

MR SMITH: No, this is not the only difference. You
20 will notice ...

ADV LEBALA: Mr Smith, Mr Smith, Mr Smith please, I'm talking about what we see, I'm just trying to compare what we see on page 118 and 163. Remember your testimony is not based on the differences of this design, I've got to go into the
25 content, we are not interested in form, we are interested in

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substance. The commissioners are not interested in form, they are interested in the substance. Forget about the forms, I'm just reflecting it for the record, all that I'm saying is that what is the difference in 118 and 163, it's because the outboard design on 163 has got something additional which is a reflection of its dimension, is that correct?

MR SMITH: Chair, the question that was asked of me what is the difference between page 118 and 163, and what we've been concentrating on is the full load displacement being 3 125. I just want to draw your attention to the fact that in fact the maximum sustained speed ...

ADV LEBALA: Mr Smith, Mr Smith please don't pre-empt my question. I'm refusing, I'm resisting, unless Mr ...

CHAIRPERSON: Advocate Lebala, I think just give him a chance to tell us what he wanted to explain, I don't think that that will hurt you and then from there you can push him back to the answer that you want, to the question that you want him to answer.

ADV LEBALA: Thank you Chair. Well, I assure you that the chairperson will call me to order if I'm out of hand Mr Smith, I assure you once again that I will never take you for granted. Thank you.

CHAIRPERSON: Can you continue your explanation that you wanted to give Mr Smith?

MR SMITH: Chair, this is a schematic firstly that's

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been included in these reports of the Outboard Profile of these, by the author and the, you will have noticed that there are differences between page 118 and 163 that lie in the area of the full load displacement maximum sustained speed, range at 5 16 knots, as well as the range at 27 knots the same. So, obviously between the RFI and the RFO phase this particular designer has done some further calculation work and has come up with a definitive offer detail which is reflected on page 163.

ADV LEBALA: Yes, that's where we are going and thanks 10 for laying a foundation for that and I like the fact that you've completed this piece of the testimony but we would like to put it in a sequence because there's a reason why we put these questions to you. Now let's go back, what we're just trying to establish is that alright, on page 163 there are two outboards 15 as against on page 118, am I right?

MR SMITH: Correct, Chair.

ADV LEBALA: Alright, now let's take the distinctiveness. We've noted that on page 118 the full load displacement is 3 150t which stands for tons, isn't it?

20 MR SMITH: That's correct Chair.

ADV LEBALA: At the RFI stage.

MR SMITH: Correct Chair.

ADV LEBALA: At the RFO stage on page 163, are you at page 163?

25 MR SMITH: I am there Chair.

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ADV LEBALA: Read the full load displacement.

MR SMITH: Full load displacement is 3 200 ton.

ADV LEBALA: It has changed, am I right?

MR SMITH: It's correct Chair.

5 ADV LEBALA: Now let's look at the maximum sustained speed on page 118. It is to the right to assist the commissioners, can you see, page 118 to the right, maximum sustained speed, can you see?

MR SMITH: I can see Chair.

10 ADV LEBALA: What is the speed?

MR SMITH: On page 118 it's 31 knots.

ADV LEBALA: Please go to page 163. You could look to the left, the last sentence below to the extreme left, maximum sustained speed, what number is it?

15 MR SMITH: It's 28.5 knots Chair.

ADV LEBALA: There's a difference isn't it?

MR SMITH: That is correct Chair.

ADV LEBALA: Let's look at page 118, the range at 16 knots, what's the number there?

20 MR SMITH: That's 6 800 nautical miles Chair.

ADV LEBALA: For the edification of the Commissioners it's to the right, just below the maximum sustained speed and let's look at page 163, what does the range at 16 knots tell us, how much is it?

25 MR SMITH: It's 7 100 nautical miles Chair.

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ADV LEBALA: It's to the right Chair, below the propulsion engine (CODAG) and "2x Bazán Bravo 12). There's a difference also there isn't it?

MR SMITH: That's correct Chair.

5 ADV LEBALA: Let's look at the German design on page 119 and I would like us to look at that against page 167. Now 119, the RFI, 167 the RFO, do you agree that what is being reflected on page 119 and 167 is the same except that the outboard on 167 is 2 and the outboard on 119 is only 1?

10 MR SMITH: That is correct as reflected Chair.

ADV LEBALA: And the reflection is the German Frigate Consortium design Meko A200, am I right?

MR SMITH: That's correct Chair.

15 ADV LEBALA: Let's start with the full load displacement to the extreme left, but before we do that, for the record do you agree that this is an outboard representing the German GFC Meko A200 design?

MR SMITH: That's correct Chair.

20 ADV LEBALA: And at the top below that design it's headed "Germany: GFC Meko A200 on page 119".

MR SMITH: Correct Chair.

ADV LEBALA: And to the left below that it's "ULL: Load Displacement", am I right?

MR SMITH: That's correct Chair.

25 ADV LEBALA: Do you agree that it stands for Full Load

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Displacement?

MR SMITH: Correct Chair.

ADV LEBALA: Now how much is it on page 119 at the RFI stage?

5 MR SMITH: Chair, 3 590 tons.

ADV LEBALA: Please go to page 167. On page 167 we know now that there are two outboard representations and it represents the self-same Meko A200 design, am I right?

MR SMITH: It reflects the same, that's correct Chair.

10 ADV LEBALA: And below the second outboard design it's headed "German Frigate Consortium" and to the right "Meko A200" for the record.

MR SMITH: Correct Chair, they have added the, on page 167 they have added the nomenclature "SAN" after
15 "A200", they gave it a specific identification. That "SAN" stands for South African Navy.

ADV LEBALA: Thank you Mr Smith, actually the officers explained to us how this comes to be, but it's not relevant at this stage of your testimony. What does the full load
20 displacement below the German Frigate Consortium heading tells us, how much is it?

MR SMITH: It is 3 590 tons Chair.

ADV LEBALA: Is it different or is it similar for the one on page 119?

25 MR SMITH: It's the same as reflected on 119 Chair.

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ADV LEBALA: We note that that is the same. Let's look at the, on page 119 below the full load displacement it starts with "VRAL Length". Can you see?

MR SMITH: I can see Chair.

5 ADV LEBALA: Now we don't have to shortchange the Commission, I don't know why we assume that the Commission would appreciate what we are talking about. What does the "VRAL Length" stand for when it's complete?

MR SMITH: That would stand for Overall Length Chair.

10 ADV LEBALA: Now what does it depict in as far as this outboard is concerned and this design?

MR SMITH: Chair it depicts the maximum length of the ship, in other words right from the very first, from the furthest part of the bow through to the most (indistinct) part of the stern.
15

ADV LEBALA: Now we note that at the RFI stage, how long is it?

MR SMITH: 119 metres Chair.

ADV LEBALA: At the RFO stage, page 167?

20 MR SMITH: It's reflected as a 121 metres Chair.

ADV LEBALA: It is different isn't it?

MR SMITH: That's correct Chair.

ADV LEBALA: Still on page 167 let's look at the to the right, actually below the "VRAL" length, there's something with
25 "VARALL Beam", am I right?

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MR SMITH: That is correct Chair, that probably means, well it does mean overall beam.

ADV LEBALA: Now we know that when it's complete it's called the overall beam. What does it signify in as far as the design is concerned?

MR SMITH: It's the widest dimension of the ship Chair.

ADV LEBALA: What's the length?

MR SMITH: The RFI gives that overall beam dimension as 16.0 metres Chair.

10 ADV LEBALA: Please go to page 167 below the length overall APPR and also below the full load displacement is a beam overall, can you see?

MR SMITH: I can see Chair.

ADV LEBALA: What length does it give us?

15 MR SMITH: The dimension given there is 16.5 metres Chair.

ADV LEBALA: It's also different am I right?

MR SMITH: That is correct Chair.

ADV LEBALA: And let's go back to page 119 to the right, the maximum sustained speed, please put it for the record.

MR SMITH: 119 the maximum sustained speed is 27 knots Chair.

ADV LEBALA: Page 167, the maximum sustained speed?

25 MR SMITH: The maximum sustained speed given on page 167 is 28 knots Chair.

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ADV LEBALA: It's also different.

MR SMITH: That's correct Chair.

ADV LEBALA: Let's look at the, I suppose that the maximum sustained speed, what does it relate to ordinarily in
5 as far as this outboard design is concerned?

MR SMITH: It relates to the maximum speed that this propulsion arrangement would be able to propel the ship along for a sustained period, in other words with, it's not just a peak speed, it's a maximum speed on a continuous basis that it can
10 propel the ship at.

ADV LEBALA: Now at this stage I think it would be appropriate to ask this question, is there a difference between 27 knots and 28 knots in speed?

MR SMITH: It's significant, in terms of power it's
15 significant I think.

ADV LEBALA: Thank you. The next item below the maximum speed sustained is "Range at 16 knots", can you see?

MR SMITH: I can see Chair.

ADV LEBALA: What's the total there?

MR SMITH: Given on page 119 the range at 16 knots is
20 6 900 nautical miles Chair.

ADV LEBALA: Please go to page 167 and it's below the maximum speed sustained to the left, how much is it?

MR SMITH: Again the range given there on page 167 at
25 16 knots, there's 7 700 nautical miles.

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ADV LEBALA: What are we addressing at this stage in relation to the outboard design?

MR SMITH: Chair, this is, for this vessel it is the range that the vessel could, maximum range that the vessel could achieve with the fuel capacity it has onboard.

ADV LEBALA: And at page 119, the RFI, let's look at the range at 27 knots, just below the range at 16 knots, what figure does it give us?

MR SMITH: Page 119 a range of 27 knots is given as 2 400 nautical miles Chair.

ADV LEBALA: Now something is problematic on page 167, if you look at the last line and sentence you see to the left it's "Range at 27 knots", now in all fairness to you one can't expect you to remember things that prevailed in 1998, but are you refreshed, would you remember how much is it because that numerical figure is conspicuous am I right, it's inconspicuous, am I right?

MR SMITH: That is correct Chair.

ADV LEBALA: Are you refreshed? Is it the same or is it different?

MR SMITH: I can't say Chair.

ADV LEBALA: In all fairness, would you remember?

MR SMITH: No, I'm afraid I can't recall Chair.

ADV LEBALA: Let's pass. Let's look at the next German design GFC Meko on page 120, we'll have to look at it against

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page 166, do you agree? 120 against 166.

MR SMITH: For purposes of what we're doing now
Chair yes, it's correct.

ADV LEBALA: 120 RFI, 166 RFO. Now this page 166
5 depicts the outboard design of the German GFC Meko 200, am I
right?

MR SMITH: That's correct Chair.

ADV LEBALA: And on page 166 it's the same design but
there is an additional outboard which is probably I would say a
10 vertical or a dimensional representation of the self-same
design isn't it?

MR SMITH: As reflected Chair, correct.

ADV LEBALA: Now let's start looking to the left, I know
that there's a stamp there that makes things difficult to see,
15 short of saying it's inconspicuous but we can stretch, to the
left it's full load displacement, how much is it?

MR SMITH: It's given as 3 565 tons Chair.

ADV LEBALA: I know the Naval officers told us about
what displacement stands for and Mr Rob Vermeulen also told
20 us in as far as the submarines are concerned. What are we
talking about at this stage in relation to the outboard designs
when we talk about full load displacement?

MR SMITH: Chair, without being too theoretical the full
load displacement is the total mass of the vessel, essentially
25 it's the mass of the volume of water that is being displaced

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below the vessel but I think in general terms it goes about the full mass of the vessel in its full load condition.

ADV LEBALA: The record reflects that you mentioned that it is reflected on page 120 as 3 565 tons, am I right?

5 MR SMITH: That's correct Chair.

ADV LEBALA: Please look at page 166 just below the rectangular or vertical dimension, it's headed "German Frigate Consortium Meko 200 SAN" for the record and below that is Full Load Displacement, how much is it?

10 MR SMITH: It's given here as 3 580 tons Chair.

ADV LEBALA: There's a distinction in the numbers in as far as the full mass vessel, full load condition is concerned, am I right?

MR SMITH: That's correct Chair.

15 ADV LEBALA: Now how much is the difference, come to think of it, let's do mathematics, 3 580, subtract 3 565, 15, it's a difference of 15 tons isn't it?

MR SMITH: That's correct Chair.

20 ADV LEBALA: Now let me ask you a rhetoric question, a question that answers itself, does it make a real difference in as far as full load, full mass of the vessel is concerned, 15 tons?

MR SMITH: It's within the tolerance (indistinct) Chair, correct.

25 ADV LEBALA: Let's look at what's below the Full Load

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Displacement, it is Overall Length, am I right?

MR SMITH: That is correct Chair.

ADV LEBALA: How long is it?

5 MR SMITH: On page 120 it's given as 118 metres
Chair.

ADV LEBALA: And look at page 166, just below the Full
Load Displacement, how long is it?

MR SMITH: It's given as approximately 118 metres
Chair.

10 ADV LEBALA: It is similar, am I right?

MR SMITH: Correct Chair.

ADV LEBALA: Let's leave all else and just go directly to
the maximum sustained speed on page 120, the RFI to the left.
I beg your pardon, to the right, page 120, the RFI to the right,
15 at the top can you see?

MR SMITH: I can see Chair.

ADV LEBALA: What's the sustained speed?

MR SMITH: The maximum sustained speed is given on
page 120 as 27 knots Chair.

20 ADV LEBALA: Please go to page 166, the RFO. Just
below the "Beam Overall", below the "Propulsion" to the left it's
"Maximum Sustained Speed *CODAT"), how many knots?

MR SMITH: It's given as 28 knots.

ADV LEBALA: It's a difference of 1 knot isn't it?

25 MR SMITH: That's correct Chair.

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ADV LEBALA: You did mention that 1 knot makes a helluva difference, I don't know why I'm putting an adjective, I beg your pardon, I'm testifying, I'm not supposed to. Does 1 knot make a difference?

5 MR SMITH: In terms of the installed power it makes a lot of difference Chair. Maybe just to clarify you would have noticed on page 120 if you look at the, that is the RFI, if you look at the block titled "Engines" you will see there are two MTU's 12V's and one LM1600 gas turbine, now if you look on
10 page 166 you will see there are two MTU's 12V's which was the same, but its' got now as a gas turbine and they are giving an option there, it's an LM2500, it's a much bigger engine to get that extra 1 knot.

ADV LEBALA: Thanks for that clarity. Let's look at the
15 range at 16 knots on page 120 to the right just below the "Maximum Sustained Speed", what figure is it?

MR SMITH: Page 120 the range at 60 knots is given as
6 100 nautical miles Chair.

ADV LEBALA: Go to page 166 below the Maximum
20 Sustained Speed, to the left is range at 60 knots, what figure is it now?

MR SMITH: It's now 6 700 nautical miles Chair.

ADV LEBALA: It's a difference of 600 nautical miles, am I
right?

25 MR SMITH: Correct Chair.

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ADV LEBALA: Let's look at the last item on page 120 below the range at 60 knots is a range at 27 knots, can you see?

MR SMITH: I can see Chair.

5 ADV LEBALA: What's the figure there?

MR SMITH: Page 120 it's given as 2 100 nautical miles.

ADV LEBALA: And page 166 below the last line, range at 27 knots it's given as?

10 MR SMITH: It's given as 2 000 nautical miles Chair.

ADV LEBALA: It's a difference of 100 nautical miles.

MR SMITH: That's correct Chair.

ADV LEBALA: Does it make a difference?

15 MR SMITH: It would make a difference. Well it's reflected, that range is on, is as a result of the changed propulsion arrangement that is reflected on page 166. In essence it means that that larger engine's fuel consumption is not as good as given in the RFI, so therefore the range was slightly less at 27 knots, page 166.

20 ADV LEBALA: Now this exercise looks tedious but unfortunately we still have to come back and probably in re-examination there could be clarity coming out of it, but we know that if you look at for instance page 121 dealing with the United Kingdom Outboard Design, that is the Yarrow Shipyard,
25 GEC Marine as against page 165. Now the RFI is page 121,

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the RFO is page 165. Now let's pause, at this stage we know that the RFI process and the RFO process have similarities but they were different processes.

MR SMITH: Correct Chair, as said before the RFI is the process of gathering information and in this particular case it was also to achieve a shortlist and it is based on uncommitted information given from the proposals.

ADV LEBALA: Now I just wanted to take you, Italian Fincantieri Outboard Design at the RFI and I can't locate it. Is there a particular reason why?

MR SMITH: I'm not sure Chair, probably because it was eliminated, I can't comment on that Chair as to why (indistinct) profile, I can only assume that it wasn't one of the designs that progressed through to the, well during the RFI phase. I'm not sure.

ADV LEBALA: Now with your expertise as programme manager, shipbuilder, you evaluated these designs, try and remember without patronising or with patronising you, it is the first time, can I patronise you?

MR SMITH: You may Advocate, thank you.

ADV LEBALA: Thank you. Please go back. Do you remember looking at the outboard of the Italian Fincantieri Falco, the Outboard Profile of the Italian Fincantieri Falco?

MR SMITH: I'm sorry Chair, I can't recall that.

ADV LEBALA: Now as at the RFI stage when the Request

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for Information was being sent out as at the stage where you are looking at the responses, ideally would it have been there?

MR SMITH: Yes Chair, if they showed a picture of the Outboard Profile, and I think we asked them to give a picture of the Outboard Profile, it's pretty much a picture, a summary of the information in the offer or in the case of the RFI's as per the information pack.

ADV LEBALA: Now you will ask yourself a question why I'm asking you this question, because there's a discrepancy between the RFI Outboard Profile Figures and the RFO Outboard Profile Figures, am I right?

MR SMITH: (Indistinct) would use them as discrepancy, I'm saying I agree, there's a difference between the Outboard Profiles as reflected here in the RFI phase and as we've just shown as to those on the RFO phase.

ADV LEBALA: Now I don't know whether it would be appropriate to bother the Commission by taking you over the remaining out profiles [sic] to complete the picture, for instance let's look at ... I think we should, we should. Let's look at page 165 RFI against ... I beg your pardon, let's look at page 121 RFI, that is the Yarrow Shipyard, the British Outboard Profile against page 165 RFO. Let's be quick, page 121 for the record reflects the Outboard Profile of the UK GEC Marine F3000, am I right?

MR SMITH: That's correct Chair.

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ADV LEBALA: This is also come to be known as the Yarrow Shipyard, isn't it?

MR SMITH: That's correct Chair.

ADV LEBALA: Let's go directly to what interest us in terms of the differences, for instance if we look to the right on page 121 the maximum sustained speed is, just put the figure there?

MR SMITH: On page 121 it has given, the maximum sustained speed is given as 28.5 knots.

ADV LEBALA: Let's go to page 165. Page 165 we see two outboard profiles, can you see?

MR SMITH: I can see Chair.

ADV LEBALA: One is the vertical representation of the other?

MR SMITH: That's a reflection, that's correct Chair.

ADV LEBALA: Depicting the GEC Marine Outboard Profile.

MR SMITH: Correct Chair.

ADV LEBALA: Which is also known as the Yarrow Shipyard.

MR SMITH: Correct Chair.

ADV LEBALA: In actual fact on page 165 below the second Outboard Profile it's headed "Yarrow Shipbuilders Ltd. F3000 Patrol Corvette".

MR SMITH: That's correct Chair.

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ADV LEBALA: Is it one and the same design?

MR SMITH: It's one and the same design as reflected on these pages Chair.

ADV LEBALA: Thanks for completing the testimony there.

5 To be specific it is one and the same design as reflected on page 121.

MR SMITH: At an overall level yes, it's the same depiction Chair.

ADV LEBALA: Now let's go to page 165, reminding you
10 that the maximum sustained speed on page 121 is 28.5 knots. Let's look at what the maximum speed on page 165 is. You will see it's four below the "Propulsion", can you see it to the left?

MR SMITH: I can see Chair.

ADV LEBALA: I hope Chair and Commissioner Musi are
15 with us. The maximum speed on page 165 is how many knots?

MR SMITH: The maximum speed, and I'm assuming it's what they are reflecting here as the "Maximum Sustained Speed" but it's given as maximum speed, 28 knots Chair.

ADV LEBALA: There's a difference of 0.5 knots.

20 MR SMITH: Correct Chair.

ADV LEBALA: Now 0.5 knots, is it distinctively different? I know it's different, of course it's 0.5%, but in maritime language is it distinctively different?

MR SMITH: At top speed a small change like this is
25 significant Chair.

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ADV LEBALA: Let's look at the range at 16 knots on page 121, what's the figure there?

MR SMITH: Range at 16 knots is given as 7 200 nautical miles Chair.

5 ADV LEBALA: Chair, let me complete the following two questions and it's an appropriate time to adjourn for lunch noting that it's 13h00. Let's look at what is, or let's look at what is denoted on page 165 under the self-same, item range at 16 knots.

10 MR SMITH: The range given on page 165, range at 16 knots is 9 060 nautical miles Chair.

ADV LEBALA: 9 060 Nautical miles subtract by 7 200 nautical miles, it's over 1 000 nautical miles out isn't it?

15 MR SMITH: It's a significantly increased range at 16 knots, that's correct Chair.

ADV LEBALA: I missed that, for the record, "it's significantly"?

MR SMITH: It's a significant increase in the range at 16 knots Chair.

20 ADV LEBALA: Now the last item on page 121 to the right under the, just below the range at 16 knots is the range at 27 knots, what's the figure there?

MR SMITH: The range on page 121, the range at 27 knots is given as 2 000 nautical miles Chair.

25 ADV LEBALA: And on page 165 at the RFO stage it's,

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just look at below the last item range at 27 knots is depicted as?

MR SMITH: Range given on page 165 is depicted as 2 020 nautical miles. Maybe just to point out, I don't think that's going to be covered, but the, just to complete the picture here, the overall beam given on page 121 is, which is the RFI is given as 15.2 metres, and the overall beam given on 165 is 15 metres Chair.

ADV LEBALA: Yes, we were going to complete with that, but thanks a lot for drawing our attention to this. Does it make a difference that 0.2 metres in as far as the overall beam is concerned?

MR SMITH: It does make a difference Chair, and it's probably one of the major contributing factors to this increased range at 16 knots.

ADV LEBALA: Now the difference at the range at 27 knots between the RFI stage of the GEC Marine F3000 against the RFO stage is 520 nautical miles.

MR SMITH: That's correct Chair.

ADV LEBALA: Does it make a difference? It's obvious.

MR SMITH: Yes, it does make a difference Chair.

ADV LEBALA: How significant is the difference?

MR SMITH: It's significant Chair, that's additional, it's almost 20% more on the range at 27 knots.

ADV LEBALA: Now we will complete with the French

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design on page 122 against page 164. Chairperson,
Commissioner Musi it's an appropriate time for lunch
adjournment.

CHAIRPERSON: We'll adjourn for lunch.

5 **(Commission adjourns)**

(Commission resumes)

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

MR SMITH: I do.

10 CHAIRPERSON: Thank you.

ADV LEBALA: Thank you Chair, Commissioner Musi. Mr
Smith, before we adjourned for lunch we were going through
the distinctive differences between the, let me use the precise
language, Design Outboard Profiles and Main Particulars at the
15 RFI Stage and as at the RFO stage, do you remember?

MR SMITH: I do Chair.

ADV LEBALA: And we are going through some distinctive
differences in as far as the weight displacement, length and
speed of this outboard designs and main particulars are
20 concerned, am I right?

MR SMITH: That's correct Chair.

ADV LEBALA: We are at the stage where we are looking
at the French design at page 122 RFI and 164 RFO. Now at
page 122 of the Declassified bundle Commissioners we have
25 the France DCN Lafayette Outboard Design and its main

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particulars and we'll be drawing your attention to some of the details contained there and at page 164 we have two outboard designs and particulars, can you see?

MR SMITH: I can Chair.

5 ADV LEBALA: Both horizontal but the other ...

CHAIRPERSON: I'm sorry Advocate Lebala, just for my own understanding is there anything which really turns around this different designs, particularly of all the successful bidders or on those who made the shortlist? Is there anything which turns
10 around that unless if at all there's something you know where there were certain allocations made and I missed them, because I'm just trying to find out where and in which instance around this, if that is the position then one can pay particular attention to that specific area.

15 ADV LEBALA: Chair, we should bear on our mind that we are at the stage where the offers are still being made and there are distinctive differences between the RFI stage in terms of weight, measurements, reduction. Now what comes out of the wash is this, it appears that at one stage there were
20 modifications, for instance if there are differences at the RFI and you have seen that the RFI value system and the RFO Value System are similar with those distinctive differences and the changes that were made, now it's up to us to persuade the Commission if need be that an element of unfairness could be
25 imputed or it might not be imputed, but that will depend on at a

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later stage. What is significant is this witness probably could comment as to whether was there a stage where modifications were allowed. Now if modifications were allowed, at what stage and in which part were those modifications allowed because at the RFI stage we see that the computations, the calculations, the measurements, the speeds, the weights are different and you go to the RFO stage, they are also different. Let me give you an example.

CHAIRPERSON: Advocate Lebala if you don't mind we have seen that, I don't call them different, I see them as improvements. He has offered a particular product at an RFI stage and when it comes to RFO stage he improves that product that which he had initially offered. Is there anything that one can read into that type of behaviour? Two, we are in a position to see those improvements because the documentation is in front of us. Can one impute any unfairness to the receipt of improved products in the RFO documents?

ADV LEBALA: Hence we posed the following question that remember at the initial stage at the RFI there was a shipbuilder who was eliminated, now we ask a question that were the shipbuilders' outboards and outlines part of the documentation, and you heard the witness's response. Let's be precise. The Italian Fincantieri Falco, we don't know whether their outboard and their ... I beg your pardon, I want to use the precise words for the record Chair. Their outboard profiles and

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the main particulars were considered. Now look at what happens, if they were, and this witness is honest, he says: "I can't remember", but we would like to come and submit that probably they must have been because this is part of the whole process. In all fairness what happened is after the ARMSCOR Secretariat had received the details of all these ship builders we heard that they were referred to the Evaluation Team and he was part of that, and they were looked at.

Now when they were looked at, they were looked at, at the RFI stage, they were never improved, they were never changed. Now let me give this analogy Chair, probably it will simplify things. Myself and Mr Smith tender, get invited to supply an attire for the South African Jazz Band, now at the RFI stage we tender that we will give them jackets with buttons and trousers with a zip. At the RFO stage ... At the RFI stage we compete with other competitors, at the RFO stage we change, we give them jackets with a zip and a trousers without the buttons, without a zip.

Now those modifications, there must be something that would allow the basis for them. Now if not there are imputations and implications, that's why the procurement process has to be transparent, it has to be accountable. The issues of cost efficiency, transparency, accountability comes in, and we'll come and demonstrate if need be as to whether was the whole process fair, hence we've laid a foundation for

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that, we are going to ask him, this witness, whether were these modifications allowed and if they were, what was the basis for that.

Now these changes are modifications Chair and in all fairness to this witness and the South African Navy and this process you will see that the changes in one instance move from higher to lower, in another instance they move from lower to higher. We have heard that the German engines were improved, there is nothing wrong in doing that, the better for those engines for those engines to be improved but with the modifications allowed. For instance what if the Italian Fincantieri Falco were not given an opportunity to modify their engines? Now those are the issues that come in Chair.

CHAIRPERSON: Advocate Lebala I hear you, but that does not necessarily mean that I agree with you. My view is still that I can't see what turns around these issues that you are trying to deal with the witness, I hear what you are saying even if I might be having a different view as far as that is concerned because I cannot believe that if I offer an improved product, that will prejudice other people because (indistinct) did not go through the RFI stage is because they did not meet the minimum requirements.

The fact that somebody gets eliminated because he hasn't met the minimum requirements, that does not preclude me in the RFO stage to offer an improved product, but then I

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hear what you are saying but I think if you believe that you know you still want to pursue this line of cross-examination you are at liberty to do so. I'm not sure if at all Judge Musi wants to add something to what I've said.

5 JUDGE MUSI: Yes Chair. Yes Chair, yes. Maybe one aspect we should keep in mind is that you know, the information contained in that RFI can't necessarily be the same information as the one contained in the RFO because those are two doctrines, RFI was used to eliminate those that did not
10 meet the minimum requirements (indistinct) those. Those that have made it to the second stage present new documentation and then one can expect that they certainly will improve on their initial offers, and I'm sure the RFO will contain much more detailed information than you would have found in the
15 RFI, so when they conduct an evaluation of the RFO there's bound to be differences between the result of that evaluation and the result of the RFI evaluation.

ADV LEBALA: Commissioner Musi, Chair, I beg your pardon for a second.

20 NOTE: Caucus.

ADV LEBALA: In response I'll collate both your concerns. You ought to remember that the submarine ...

JUDGE MUSI: Is it necessary Advocate Lebala to collate our concerns? Can't we rather move forward? I think we are
25 wasting time.

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ADV LEBALA: We will ...

JUDGE MUSI: Can't we get to the next aspect of this inquiry? This witness has been in this box for too long, I think we should work towards concluding his evidence.

5 ADV LEBALA: Thanks Commissioner Musi, Chair. Let me remind you, and we will go the next phase of his testimony, hence we said that we are asking the last question to show the changes on the French design and we wanted to go to the modifications. Now we ought to remember that we are at a
10 stage where we are not only dealing with the eliminations, it's not us Commissioner Musi and Chair, the RFI and the RFO deals with eliminations and the process to achieve the Figure of Merit, hence we took this painful journey.

We need to remind you that this aspect we cannot
15 duck, that's where our problem starts, our problem just starts there. For instance one would have wished that you carry on, you forget to demonstrate these differences. Remember the following Commissioners, the RFI stage and the RFO stage are similar, you eliminate unlike in the submarines, in the
20 submarines you eliminate at the RFI stage and then you go to the RFO.

With the Corvette's we heard that you eliminate and you also go to the Figure of Merit, hence we took those graphic designs on paragraph 8 on page 16 and paragraph 8 on page
25 161 and that's a very painful process to demonstrate those

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distinctions where ended up confirming that the distinctions come on the formula with regard to the total, in as far as the RFO the total is 1 040, in as far as the RFI the total is 10 in as far as the military performance of the Figure of Merit is concerned, and these distinctions we can't ignore. Now what we are simply saying, we will part ways with this testimony and thanks for your guidance but it has got a basis Commissioners, its basis will be completed by this witness telling us whether they were modifications and the next question if they were modifications, what were their basis, and we are going to close, we are just going to ask him two questions. We went through this painful journey, I know that you want to say something Chair.

CHAIRPERSON: Maybe let me put it this way to try and assist you, there were modifications, we are aware of that, we have gone through the papers, we are aware of those modifications. Now maybe just find out from the witness if he knows why there were those modifications, if he does know maybe he will answer instead of going through each and every one of them, we do have the documents, we've gone through them, we have seen that there were certain modifications, try and find out from the witness if at all he knows the reasons why there were modifications, if he does know probably he will tell us, if he doesn't know then he doesn't know.

ADV LEBALA: Chair, maybe the record reflect that into

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the future if we could expedite testimony please help us and
this is the stage where thanks, we're indebted to you for
helping us. At one time we were tempted to say to this witness
let's not take you through all of them. You will remember that I
5 hesitated at one time but I said let me complete them so that I
should avoid what is your concern, but we want it to be
reflected for the record, we know that these witnesses might be
cross-examined, but let's go directly to that which could
expedite the testimony of this witness. Mr Smith, you have
10 heard the deliberations that are going on now and you
appreciate them, you appreciate them am I right.

MR SMITH: I do Chair.

ADV LEBALA: Now it has become common cause that
there are differences between the RFI process on the outboard
15 profiles and the RFO profiles, you agree isn't it?

MR SMITH: I agree Chair.

ADV LEBALA: And we note that there are modifications,
it goes without saying isn't it?

MR SMITH: It goes without saying Chair that there
20 were improvements in the outboard profile as presented here.

ADV LEBALA: Now feel free to call them improvements or
modifications but we know that some of the modifications move
from a lower nautical mile or a lower displacement to a higher
displacement, am I right?

25 MR SMITH: Correct Chair, some of them went up, some

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went down.

ADV LEBALA: Now we may call them improvements or modifications. Now was there anything that justified these modifications?

5 MR SMITH: Chair, the ... When they, when the offerer has now got to prepare the offer this is now a serious process, just for purposes of giving you a little context, (indistinct), to make submissions to a RFI could be very superficial, it's information that's already at hand at the offerers' offices, it's so-called
10 pamphlets and its information of that nature and the know it's not binding.

When it gets to the offer now they really sit down and prepare something, it costs, to prepare an offer costs millions of Rand, it is not a straightforward exercise, it is,
15 because now you are committing yourself to the detail and you are going to be contracted or could be contracted against that detail, so yes, you will find differences because now it is preparing something which is definitive, for instance the specification that is provided by the offerer at the point of offer
20 could be volumes of document, it was fact volumes of document, the RFI, it might just be a relatively small, one document just to give you the differentiation.

So, in preparing his full specification, what we call a build specification, the RFO, requires a lot of effort and
25 certainly in the preparation thereof without committing

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themselves to that detail there will be slight changes. Maybe we should also just point out, I think that was earlier, our attention was drawn to the fact that there was also at post-RFI I think there was discussions with the offerers, giving them information regarding their RFI responses, so they will have also receive some sort of guidance as to where they probably needed to give more attention. Thank you Chair.

ADV LEBALA: Before we go to deal with the scores from here we'll shoot directly to the scores, you remember we kept on referring you to page 129 paragraph 3, I would like us to complete this part of your testimony by reminding you of what page 129 paragraph 3 "Derivation" informs us, whilst reminding ourselves that in as far as the Corvette's ship platforms are concerned it's not a question of eliminating, remember we eliminate and look at the Figure of Merit, am I right?

MR SMITH: That's correct Chair.

ADV LEBALA: The same involved process that we see in the RFO, are you refreshed?

MR SMITH: I'm refreshed Chair.

ADV LEBALA: Now in line with that we'll part ways with this aspect of your testimony by reading the following, page 129 of the self-same bundle "Derivation":

"This document is derived entirely from the previous value system established for the evaluation of requests for information solicited internationally by

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*the Minister of Defence on the
23rd September 1997”.*

In essence an RFI processes from requests to the Value
System, to the Evaluation Report, to the matrix, to the scores
5 do play a significant role in assisting in the RFO Evaluation
Systems and the outcomes, am I right?

MR SMITH: That’s correct Chair.

ADV LEBALA: Now I’m going to leave page 168 of the
self-same bundle because more or less the execution is the
10 same as we have seen in the RFI, do you agree?

MR SMITH: That’s correct Chair.

ADV LEBALA: But what we note is at the top your
testimony is about the ship platform, we note something at the
top for the record and for those who might be interested in
15 cross-examining you or for the purpose of the future sake read
what you see at the top on page 168.

MR SMITH: On the top of the page it says “Combat
Suite and Management Aspects of the Offerers”.

ADV LEBALA: Now it has become clear that your
20 testimony has got nothing to do with the combat suite or it’s
not primarily focused on the combat suite.

MR SMITH: That’s correct Chair.

ADV LEBALA: “Execution”, will you agree with me that is
the same as what we’ve gone through in as far as the RFI is
25 concerned?

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MR SMITH: That is correct Chair.

ADV LEBALA: Except that the dates are different, in as far as the execution of the RFO is concerned it was from 12th to the 29th May 1998 by the Evaluation Team of which you were a member.

MR SMITH: Correct Chair.

ADV LEBALA: And we know that the Evaluation Team, we have rhymed and harped on it, page 168 to page 169, do you agree?

10 MR SMITH: I agree Chair.

ADV LEBALA: The methodology is also the same isn't it?

MR SMITH: Methodology is maybe slightly different Chair, I'm not quite sure but it appears that it's different if you look at paragraph 18 on page 169 and I draw your attention to the third sentence which is halfway through that paragraph which commence with "Scoring ...", are you there Chair, sorry? My apologies. If I can read it, so it's paragraph 18 "Methodology", it says here that:

20 *"Scoring was recorded on a computer spreadsheet, full visibility of final, total weighted scores being limited to the chairman and Commander Watson, the technical recorder, ...".*

That's the one part. Secondly:

25 *"... and Captain Visser, the logistic recorder and Mr Erasmus for the logistic scoring. Full commercial*

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offer visibility was restricted to Captain Kamerman and Mr Smith only”.

So, this was not, this is an additional, it's different to what it was applied to in the RFI, this is methodology that was applied
5 in the RFO.

ADV LEBALA: But you are showing the distinctive, what I would refer as form of methodology but I would like us to look at the substance of the methodology, in this instance look at page 4 of the bundle paragraph 4 against page 169 paragraph
10 18. My question was that the process of methodology in terms of substance is the same, maybe I should have been fair by being specific, substance, not the form is the same isn't it?

MR SMITH: That's correct Chair. In general it was the same process.

15 ADV LEBALA: Because both paragraphs say:

“The evaluation was undertaken in closed sessions and under strict scrutiny to avoid any interference or leaks”.

Am I right?

20 MR SMITH: Correct Chair.

ADV LEBALA: *“Evaluation of each characteristic of the Value System was computed for all of the options in alphabetical sequence before proceeding to the next characteristics in order to avoid the reverse halo effect”.*
25

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MR SMITH: That is the same Chair.

ADV LEBALA: Yes, and we explained why is that so. Thanks for drawing our attention to what I would qualify as the form that goes to how the scoring was recorded on the spreadsheet, so we'll part ways with the methodology. "Further information requested", paragraph 19 page 169 Chair, Commissioner Musi. Page 20, "Adjustment to the Scoring Range Parameters", we'll not spend time on it. "Liaising with the IP in the Financing Evaluation Teams", was it the same as in the RFI stage?

MR SMITH: No Chair. The RFI stage, if you can recall, did not address the industrial participation of the financing aspects and I don't mean to deal with the ship platform, so there was no need to have this, shall we say interaction between the different evaluation teams those days. Four evaluation teams only came into effect in the RFO period.

ADV LEBALA: But it has become clear, we know that you do not know that Mr Shaik was the coordinator in as far as all these teams are concerned, am I right?

MR SMITH: I don't know what role he played there Chair.

ADV LEBALA: Now I'm piggy-backing on what we went through in your testimony. You remember we drew your attention and it's in your statement, I'm not going to waste time by going back there. Is it true that in your statement you do

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mention that Mr Shaik was the coordinator?

MR SMITH: At that stage, that's correct Chair.

ADV LEBALA: And he coordinated these teams isn't it?

MR SMITH: As stated Chair and it was, as I've put in
5 my statement there I said it was an extract from this report,
this report makes that statement.

ADV LEBALA: Now let's spend time on the remaining two
pages on what matters most, these scores. Page 170 of the
self-same bundle, we know that in the ultimate end we have to
10 look at the military performance score and the military value
score, am I right?

MR SMITH: Correct Chair.

ADV LEBALA: And at this stage we know that when we
talk about the military performance score we talk about the
15 technical performance.

MR SMITH: That's correct Chair.

ADV LEBALA: That is where your team played a role isn't
it?

MR SMITH: That's correct Chair.

20 ADV LEBALA: We are not looking at the industrial
participation, we are not looking at the financial options.

MR SMITH: That's correct Chair.

ADV LEBALA: Now the military performance scores, it
relates to the performance of the ship platform, am I right?

25 MR SMITH: That's correct Chair.

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ADV LEBALA: We look at the raw score.

MR SMITH: That's correct Chair.

ADV LEBALA: We don't divide it.

MR SMITH: No Chair.

5 ADV LEBALA: Now the score, that tells us the following on page 170, that when you look at how well performing the ship platform is, the German GFC Meko A200 became number 1 with the score of 810.5 points out of 1 080.

MR SMITH: That's correct Chair.

10 ADV LEBALA: And the German GFC Meko 200 became number 2 in ranking with 790 points out of 1 080?

MR SMITH: That's correct Chair.

ADV LEBALA: The Spain Bazán number 3 with 766.6 points.

15 MR SMITH: That's correct Chair.

ADV LEBALA: The UK, the Yarrow Shipbuilder GEC F3000 became number 4 with 649.9 points out of 1 080.

MR SMITH: Correct Chair.

20 ADV LEBALA: And the France DCN Patrol Corvette became number 5 with 618.3 score points out of 1 080.

MR SMITH: Correct Chair.

25 ADV LEBALA: And at this stage may the record remind us that you mentioned that although the graphic representation on page 131, helping us to get to these scores put the score out of 1 040 instead of 1 080, am I right?

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MR SMITH: Correct Chair.

ADV LEBALA: Now what has become clear is that in as far as the performance of the ship platform is concerned the German GFC Meko A200 was ranked number 1.

5 MR SMITH: Correct Chair.

ADV LEBALA: Now the reasons thereto are explained in paragraph 23 and a basis for them has been laid, except that let's look at paragraph 23, I'll read what is relevant just to expedite time because all these aspects more or less reflect on what the RFI outcome told us, am I right?

MR SMITH: In general, yes Chair.

ADV LEBALA: 23, let's read it for the record:

15 *"As can be seen both German Meko designs have excellent military performance, very strong points being sea-keeping, survivability, (indistinct), helicopter operability, logistic impact ..."*

It comes again:

"... and machinery systems".

MR SMITH: As read Chair.

20 ADV LEBALA: I could read below and would I be right to say if you gloss through that nothing is telling us about the limitations in as far as the German product is concerned?

MR SMITH: That's correct Chair.

ADV LEBALA: For instance it is said towards the end:

25 *"The modular construction of the Meko allows for*

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shorter build times and also greatly facilitate the integration of the local combat suite”.

It means it talks about delivery and service isn't it?

MR SMITH: Correct Chair.

5 ADV LEBALA: *“Given the superior features and level of documentation offered very little design work is foreseen before construction can begin”.*

MR SMITH: As read Chair.

10 ADV LEBALA: This has nothing to do with the weaknesses and the limitations.

MR SMITH: That's correct Chair.

ADV LEBALA: What we have is that the German design is excellent and presents an excellent military performance.

MR SMITH: That's correct Chair.

15 ADV LEBALA: Let's go to Spain and we note why Spain got to be number 3, we are reading paragraph 24 on page 170 Chairperson, Commissioner Musi:

20 *“The Spanish 590B is a very good all-round design with the best mobility, operability, growth potential, layout, accommodation and habitability features. As in the case of Germany very little design work will be necessary if the Spanish Corvette is selected”.*

25 Now we are told that the German, the Spanish design is a good all-round with the best mobility, operability without limitations,

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am I right?

MR SMITH: That's correct Chair.

ADV LEBALA: The UK will know why it got to be number
4. Paragraph 25:

5 *"The F3000 design is improved from the last
evaluation and has good sea-keeping and layout
qualities".*

Are they talking about the modifications I suppose, because we
know that at the RFI stage there were limitations to it isn't it?

10 MR SMITH: That's correct Chair, it's referring to the
improvements that brought on their design as part of the
offering RFO.

ADV LEBALA: This is in line with what the chairperson
and Commissioner Musi concluded that we need not waste time
15 because modifications were there and we could see
improvements. Let's read on:

*"The F3000 design has improved from the last
evaluation and has good sea-keeping and layout
qualities and an excellent standard of
20 accommodation and habitability".*

Now its strength from what we see is not only did it improve
from the last evaluation with good sea-keeping and layout
qualities, it has got an excellent standard of accommodation
and habitability.

25 MR SMITH: That's correct Chair.

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ADV LEBALA: How significant is accommodation and habitability in military performance?

MR SMITH: Chair, as part of a group, one of the groups, or at least two of the groups that were assessed, and it
5 has to do with the quality and the quantity of accommodation onboard the vessel for the purposes of the crew, so it is important, the human aspect of your ship going to sea for a lengthy period is a very important feature.

ADV LEBALA: Page 171, now you are referring to those
10 group of 12's isn't it?

MR SMITH: That's correct Chair.

ADV LEBALA: In terms of Part 2 where we deal with the military performance.

MR SMITH: That's correct Chair.

15 ADV LEBALA: That's where we look at the scales, the parameters and the weights.

MR SMITH: That's correct Chair.

ADV LEBALA: Now let's read further page 171:

20 *"The ballistic protection offered is poor being below the minimum critical requirements, although this aspect can be improved without major implication".*

Is that a limitation?

MR SMITH: That is a limitation at this point, that's correct Chair.

25 ADV LEBALA: Paragraph 26, it echoes on the limitations

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from the onset:

“Design is a very poor radar signature, however, offered radar cross-section (“RCS”) being well above the special critical maximum and an order of magnitude more than the other contending designs”.

5

Up to so far we know that the Spanish and the Germans don't have limitations but the UK Yarrow Shipyard design has got limitations.

MR SMITH: That's correct Chair.

10 ADV LEBALA: Towards the end we are told that:

“The ship also has generally poor operability due to a very restrictive forward structure design which inhibits safe seamanship execution and restrictive bridge shape dictated by structural requirements. Major redesign work would be necessary on the F3000 to improve these aspects with unknown but probably severe cost and timescale implications”.

15

MR SMITH: As read Chair, correct.

ADV LEBALA: These are limitations?

20 MR SMITH: These are limitations Chair.

ADV LEBALA: Now France, paragraph 27:

“The Patrol Corvette design has been improved since the last evaluation ...”.

The modifications come again:

25 *“... but still has poor accommodation and*

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habitability layout and standards as well as growth potential being a generally cramped design”.

We know that France has got limitations, poor accommodation and habitability, part of the group of 12 isn't it?

5 MR SMITH: That's correct Chair.

ADV LEBALA: And that plays a very important role in as far as the weights allocated in the military performance scores isn't it?

MR SMITH: That's correct Chair.

10 ADV LEBALA: Now:

“The score of this offer was also severely limited by the poverty of information provided”.

It means the French provided tacit and limited information according to what is being written here.

15 MR SMITH: That is correct Chair.

ADV LEBALA: Towards the end it says:

“In several cases good technical options were stated in the technical part of the offer but not costed in the commercial part”.

20 We also know that there was non-costing, isn't it?

MR SMITH: That's correct Chair.

ADV LEBALA: Towards the end it says:

“Rendering the option invalid for inclusion for evaluation”.

25 That's another limitation.

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MR SMITH: That's another limitation, correct Chair.

ADV LEBALA: *"The logistics response was also very poor".*

MR SMITH: Limitation Chair.

5 ADV LEBALA: Now all this detail, you were alive to it isn't it?

MR SMITH: I'm reminded of it as we read it in this report, that's correct Chair.

10 ADV LEBALA: This is what you provided to the, those who prepared this report.

MR SMITH: Yes, that would have been taken up in the report as information that we evaluated on, at the technical level Chair.

15 ADV LEBALA: And as you read you are refreshed I suppose, it comes back to you that this is what your team had written, wrote and provided as detail to those who presented this report.

MR SMITH: We would have highlighted the areas that are now written out in text in this report, that's correct Chair.

20 ADV LEBALA: Now to be precise let me repeat my question. You are reminded that this is the information that you gave to those who present this report before the Commission and we know who are they, it's, to refresh us is, it is Captain Kamerman as the chairman and the moderator is
25 Rear Admiral Howell.

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MR SMITH: Yes Chair, that information would have come out of the evaluation of the Value System Part 2.

ADV LEBALA: Now let's conclude by saying we know that in as far as the military performance score, that is the raw scores in as far as the performance and capability of the ship platform is concerned the German design was number 1 and to be specific its nearest competitor was not its sister design, the Meko 200 which was number 2, but it was the Spain Bazán which became number 3.

10 MR SMITH: That is correct Chair.

ADV LEBALA: Now let's look at the Corvette costs page 171 paragraph 28, "Life Cycle Costs", paragraph 29 "Acquisition Costs", and look at page 172 to the "Scores". Commissioners we are on page 172, the "Scores". Let's summarise. When we look at the Corvette costs we want to look at the best value, am I right?

MR SMITH: Correct Chair.

ADV LEBALA: In line with the formula that we know where it comes from, we are not going to repeat that, we look at the raw score of the ship platform and we divide it by the acquisition costs.

MR SMITH: That's correct Chair.

ADV LEBALA: Now that's where we start to see whether it would be cost-wise to pay more or to pay less.

25 MR SMITH: That's correct Chair.

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ADV LEBALA: And we know that what informs this part of the testimony it's Part 1 of the Critical Performance Filter, am I right or wrong?

MR SMITH: Maybe I can just add, as you will see,
5 we're referring to paragraph 29 and the scores, those scores were ... Sorry the costs, we're talking about costs. Sorry, repeat the question again?

ADV LEBALA: In actual fact I'm wrong because we are dealing with scores here. We look at the scales, the scores
10 and the weights, we can't talk of the critical performance filter. Now let's look at what we have now. In as far as the costing is concerned we realise that the Spain Bazán on page 172, its total score will be R4 333.1 billion being total costs in Rand isn't it?

15 MR SMITH: That is correct Chair.

ADV LEBALA: And the second lowest will be the UK GEC Marine F3000 at R4 915 billion.

MR SMITH: That's correct Chair.

ADV LEBALA: Number 3 will be the German GFC Meko
20 200 at R4 929.8 billion.

MR SMITH: That's correct Chair.

ADV LEBALA: Number 4 would be the German GFC Meko A200 at R4 984.1 billion.

MR SMITH: That's correct Chair.

25 ADV LEBALA: And the most expensive will be the French

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DCN Patrol Corvette at R5 373.2 billion.

MR SMITH: That is correct Chair.

ADV LEBALA: Now we note something that the German GFC Meko A200 that we know in as far as the military performance is concerned scored high, is slightly more expensive than the Spain Bazán.

MR SMITH: It is more expensive than Bazán, Spain. Correct Chair.

ADV LEBALA: And even more expensive than the other two between it and Spain, Bazán.

MR SMITH: That's correct Chair.

ADV LEBALA: Now at this stage we know that cost-wise the Spain model Bazán 590B is the least expensive.

MR SMITH: That's correct Chair.

ADV LEBALA: Cost-wise.

MR SMITH: That's correct Chair.

ADV LEBALA: Let's go to the Corvette Military Value. We are still looking at the performance cost ratio, am I right?

MR SMITH: That's correct Chair.

ADV LEBALA: We want to satisfy ourselves that we get the best value for the Corvette platform, ship platform we are purchasing.

CHAIRPERSON: We are remarking about something else, not about what you are doing.

ADV LEBALA: Now when we look at the ... Thank you

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Chairperson. When we look at the Corvette Military Value we are still looking at the costing isn't it?

MR SMITH: Correct Chair.

ADV LEBALA: Do we still consider the (indistinct) of the ship platform and we divide it by the acquisition cost?
5

MR SMITH: Yes Chair. Sorry, yes Chair, that's what's effected here.

ADV LEBALA: And what comes out of the table is that the Spain model Bazán 590B in terms of the performance score out of 1 080 has scored 766 points, point 6. In terms of the total cost in Rand it's R4 333 billion and its military value is normalised to 100 and it gets 100.
10

MR SMITH: That's correct Chair.

ADV LEBALA: And what follows is Germany GFC Meko A200 with the performance score out of 1 080 of 810.5, and the total cost in Rand is R498 4 billion and its normalised military value to 91.9.
15

MR SMITH: That's correct Chair.

ADV LEBALA: The third is the Germany GFC Meko 200 with the performance score 1 080 as 790 at the total cost in Rand R4 930 billion at the normalised military value score out of 100 becoming 90.6.
20

MR SMITH: That's correct Chair.

ADV LEBALA: Number 4 is the UK GEC Yarrow Shipyard design Marine F3000 at the performance score out of 1 080 of
25

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609.9, the total cost in Rand is R4 915 billion, normalised to 100 at military value, 74.7.

MR SMITH: Correct Chair.

ADV LEBALA: Number last, number 5 is the DCN1 [sic]
5 Corvette Lafayette, the French with a performance score of 1 080, 618.3 and the total cost is R5 373 billion at the normalised military value out of 100, normalised to 100 at 65.0

MR SMITH: That is correct Chair.

ADV LEBALA: Now we know that ... Please go to ... Let's
10 leave 32, paragraph 32 on 172 and paragraph 33 and conclude on 173. What has become clear is that the German GFC Meko A200 has got the best military performance score.

MR SMITH: Correct Chair.

ADV LEBALA: What has become clear is that the Spain
15 Bazán 590B has got the best value.

MR SMITH: It's got the lowest price, correct Chair.

ADV LEBALA: We call it the military value result, the best military value result.

MR SMITH: Correct Chair.

ADV LEBALA: That is looking at it cost-wise. Looking at
20 it cost-wise?

MR SMITH: Correct Chair.

ADV LEBALA: Now cost-wise the Spanish model is
number 1, in as far as the performance capability of the ship
25 platform is concerned the military performance, the Germans

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are number 1.

MR SMITH: Correct Chair.

ADV LEBALA: Now page 173 is a summary,
"Conclusions". You have testified earlier on when we were
5 looking at the RFI results, you remember the distinction
between the military performance the military value?

MR SMITH: Correct Chair.

ADV LEBALA: And throughout I've been leading you just
to emphasise the difference, the differences are simple,
10 military performance, you look at the performance capability of
the ship platform.

MR SMITH: That's correct Chair.

ADV LEBALA: Military value you look at it cost-wise, you
take the ship platform (indistinct) score and divide it by the
15 acquisition costs.

MR SMITH: Correct Chair.

ADV LEBALA: Now in as much as you told us you
remember at the RFI stage you told us that you want a ship you
can afford but it must be a capable ship, am I right?

20 MR SMITH: Correct Chair.

ADV LEBALA: It was at the stage where I asked you a
question that if you were to choose between military
performance and military value which one would you give
preference, do you still remember?

25 MR SMITH: I remember Chair.

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ADV LEBALA: And it makes sense because the Germans in as far as the GFC Meko A200 are number 1 in military performance, that is in as far as the performance capability of the ship platform is concerned whereas the Spanish in as far as their model Bazán 590B is the best in as far as the acquisition costs are concerned.

MR SMITH: Correct Chair.

ADV LEBALA: Now let's conclude. Which one would you give preference to bearing in mind that in as far as the RFI is concerned at that stage you mentioned that you would rather have a ship that you can afford but it must be a capable ship, you remember?

MR SMITH: I remember Chair.

ADV LEBALA: Now are you still willing to cast the dice even here?

MR SMITH: Chair this is my view, I would still go for the best military value.

ADV LEBALA: Are you saying that this is what you said earlier on in as far as the RFI is concerned?

MR SMITH: Yes Chair.

ADV LEBALA: No, that's not what you said, you said you want to have a ship that you can afford but it must be a capable ship, it means you recognise the performance value and the military value.

MR SMITH: Yes I recognise the performance on the

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military value but at the end day if you can remember I said, the analogy I used, I said best bang for the buck, that would be it, that would be that and that equates to military value, the best value for your money. That's military value.

5 ADV LEBALA: Now please nail your colours to the mast, are you saying to the Commission that according to you Bazán Spain 590B model should have succeeded because you are saying in as far as you are concerned the military value should be given preference?

10 CHAIRPERSON: I'm sorry Advocate Lebala, I don't think this witness went that far. Mind you, we are dealing with only one specific area which needs to be evaluated before they can announce the winner. In this category this is what the witness is saying, in this category, not the overall winner because
15 (indistinct) finance must still come into play, industrial participation must also still come into play and this witness was not involved in those aspects. So, deal with the witness, let the witness tell us about what he was involved in, you can't ask him to speculate about the industrial ..., what impact the
20 industrial participation would have had on these scores. Maybe let's deal with him in as far as this (indistinct) in front of us are concerned. Thank you.

ADV LEBALA: I'm indebted Chair. If you are saying that the question was too broad then I'm corrected Chair and one
25 should avoid asking witness broad questions. I thought that

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you were aware that I was talking about the military performance and the military value in as far as the ship platform is concerned, am I right?

MR SMITH: That's correct Chair.

5 ADV LEBALA: And I kept on reminding you that we are talking about the technical evaluation, the military value where your team played a role where you served as a programme manager, not focusing on the industrial participation, not focusing on the finance options.

10 MR SMITH: It's correct Chair.

ADV LEBALA: Now to complete the picture, and I think the Chair has reminded us that we should be specific. Let's be specific, let's remind ourselves that in the RFI you concluded after we confined you to the ship platform reminding you that
15 we were dealing with the military performance and the military value in as far as the ship platform is concerned, now we are repeating ourselves and say we wanted to look at it with your shades on from the perspective of the military value and the military performance value in as far as the ship platform is
20 concerned. Now which one would you give preference to, the military value or the military performance?

MR SMITH: Personally Chair I would give, military value would be more important to me.

ADV LEBALA: Now am I right to say you are now casting
25 a dice and say in your considered view you prefer the Spain

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Bazán in as far as this aspect is concerned to have succeeded?

MR SMITH: Chair, the results on page 172 speak for themselves. The Spanish 590B design achieved the best military value as contained in that table.

5 CHAIRPERSON: I (indistinct) the results speak for themselves, you don't have to mention Spain or Germany or whatever, you have just gone through that exercise, you can see on this page who achieved the best military value.

ADV SOLOMON: Sorry Chair, if I could also just come in
10 here. I don't think it's useful for Mr Smith to say what his personal preference is, it's totally irrelevant, there's a formula that had to be applied, we know what the formula is, it appears the formula was applied and we see the result.

ADV LEBALA: Chair I agree with you, I agree with my
15 colleague Solomon SC, but let me remind you honourable Commissioners and Solomon SC, we have a greater duty, myself and Mr Ngobese because we have to come back and argue before you and say the following, you've heard what Mr Smith said, that's the reason why we took you through his CV.
20 It's not a nice journey, he said to us that in his ...

CHAIRPERSON: Advocate Lebala you are spot on, I agree
with you but then Mr Smith had to follow a certain procedure which was agreed in advance in order to determine which of the ship builders were given the best value for money, you asked
25 him a question and basically what he says is that: "But then

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I've given you the figures, I've told you exactly how we work it out, look at page 172 and then you've got your answer, why do you want me to say (indistinct)?", because we may have the answer here right in front of us and what his views are, I think they are totally irrelevant because mind you he was bound by the Value System that was agreed upon well in advance, so his views should be, I think they are neither here nor there, I mean this is the point that we are trying to make.

ADV LEBALA: Chair I agree with you and lastly I would like to assure Mr Smith that you, the commissioners would never allow us to ask an unfair question. Unfortunately for us this one Mr Smith you will get away with it, we are deprived of an opportunity to come and say the following; Chair, Commissioners, you have heard what Mr Smith said, he said according to him it doesn't matter whether the GFC Meko A200 succeeded on the military performance but his testimony given his history, expertise, ship designer, in ARMSCOR for 23 years, he said he preferred Spain to have succeeded but we'll leave it for that stage Chair. Thank you.

Now the last portion of your testimony, we are done with the formalities, we just want to point two areas where the critics will come and challenge or test your testimony. Now you remember that part, please feel free to tell us, and I know that the instincts of Mr Solomon must be up now and alert, you remember that part where we referred you to the Altech

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Defence System, you remember that part of the RFO where we referred you, we can refresh you, it relates to your statement bundle Annexure "BS3" page 35, and we know that the debate when the commissioners came in very hard on us to remind us that we should treat you fairly and not with kid gloves, fairly. I'm certain that we never allowed ourselves to treat you with kid gloves. That's where we paused and we said that we'll leave it but we come back to it because there's something that the critics say about it and please let us know whether you can respond to it or not.

You remember we started ... Commissioner Musi, Chair, we are on page 34 and page 35 of the Statement bundle but I want us to go to page 35 where we deal with the combat suite contractor. Now does this reference to this paragraph remind you of that piece of testimony?

MR SMITH: It does Chair.

ADV LEBALA: Where actually the chairperson came in and just said look, let's leave it, it has landed, you can't answer as to why the Altech Defence System here appears to have been given preference without going through a procurement process.

MR SMITH: I recall Chair.

ADV LEBALA: To be precise, not to misquote the Chair, this was based on the fact that the selected preferred contractor, we went through a very tedious process, that's why

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we started at the RFI and ended up at the RFO.

MR SMITH: I recall Chair.

ADV LEBALA: And we said that it appears that in as far as the Altech Defence System, ADS is concerned, we never
5 went through that.

MR SMITH: No, we didn't go through that Chair.

ADV LEBALA: Now let's test it this way, is it true that the Altech Defence System was given that preference not only to protect the local industry but historically they've always been
10 dominant in that space in assisting with the defence system in as far as the combat suite is concerned?

MR SMITH: They had a history of being involved in the combat suite development over the period preceding the deferment or prior to 1995, that's correct Chair.

ADV LEBALA: So you confirm that, permit me to use this expression measurably, that in that space they were dominant and they were reputable?
15

MR SMITH: That's correct Chair.

ADV LEBALA: Are you aware that at one time a foreign
20 interest company called Thompson CSF purchased shares in the Altech Defence Systems?

MR SMITH: In general Chair what I read about, but I don't bear any specific knowledge of timing and scope of that purchase.

ADV LEBALA: But as at the time when you were testifying
25

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you are aware that Thompson CSF purchased shares in Altech Defence System?

MR SMITH: As far as I read Chair but I don't know when that occurred.

5 ADV LEBALA: Now the critics are saying, and you will understand why we take you through this testimony, the critics are specific that during April 1998 Thompson CSF purchased 50% of the shares in Altech Defence System. As you are standing before the Commission are you alive to that?

10 MR SMITH: I'm not alive to that detail Chair.

ADV LEBALA: But now you are summersaulting because you did mention that you only came to know about it when you read about it, isn't it?

MR SMITH: That's correct Chair, I was just, what was
15 quoted now is some detail of dates of which I'm not aware and the scope of which I'm not aware, I don't, that's not in my general knowledge, the exact date of the exact scope of that.

ADV LEBALA: Fair enough. I think my question was
20 unfair then, but as you are standing before the Commission you do know that Thompson CSF which is a French interest group purchased 50% shares in Altech Defence System. You may not even know the number of shares purchased, it has become clear that you don't know the date and the time when these shares were purchased.

25 MR SMITH: Correct Chair, I've read about it.

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ADV LEBALA: Now to be precise as you are standing before the Commission you are alive to the fact that Thompson CSF purchased shares in Altech Defence Systems.

MR SMITH: Correct Chair.

5 ADV LEBALA: Are you aware that Thompson CSF further sold part of its purchased shares to Nkobi Holdings?

MR SMITH: I've read about it Chair.

ADV LEBALA: Now as at the time when you are testifying before the Commission you are alive to the fact that the
10 process started with ADS being the dominant player in the systems, foreign French interest group Thompson CSF purchasing shares in it and diluting its shares and selling them to Nkobi Holdings?

MR SMITH: Chair, I'm not aware of that detail.

15 ADV LEBALA: I'm sure the chairperson and Commissioner Musi would raise eyebrows now because you have just told us that you know about it. I'm talking about as at the time when you are standing there, you said you know about it because you read about it. Now it doesn't matter the substance of how you
20 know about it but as you are testifying before the Commission you do know about it.

MR SMITH: I do know about it.

ADV LEBALA: Do you know about Nkobi Holdings?

MR SMITH: I've read about Nkobi Holdings, yes Chair.

25 ADV LEBALA: Let me refresh you. Do you know that the

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late Minister of Defence Mr Joe Modise had interests in Nkobi Holdings?

MR SMITH: No Chair.

ADV LEBALA: Now to be precise and fair to you do you
5 know of the relationship, if any, between Nkobi Holdings and the late Minister Joe Modise?

MR SMITH: No Chair.

ADV LEBALA: Now as at when you are testifying before the Commission haven't you read anything about the
10 relationship between Nkobi Holdings and the late Minister Joe Modise, may his soul rest in peace.

MR SMITH: I can't recall Chair.

ADV LEBALA: Now when you say you can't recall you are saying that if I could do some probably additional probing I
15 might assist you to recall?

MR SMITH: You may, I just, I can't recall now and I can't specifically recall having heard about that Chair.

ADV LEBALA: Fair enough, if you can't recall you can't recall. Now I'm being halted in my foot-tracks because from
20 here I think Mr Solomon SC will go for my throat because if you can't recall this stage I can't go to the next questions.

CHAIRPERSON: I'm sorry Advocate Lebala, just make sure that he doesn't go for your throat.

ADV LEBALA: Thank you Chair. You will note that I have
25 a very accessible throat Chair, but thanks for reminding me

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that I have to exercise my defence instincts. Let me read what the critics say in all fairness to you and to be precise if you do not know, you do not know. The critics say”

5

“Notwithstanding the (indistinct) thorny issues of a foreign company, Thompson CSF was based in France, purchasing a (indistinct) company in order to take advantage of the fact that the South African Government was intending to buy local, what is effectively meant was that African Defence Systems became a subsidiary of Thompson CSF”.

10

Now we haven't even gone to African Defence Systems because once you say you can't recall the relationship between Nkobi Holdings and the late Minister Joe Modise it makes things difficult for us to ask you about African Defence Systems.

15

Maybe I should start here. Are you alive to the name African Defence Systems?

MR SMITH: I am Chair.

ADV LEBALA: Do you know the relationship between Mr Shaik and African Defence Systems?

20

MR SMITH: No Chair.

ADV LEBALA: Have you read anything about the relationship between Mr Shaik and the African Defence Systems?

MR SMITH: No Chair.

25

JUDGE MUSI: Shouldn't you be specific about which

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Shaik are you talking about?

ADV LEBALA: I've got to be very cautious to throw names
Commissioner Musi. At this stage I think this must be handled,
I've got to be like a blind man going through a revolving door
5 and please let me take you into my confidence and say the
following; if, and only if this witness was able to give a detail
from Nkobi Holdings to the relationship with the late Minister
Modise, then I could specify names and remember I'm laying a
foundation to something which is very relevant to his testimony
10 and both of you are probably alive dear Commissioners, that
I'm starting to play in Term of Reference 1.5 and 1.6 and we
are not yet there, but at this stage we thought that he could
assist in line with what the critics are saying and it would not
be fair for us to continue with this line of asking questions and
15 with respect and due reference to you Commissioner Musi we
can't even mention the name.

JUDGE MUSI: Thank you.

ADV LEBALA: Now DIP, we know that you are not an
expert in DIP, am I right?

20 MR SMITH: That's correct Chair.

CHAIRPERSON: I'm sorry Advocate Lebala, I see we are
left with less than two minutes before we adjourn, are you still
going to be long with this witness?

ADV LEBALA: Chair, four questions. We want to be done
25 with this witness now. I think by 16h10 we will be done with

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him.

CHAIRPERSON: Okay.

ADV LEBALA: Thank you Chair. Now what is your understanding of DIP, simplify it, if you want to give examples please feel free to. What do you understand DIP to mean in as far as the acquisition process of the ship platform is concerned in the context of the SDPP's?

MR SMITH: Chair, Defence Industrial Participation was instituted, or it's my understanding, was instituted as a way to leverage through the acquisition, through projects, advantage if you will, or towards local defence industry and to place an obligation on offerers or on projects, contracts above a certain threshold to meet a DIP obligation and then through the DIP obligation they would then also provide investment and opportunities for the local defence industry to become involved. It was also the intention through that to keep the defence industry sustained, so broadly speaking in my understanding that is what its original intention was.

ADV LEBALA: Very refreshing Mr Smith and to the point, and that's what DIP so simplified in A, B, C form. Now let's look at the, when the ARMSCOR Secretariat gives you the RFO's against the Value System. We do know that when you were given the RFO's as a member of the Evaluation Team you were also given the Value System, am I right?

MR SMITH: That's correct Chair.

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ADV LEBALA: And at that stage we know that we are looking at five designs from four shipbuilders.

MR SMITH: Correct Chair.

ADV LEBALA: As at that stage how many shipbuilders, as
5 at that stage were demonstrating that they were satisfying the
DIP element as at that stage, and we know who were they.
Now let's be specific, was Spain Bazán as at that stage
satisfying the DIP element?

MR SMITH: Chair, I can't comment on that part of DIP.
10 In fact what happened was that, just for clarification, when the
offers, at the point of the Procurement Secretariat those, when
the offers were distributed to the teams the offers were
actually split up so that the technical Evaluation Team only
received the technical parts and the commercial parts and the
15 DIP Evaluation Team only received that part of the offer which
dealt with DIP and so forth, so as part of the Technical
Evaluation Team I had no insight into what was going on and
what the quality and quantity of the offer responses were in
terms of DIP.

ADV LEBALA: But as at that stage when the ARMSCOR
20 Secretariat gave you those RFO's and the Value System you
were alive to the fact that the technical value, that is the
military value in which your team played a role was very
important.

MR SMITH: Correct Chair.
25

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ADV LEBALA: You were also alive to the fact that the industrial participation was important?

MR SMITH: Correct Chair.

ADV LEBALA: You were alive to the fact that the NIP was
5 important.

MR SMITH: Correct Chair.

ADV LEBALA: And the DIP was important.

MR SMITH: Correct Chair.

ADV LEBALA: And the financial options were important.

10 MR SMITH: Correct Chair.

ADV LEBALA: Now was your attention at that stage drawn to the fact that the DIP Element had to be considered?

MR SMITH: I knew that the DIP Element was being considered, yes Chair.

15 ADV LEBALA: So you knew that the DIP Element was important?

MR SMITH: Correct Chair.

ADV LEBALA: Now if you knew that the DIP Element was important at that stage let's go back. Spain Bazán, was it
20 satisfying as at that stage this important DIP Element, as at that stage when you knew that the DIP Element was important? We know that ...

CHAIRPERSON: Just hold on, even before the witness answers that question I'm not sure how should the witness
25 know that because he says that they were given their portion

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only and the other groups were given the documents which deal with their section. If he was not dealing with DIP how would he know how the other bidders fared as far as DIP is concerned? I think let's ask him what he says that was given to him, he was
5 given documents which deal with the technicalities of the various ships, so that is where his concentration was, not what on other, or what other people are doing. Unless if at all he wants to tell me that you know, they said to him don't look at DIP and he went, contrary to instructions and looked at DIP,
10 then he may be in a position to answer the question. Are you in a position to answer that question Mr Smith?

MR SMITH: You're totally correct Chair.

ADV LEBALA: Okay well, another reminder that you know, this Commission will never allow witnesses to answer unfair
15 questions and it's very refreshing Mr Smith, I assure you that you know, I need to be reminded if I ask you fair questions but I still raise a concern based on the chairperson's concern because you can respond to this question and I'll demonstrate why. By your own words the DIP Element is important, you
20 have conceded and throughout, there's a reason why we kept on remind you that we know that you are interested in the technical value, the military value which has got nothing to do with the IP, the finance options, you remember that?

MR SMITH: I remember Chair.

25 ADV LEBALA: But, and true, you knew how important the

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DIP Element is, irrespective. Am I right?

MR SMITH: That's correct Chair.

ADV LEBALA: Now the chair is correct, we are not saying
did you value the DIP Element, am I right, we are not saying
5 did you value the DIP Element?

MR SMITH: I did not value the DIP.

ADV LEBALA: And you did mention that you are not an
expert in DIP.

MR SMITH: Correct Chair.

10 ADV LEBALA: Now I want to test this important
knowledge and very funny, Mr Vermeulen on the submarines
also knew how DIP Element played a significant role, do you
remember?

MR SMITH: I remember Chair.

15 ADV LEBALA: He even gave examples of DIP.

MR SMITH: Yes he gave examples, that was examples
that materialised during the actual project itself.

ADV LEBALA: Now let's test your knowledge of how
important DIP Element is, bearing in mind what the chairperson
20 has drawn our attention to, and the chairperson's concern is
very valid, he says we can't ask an unfair question and I've
just demonstrated that we are not asking you an abstract
question. Now we are not asking you a free-floating question,
please respond. As at that stage noting that there are other
25 teams that deal with DIP finance options, now and noting that

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the DIP Element was important, were you aware as at that stage, yes or no, that Spain Bazán 590B design team was satisfying the DIP Element?

MR SMITH: No Chair.

5 ADV LEBALA: Germany GFC Meko A200 team?

MR SMITH: No Chair.

ADV LEBALA: UK GEC Yarrow Shipyard?

MR SMITH: No Chair.

ADV LEBALA: France Corvette DCN?

10 MR SMITH: No Chair, I was not aware.

ADV LEBALA: Now if the critics were to come and say the German GFC Meko A200 team design did not comply with the DIP Element, would you agree? Remember the DIP Element was very important, Mr Vermeulen told us, Mr David Griesel told us, if I'm not mistaken and I think I should remember because I was just reading the record on some days I wasn't here, Captain Jordaan told us that and you are confirming that. Now knowing what you know are you aware that the German Frigate Consortium Meko A200 team did not comply with the DIP Element? This is what the critics say, this is not what we say, are you aware about that?

MR SMITH: The question is, if the question is was I aware of this, I was ... As I said I had no insight into the evaluation of the DIP, I did read that subsequently, most recently about that, so I bear knowledge of what I've read but I

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wasn't part of that process, so I can't comment to that one way or another.

ADV LEBALA: Now the last question is you told us that the ARMSCOR Secretariat provided you with the RFO documents and the RFO Value System, you remember?
5

MR SMITH: I remember Chair.

ADV LEBALA: Now it is at that stage where the critics come and say:

10 *"The German Frigate Consortium failed to conform to minimum bidding requirements by failing to submit the required DIP (Defence Industrial Participation Information) in their RFO".*

Are you aware about that, this is what the critics say.

MR SMITH: I'm aware of what the critics say.

15 ADV LEBALA: Now thanks for that information. I'm not interested unfortunately in that knowledge, I'm interested in the response. Remember you told us that you know how important the DIP Element is and you looked at the RFO's, you look at the RFO Value Systems, they were given to you by the
20 ARMSCOR Secretariat. Now what do you say to what the critics are saying that at the RFO stage the German Frigate Consortium A-Meko 200 [sic], including the German Meko 200 design element RFO failed to meet the DIP requirement, are you alive to that or do you want to comment about that?

25 MR SMITH: To comment on, in general terms Chair.

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As I said earlier, at the point of the offers in the Procurement Secretariat's division the offers were split up, the offers, the proposals into different sections dealing, those sections dealing with DIP and those sections dealing with technical aspects were given to the individual teams, so I'm not alive to the content of that DIP package and how that was analysed and looked at.

ADV LEBALA: Remember, and I'm not saying to you that were you aware of the importance of the NIP Element, I'm not saying were you aware of the importance of the Financial Option Element, no, and it has become common cause that at one time or the other almost everybody was alive to the importance of the DIP Element and you confirmed it, Rob Vermeulen confirmed it, David Griesel confirmed it, hence our question. Now I'm not saying you evaluated the DIP Element, I keep on coming back, now do you want to comment against what I'm saying?

MR SMITH: Chair, I didn't have a copy of the DIP, as the Technical Evaluation Team and as the programme manager we did not have the DIP proposal or offer section, that was not given to me as part of the technical evaluation.

ADV LEBALA: Chair, we've no further questions. In actual fact let me allow you to close by saying anything you want to say, feel free, if you want to take it out of your chest, and whatever you say please collate it with giving the

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Commission examples of DIP if you know of any. You could start by giving examples of DIP and from there you could close by mentioning anything you want to mention, subtract at. This is your airtime.

5 MR SMITH: Thank you Chair. As you are aware I was post-1998 I assisting the DIP Team in terms of Technology Transfer and ...

CHAIRPERSON: I'm sorry Mr Smith, can you just pick up your voice a little bit, I'm struggling to hear you.

10 MR SMITH: Sorry Chair, my throat is becoming a bit worn. Some examples, I put forward some examples for interest sake. On the submarines my colleagues did mention the ..., we're talking now DIP, that Siemens in Pinetown manufactured the control panels for the submarines. In fact it was more than that, well he was just concentrating on the
15 submarines. They also produced the large switchboards that went into the Corvette programme as a, just an extension of that, and I want to just add as well to something that you mentioned about CASSIDIAN which was previously Eloptro and
20 Zeiss South Africa and now CASSIDIAN, Attack Periscopes, (indistinct) had a history, they were involved in the support of the Daphne submarines prior and early days and that company has gone on to currently becoming involved and operates submarines in various parts of the world in terms of their
25 periscopes, so it's been a successful story, it's been ongoing.

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He also referred to a company known as CAD, CYBICOM Atlas Defence which was brought into being by the Technology Transfer and the DIP programme of the submarines. I just wanted to add to that that during that time with the, I'm
5 talking now the submarine combat suite we had software engineers placed overseas for lengthy periods, years in fact. They participated in the software development of the submarine combat suite.

Part of that Technology Transfer also included,
10 which was quite unique, we were able to negotiate the full transfer of the source code, the actual source code for the combat suite of the submarines which was now in South African hands, plus all the necessary periphery that goes with that, so we had the ability and we got South African people that had the
15 knowledge to be able to deal with that source code. That company has also gone on to produce things like a periscope simulator and (indistinct).

The other company, one of the companies he mentioned was MTU, that name has come up, it used to be a
20 company in Cape Town which was eventually bought out by MTU, the German company, and they were involved as far as the submarine programme you mentioned (indistinct) the capability to support those, the engines in the submarine. On the Corvette side they were also involved, there were MTU
25 engines, main engines and as well as generators on the Patrol

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Corvettes and there was investment, a lot of investment made into that company in Cape Town, in fact the main engines which are quite huge were, some of them were assembled in Cape Town and shipped back to Germany and finally tested over
5 there.

That company has gone on to establish itself in Gauteng and it is one of the companies which services these big mine ore core carrying trucks and so they got involved very strongly in the commercial area and they've now got offices
10 throughout Sub-Saharan Africa as well.

Specifically with the Corvette's I can just mention just a few examples, we had Titanium Industries in Johannesburg who provided the raw material titanium which was part of the exhaust system on the Corvette's. Further that
15 we had a company going in Cape Town that provided the superstructure elements of the Corvette's which were then shipped back to Germany to assemble there.

Just another little note, we had a small company originally located in Durban, they now also have offices in
20 Cape Town, Electrowave, they went across also to gain knowledge in terms of the electrical installation onboard the Corvettes and what actually happened, within a few months of the Corvette's being built the South Africans of this company were given the role of supervision of the installation, they were
25 seen to be already capable and they were given in Germany the

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responsibility for supervising the installation of the electrical installation for the Corvette's.

The combat suite in itself has of course already been spoken about and they were the requirement on the DIP for at least 60% of the combat suite to come from local sources. I won't give you any examples in terms of the helicopter. And maybe I'll just conclude, those are just some examples of, and there are many others, of the successes achieved during the, under the DIP section. I'd like to just conclude with my, the last part of my statement, the last, I'm reading out the last paragraph of my statement and that's on page 8:

"In conclusion as early as the 1990's ARMSCOR has been engaged to execute a Corvette Programme in distinct parts through a contract for overseas ship platforms, contracts for local combat suite systems and a separate contract for Maritime Helicopters. As a result of the new democratic dispensation during 1994/1995 the Corvette Programme which was already underway was deferred to allow The White Paper on Defence and Defence Review. Pursuant to these two processes the decision to change the programme contracting model to a single main contractor model for the ship platforms and combat systems and much needed Corvette

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acquisition reopened in September 1997 as part of the SDPP acquisition”.

Thank you Chair.

CHAIRPERSON: Thank you Mr Smith.

5 ADV LEBALA: Nothing Chairperson from us.

CHAIRPERSON: Thank you. Anybody who wants to cross-examine Mr Smith? Thank you. Any re-examination, but before you start with your re-examination, if you do have any, how long do you think you are going to take?

10 ADV SOLOMON: Chair, Commissioner Musi, 10 minutes.

CHAIRPERSON: 10 minutes?

ADV SOLOMON: No longer.

CHAIRPERSON: We can continue.

ADV SOLOMON: Thank you.

15 **RE-EXAMINATION:**

ADV SOLOMON: Mr Smith, Commissioner Musi put a short while ago during an interchange between yourself and Advocate Lebala the differences between the RFO and the RFI, it was in the context of an objection that was raised concerning the evidence that Advocate Lebala was attempting to lead. In that context he correctly put it that the RFO was a much contained, far more detailed information than the RFI and it was for a different purpose.

20

I know you on a number of occasions this morning indicated that you could explain to the Commission the

25

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differences between the two value systems that were applied in the RFI and the RFO. Could you just in summary form, just the main points, we know that they were similar but they were not identical, could you just highlight some of the differences, I think it will be of some benefit to the Commission.

MR SMITH: Chair, what has already come out I think during recent questions and answers is that these differences in the actual Value System led to the maximum points on the Value System being increased or changed, the scope of which changed. I'm not, I don't have information as to the detail of what gave rise to those changes and those could only have come through as correctly pointed out by Advocate Lebala as a result of that paragraph, we're talking about "Derivation" and correctly pointed out that they were minor, too minor.

There was, however, a note made about the simplification of the logistic system and we don't have the detail of what that simplification entailed but what it did result in, those things did result in a change in the Value System. At least we are aware to the extent that the maximum possible was now 1 080 points as opposed to what it was previously, so there was a change there.

ADV SOLOMON: Sorry, just for the record you're referring to page 129 of the Declassified Documents bundle paragraph 3, is that correct, under "Derivation"?

MR SMITH: That's correct Chair. You see there's a ...

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Thank you for that. Page 129 "Derivation", there's a paragraph 3.a and paragraph 3.b and then there is a paragraph 3.c, it talks about a simplification of logistic evaluation criteria as a result of the confidence in the logistic processes in the shortlisted shipyards, "(i.e. this value system concentrates on the degree of logistic compliance (indistinct) assessment of the confidence in the ship logistic processes)". I can't comment on the detail of that but all that seems to be apparent from the report, this gave rise to the maximum possible points of now 1 080. So, there were some changes, although albeit of not an extensive nature, there were changes.

Then Chair, what's of interest as well is that the, if you look at the military performance on page 172, calculation of the military value and the way it was calculated during the RFI process, and if you recall I, at that stage when being questioned about the RFI I was a, I said that I couldn't see the reasoning behind, and this is on page 8 Chair of the bundle, Declassified bundle and page 172 of the Declassified bundle, if you can recall when it was discussed on page 8 and I was questioned as to the use of the Military Value there I said that essentially the RFI and the process followed in the SDP at this stage was to achieve a shortlist, I wasn't quite sure why the Navy wanted to determine a Figure of Merit at the RFI stage, but it was it was seen, at that stage they calculated a Figure of Merit based upon the ship platform cost, but that was at that

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stage, but in terms of the, if you look at page 162 it was correctly calculated in terms of the total cost as directed probably by SOFCOM. Thank you Chair.

ADV SOLOMON: You said 162, do you mean 172?

5 MR SMITH: Sorry, correction Chair, page 172. You can see the total cost there in that table under paragraph 31. You will see that the figures are quite significantly different to the figures used by the Navy and the ship platform cost calculation, so there's a distinct difference in terms of the
10 figures used in the calculation. I concede it doesn't necessarily change things but it was a difference in the two approaches.

ADV SOLOMON: Then just moving I wanted to deal with one of the issues that I think requires some clarification from
15 yesterday's testimony, and that related to the final approval of the Value System on the 11th of May 1998 I think.

MR SMITH: Yes Chair.

ADV SOLOMON: Now I just wanted to put to you what David Griesel had said in his statement, I'm just going to read it to
20 you because I'm not sure that everyone's got it but it's page 16 paragraph 7.3 of his statement, he says the following:

"None of the received offers in any of the categories ..."

Which would include the Corvette's which you were involved in:

25 *"... were released to any of the programme teams*

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prior to lodging of an approved value system from the Evaluation Team”.

Did you agree with that statement?

MR SMITH: I agree with that statement Chair.

5 ADV SOLOMON: Could you just indicate again for the purposes of the Commission what the purpose of the Value System was.

MR SMITH: The purpose of the Value System was to evaluate and determine the preferred bidder in a nutshell
10 Chair.

ADV SOLOMON: In order for that evaluation to take place was it necessary for the bidders as you call them to have knowledge of the Value System and its content?

MR SMITH: It wasn't necessary for them to have it and
15 as far as I'm aware they certainly didn't get a copy of that Value System Chair.

ADV SOLOMON: So, we know that the Value System would not be distributed to distributed to bidders beforehand. One of the questions that
20 arose yesterday was the fact that I think the French bid had been delivered on the 1st of May and the remaining bids on the 11th which appears to be the same day on which the Value System was approved.

MR SMITH: I recall Chair.

25 ADV SOLOMON: Is there any significance and would it have

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made any difference in respect of the French bid which was submitted on the 1st that the Value System was approved only on the 11th of May?

MR SMITH: No Chair.

5 ADV SOLOMON: Would any prejudice have been suffered by the French bidder by the fact that it, that the Value System was only approved 10 days after it had in fact submitted its bid?

MR SMITH: No Chair.

10 ADV SOLOMON: I've no further questions, thank you Chair and Commissioner Musi.

CHAIRPERSON: Mr Smith, thanks a lot for assisting the Commission, you are now excused.

MR SMITH: Thank you Chair.

15 CHAIRPERSON: Before we adjourn there are one or two things that I want to mention. Firstly we'll only come back next week Wednesday, we'll not be in a position to sit Monday and Tuesday because this venue is not available, and secondly as you are all aware the lifespan of this Commission was expiring on the 4th of November, I think which is this coming Sunday or
20 on Monday, but I have been informed that we have been granted extension up to the end of November next year. Yes, we have been granted extension up to the end of November 2014, so we will continue as usual as from next week Wednesday, and lastly Advocate Lebala before we adjourn are
25 you in a position to advise us about the witness that is going to

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be led on Wednesday and by whom, and whether the summary of the evidence of that witness is available and whether will it be posted on our website timeously.

ADV LEBALA: Chair, if the ... Please permit me to give you “if” and you will appreciate why we are giving you “if” at this stage, noting that the future of this Commission doesn’t rely on “if”. If the witness we are leading on Wednesday is Mr Frits Nortjé his summary Commissioner Musi, Chair, is already posted on the website, but there are uncertainties given the reality that there has been a request that we thought that we accommodate and I would like the ARMSCOR team to join issue here and put themselves on record with regard to their position, I would also invite Ms Cane if she wants to.

We are told that Mr Young has made a request which seems to be changing colour in as far as his request to cross-examine Mr Frits Nortjé is concerned. Now the details are in his email but at the moment it is still private to myself and the Commission’s Secretariat. The long and the short of it is it appears that Mr Young seeks a further extension with regard to his cross-examination of Mr Nortjé, suggesting that he rather prefers that Mr Nortjé be cross-examined after all the ARMSCOR witnesses had testified.

Now we are not here to make an opinion lest we mislead everybody and assail that which ought not be assailed, but we assure you Chair that as at this stage there’s a

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suggestion, which is very matured, from Mphaga SC and Ms Ramagaga that they might proceed with the Air Force witnesses in as far as the acquisition of those products are concerned, the acquisition process of those products are concerned, starting on Wednesday. What does that mean Chair? It means the likelihood of Mr Frits Nortjé testifying might manifest and effectuate at a later stage.

Now I don't have to talk about the consequences of the record, what this does. Now the question to be posed is we, our team, myself and Mr Ngobese, do we lose anything? Nothing. Is the Commission being prejudiced? We still have to wait. We sense that there could be some prejudices, especially the content and the context of the latest email. Now I would like to address you probably on Wednesday morning on this subject after we have applied our mind jointly with the Commission's Secretariat and may the record reflect that this Commission has always encouraged evidence leaders to be independent.

We place it on record that when we say we want to confer with the Commission's Secretariat it's not with a view to influence each other but it's a view to appreciate the outcome that could benefit the Commission. We have already made our decision on this subject. Now there's been a hint from the ARMSCOR team, hence I would like to invite them at this stage so that they should shed light in as far as their position is

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concerned and probably Ms Cane also with her interest which cannot be undermined on behalf of the Department of Defence, should also come in and state their position. Now I'm certain Commissioner Musi and Chair that you do appreciate our position at this stage, hence the "if" Chair, Commissioner Musi.

CHAIRPERSON: Thank you.

ADV SOLOMON: Chair, Commissioner Musi, ARMSCOR's position is as follows; we understood from what we had been advised that Mr Nortjé would follow Mr Smith because they are really two parts of the same whole dealing with the Corvette evidence, so the first point we want to make is really render Mr Smith's evidence rather disjointed if one didn't have the opportunity of juxtaposing his evidence with that of Mr Nortjé.

Second point we want to make is arrangements have already been made, Mr Nortjé is as we talk on a flight from Cape Town, he recently relocated, he's retired and he's just relocated, I think to Mosselbay or somewhere, that part of the world, and it would be very inconvenient, we can use the time fruitfully on Monday and Tuesday with him if the Evidence Leaders want to refresh themselves, they have spoken to him, and prepare quite thoroughly with him, but he would then be available, it would be gravely inconvenient were he to stand over for an unknown period now and the Air Force witnesses who belong to ARMSCOR, but who would give evidence about the acquisition of the aircraft would be interposed, so we would

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say that the two day stand down that we have forced upon us Monday and Tuesday next week should give Mr Young sufficient time to make the arrangements he needs to make to be available to cross-examine Mr Nortjé, either the balance of next week or if he spills over to the following week, and I'm not sure what his reasons are why he can't be here, but Mr Nortjé is here and that was the order that we had been advised would be followed, so it's really very disruptive, particularly now that he's relocated, I'm not sure if he's actually left the employ of ARMSCOR at this point in time or he is, he has retired or is about to retire in the next few days as I understand it. So, I think we must also take into account his convenience and not just Mr Young's convenience.

ADV CANE: Thank you Mr Chair. Having no knowledge of Mr Young's circumstances or his motivation to be accommodated I'm not in a position to give you any views in that regard and I'll have to leave it in the Commission's hands.

CHAIRPERSON: You know, I think to me it appears as if it will be much better and much more convenient even to the Commission if at all once you have started with a particular topic, we finish it before we jump to the next topic. If Mr Nortjé is also going to deal with the Corvette's I think it's only logical that he should be the next witness. Whilst I understand that you know, we needed to accommodate some of the people who needs to cross-examine, and at the same time I think we

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need to take into account the interests of those people that we have already subpoenaed, that we have already told that they are coming to testify and also the convenience of the Commission.

5 I'm not quite sure why Mr Young will not be in a position to start cross-examining on Wednesday if Mr Nortjé is called upon to testify as from Wednesday. In any event if at all Mr Nortjé is going to start testifying on Wednesday I don't think the cross-examination will be on Wednesday, the cross-
10 examination will have to take place probably two, three, four days down the line. I have discussed this with the, you know Judge Musi and our view is that Mr Nortjé must come and testify on Wednesday and Mr Young, if at all he wants to cross-examine, he must make the necessary arrangements. We, this
15 date or this list of witnesses was announced some time ago, it's not something that was announced yesterday, so I think for the sake of everybody who is involved in this matter, including Mr Nortjé himself it will be much more convenient if at all we start with Mr Nortjé on Wednesday morning. Thank you. We'll
20 adjourn and until next week, next week Wednesday. Thank you.

(COMMISSION ADJOURNS)