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

MR DE BEER: I do.

ADV SIBEKO: Thank you Chair, Commissioner Musi. Mr
5 De Beer when we adjourned yesterday we were just about to commence dealing with your part of the statement that seeks to explain the implementation of DIP during the RFI and the RFO phases of the SDPP which appears at page 16 as from paragraph 10, do you recall?

10 MR DE BEER: Commissioners, yes, I do.

ADV SIBEKO: Now you indicated earlier in the statement what documents were contained in the RFI and the RFO's. Could you just as, by way of summary just say that again just to remind us.

15 MR DE BEER: Commissioners, I was not participating in the RFI phase, I have only a result sheet for the RFI phase, so I'm not, I cannot comment on what documentation exactly was contained in the RFI questionnaire, however, in the RFO it is fully discussed, the RFO consisted of six appendices and I'll
20 have to refer to my notes to go through those appendices but it's basically the NIP Programme and requirements in the RFO and then Appendix 2 until I think Appendix 6 is contained, the evaluation and the requirements for the DIP Programme.

ADV SIBEKO: While I accept that you did not participate
25 in the RFI phase just in general perhaps let's divorce the RFI

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process from the SDPP's. If I may rephrase the question, would an RFI be issued with the schedules that will be referred to later in your evidence by example issues dealing with the DIP, the NIP *et cetera*?

5 MR DE BEER: Commissioners, the RFI would definitely contain the requirements but most importantly the thresholds, the guidelines and rules as well as the obligation percentages the RFI would contain that type of information. I am aware that the RFI did contain the NIP Programme as well as the DIP
10 Programme as a guideline.

ADV SIBEKO: Now in paragraph 10.1 of your statement you refer to a summary of the DIP, the NIP score sheets of the RFI phase in respect of the SDPP, is that correct?

MR DE BEER: That is correct.

15 ADV SIBEKO: Now that document is contained in file 1 at page ..., file 2 at page 144. Do you have the document in front of you/

MR DE BEER: I do.

ADV SIBEKO: Could you please identify that document
20 for the record?

MR DE BEER: The document which you are referred to as "BDB9" is The Summary Score Sheet for International Package Proposals, RFI Responses.

ADV SIBEKO: Will you explain to the commissioners the
25 various columns that appear after the list of tenderers

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assessed and the scoring as to how that applies?

MR DE BEER: Commissioners, the second column refers to an IP percentage but it should be stated that is the NIP percentage which is 30% in the column, all the bidders had to confirm that they would comply with this 30%. You will note in this column that right down from the top to the bottom all of the tenderers for the different programmes confirmed that they understand and acknowledge that NIP will be at 30%. The second column states the answer, that is that they understand the NIP Programme and the answer for all the bidders for all the different programmes is "Yes". The third column will indicate the DIP percentage, the DIP percentage was communicated to be 50% of the contract value. In all cases but one all the bidders for the different programmes indicated that they understand that, the very last one is tenderer number 9 from the Russian Federation from Rosvoorouzhnie or MAPO - MIG Aircraft Company stated 30%.

The DIP answer requested was supposed to ask whether you understand that you will commit to a 50% DIP obligation, the answers are yes in all cases except for two. You will note in the last, the seventh last row from the bottom tenderer number 7 Italy, Alenia Aerospazio - AMX Aircraft there is a "Not Applicable" which I cannot declare to you what the not-applicable meant, and then lastly in that same column of the DIP answer you will see from tenderer number 9 Russian

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Federation Rosvoorouzhennie, the answer is no.

The next column is a summary of the combined answer with regards to Industrial Participation combined between NIP and DIP, the answers are yes in all cases but the same two as I already mentioned for tenderer number 7 Alenia Aerospazio the answer is once again "Not Applicable" and then the last row states Rosvoorouzhennie for tenderer number 9 is a no. The rest of the columns are now broken down in the different programmes, the submarines is the next column, then Corvettes, Aircraft, LUH, Maritime Patrol Helicopter and Main Battle Tank which is not the subject of discussion, the last two, nevertheless the answers that you see there in several of the columns are yes in all cases but the last two for the aircraft from tenderer number 7 Italy, Alenia Aerospazio indicated a "Not Applicable" in the case of Industrial Participation and then the last tenderer number 9, Rosvoorouzhennie/MAPO-MIG indicated a no for IP. That is a summary of the RFI responses. So, I can state in summary of this summary that all of the tenderers but two actually conformed and confirmed that they understand the IP Requirement and that they will conform to the IP Requirement.

ADV SIBEKO: I see also under column, the column dealing with the Corvettes that there are two yes's, one in relation to Spain, the Corvettes offer, and the other one in respect of Italy, the Ficantieri, the yes's there have asterisks.

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Are you aware of what that conveys?

MR DE BEER: Commissioners, I've noted that in my preparations for this statement but I could not find in the readings thus far what those asterisks' meant.

5 ADV SIBEKO: Now after the scoring in the RFI, in respect of the RFI we then proceeded to the RFO stage, is that correct?

MR DE BEER: That is correct.

10 ADV SIBEKO: Now these two phases, the RFI and the RFO phases are regulated by certain documents like your instructions and so forth. These are the documents you referred to earlier on that these are dealt with through the assistance of your notes. Is that correct?

MR DE BEER: That is correct.

15 ADV SIBEKO: Now you state in paragraph 10.3 of your statement as it appears on page 1 that:

20 *"During the RFO phase of the SDPP acquisition, in order to give effect to the objectives and principles of DIP, all bidders were provided with a generic set of DIP Guidelines as part of the RFO's".*

And you say these are ... Let's stop there. But you also mentioned that the RFO in respect of the Corvette is the one that is attached as "BDB10". Now how is that RFO different from the other RFO's that were forwarded or provided to the other bidders?

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MR DE BEER: Commissioners, the RFO for the Corvettes differed in the sense that the Corvettes was, that programme had to be split into two main parts, the one, the first part being the platform and the second part being the Combat Suite, so our RFO had to provide for that and we got guidance from the Technical Project Team that we could expect a lower value for Direct Defence Industrial Participation with regards to the platform than what the norm is that we normally use, I must mention what that norm is.

10 For Direct Defence Industrial Participation the DIP Division anticipates from foreign suppliers to commit to at least 20% or up to 30% of the DIP commitment must be made up of activities which falls under the category of Direct DIP, 20% to 30% of the DIP commitment where the balance will then be automatically indirect DIP. That's the norm that we applied.

15 In the case of the Corvettes that norm had to be lowered because of the small size of our ship building industry at the time and the capabilities and capacities that were not there to commit to a higher Direct DIP value. So, in the case of the Corvettes that norm was lowered to 10% of the platform price should be for Direct DIP. The second differentiation is the norm for the Combat Suite which had to be higher than our norm of 20% to 30% of the DIP obligation and that norm was then stated to be 60% of the Combat Suite price should go to Direct DIP.

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ADV SIBEKO: Let's clear this up a bit. Now we know as a principle that the DIP obligation which every bidder must comply with must be the 50% of the contract value, is that right?

5 MR DE BEER: That is correct.

ADV SIBEKO: Now you have now said that in respect of the Corvette there was a split of a 10% and 60%, how does this relate to the 50% DIP obligation that we have been talking about all this time?

10 MR DE BEER: Commissioners, I will have to refer to my notes to answer that question correctly. The, I can state that the 60% for the Combat Suite is higher than the norm of 50% and that was due to the information from the technical team that we had a reasonably well-established capacity and
15 capability in the local defence industry, that's why that norm was lifted to be a higher value of the Combat Suite. We must also note that the total project cost for the Corvette still contained the norm of 50% overall, the cost of the Combat Suite was expected to be at in the region of 1/3 of the total
20 cost, so the 60% commitment required was 60% of 1/3 of the total programme cost.

ADV SIBEKO: Will you be able to better explain the split of ..., perhaps let me rephrase the question. The 10% and 60% in respect of the Corvette Programme, did that constitute a
25 deviation from the norm as we understood in terms of the

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principles that you have testified to yesterday?

MR DE BEER: Commissioners, to the best of my understanding it did not deviate from the norm of 50% DIP for total project cost.

5 ADV SIBEKO: Now would you then like to refresh your memory by referring to your notes in order to explain properly the 10/60% split within the context of the 50% DIP obligation committed to.

CHAIRPERSON: I think that you would probably find on
10 paragraph 13.1.

MR DE BEER: Thank you Commissioner, I could not hear the response?

ADV SIBEKO: The chairperson says you may probably find that in paragraph 13.1 of your statement.

15 MR DE BEER: Commissioners thank you, I'm on page 22 paragraph 13.1. I continue with this statement after the reference to "BDB10".

20 *"This format is generic and was applied as part of all the different RFO's, however, the percentages required for Direct DIP would typically be 20% to 30% of the total DIP offered with the balance being a portion to indirect DIP".*

This is the norm. Now this norm, the part of the norm that state, that wasn't deviated from is 50% overall commitment to
25 the Corvette total project cost, however, the split within that

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50% for Direct DIP was supposed to be 10% for the platform portion and 60% of the Combat Suite price, that was a specific indication but it was not a deviation.

ADV SIBEKO: So the 10/60% split related to the Direct
5 DIP in respect of that platform?

MR DE BEER: That is correct Commissioners.

ADV SIBEKO: Thank you for that clarification. I'm
indebted to you Chair. Now let us refer to "BDB10" which
starts as from page 145 of the file number 1 and I would ask
10 you to identify the document for the record.

MR DE BEER: Commissioners, this document is the
Industrial Participation Requirements, Conditions and
Reference Documents for the Corvettes. The documentation
contained herein refers to Section 4 of the RFO and constitutes
15 the full requirement regarding Industrial Participation for the
Corvettes.

ADV SIBEKO: Would I be correct to say other than the
10/60% split in respect of the Corvettes the other programmes
or other bidders were given a generic document such as the
20 one that one finds at "BDB10"?

MR DE BEER: That is correct.

ADV SIBEKO: And the date of that document is
27 January 1998.

MR DE BEER: That is correct.

25 ADV SIBEKO: Now this document has on that front cover

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the names of J J Van Dyk, C Shaikh and V Ponsamy. Who are these people?

MR DE BEER: Commissioners, Mr J J Van Dyk was the then head of the Defence Industrial Participation Division. C
5 Shaikh refers to the Chief of Acquisitions of the Department of Defence at the time, and V Ponsamy refers to the director, and I stand to be corrected if that's not the case, but it's the director of Industrial Participation of the DTI at the time.

ADV SIBEKO: Now you have set out in paragraphs 10.4
10 and further of your statement at page 17 where you make reference to the various documentation that is provided for in the documents contemplated or under cover of the document that you've just read, is that correct?

MR DE BEER: That is correct.

15 ADV SIBEKO: Right. Can I ask you to turn to page 146 of that document. I see in paragraph 1 of that document... Page 146 of file 1 Commissioner. Now paragraph 1 of the document together with its subparagraph lists the various documents that are, that form part of this whole document as
20 you have described in paragraphs 10.5 of your statement, is that right?

MR DE BEER: That is correct.

ADV SIBEKO: Now the purpose of this document was to
25 inform the various bidders of the principles that were applicable and that would be considered for purposes of their

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bids, is that correct?

MR DE BEER: That is correct.

ADV SIBEKO: Right. Now I would like to refer you to some of the provisions and this document which I would like for you to read into the record and we will deal with as we go along, is that correct, do you have page 146 in front of you?

MR DE BEER: I do.

ADV SIBEKO: Can I ask you to read paragraphs 2 and 3 together with its subparagraphs into the record?

10 MR DE BEER: Commissioners, paragraph 2:

“It is National Policy of the Republic of South Africa that whenever acquisitions have to be made from a foreign country by any State Department or parastatal and the total value of such contract awarded to a foreign contractor, is equal to or more than USD 10 million then the total value of the foreign contract shall be subject to Industrial Participation as described herein”.

Paragraph 3:

20 *“The total obligation shall be at least equal to those percentages as prescribed here under:*

3.1 Defence Industrial Participation (DIP) portion of at least 50% of the total contract price to be administered, managed and controlled by ARMSCOR, under a separate Agreement in

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accordance with the rules and prescriptions of ARMSCOR as per 1.2 hereof.

3.2 Non-Defence Industrial Participation (NIP) portion of at least 50% in accordance with the stipulations of paragraph 9.1 to be administered, managed and controlled by the Department of Trade and Industry (DTI) of South Africa, under a separate Agreement in accordance with the rules and prescriptions of DTI as per 1.1 hereof”.

ADV SIBEKO: So, at the time that the bidders received this document they were made aware of the 50/50% split of the Industrial Participation requirement, contrary to what the policy was in respect of NIP that was 30%.

MR DE BEER: That is correct.

ADV SIBEKO: And as we shall see later in this, as we proceed with this document the bidders were required to confirm their understanding as you have pointed out of this obligation and their commitment to discharge that obligation.

MR DE BEER: That is correct.

ADV SIBEKO: Could you then turn the page to page 147 and on that page may I ask you to read paragraphs 5 and 6 into the record please.

MR DE BEER: Paragraph 5:

“The Bidder shall submit with his proposal two

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5 *separate sets of firm business plans; one in the format of Appendix 4 and the other in accordance with the requirements of the DTI, indicating clearly how he commits himself in meeting his DIP and NIP obligations. These business plans must be finalised by the Bidder respectively with ARMSCOR and DTI, prior to the signing of the Main Agreement (purchase contract)".*

Paragraph 6:

10 *"The Bidder shall also submit with his proposal regarding DIP, a planning and target schedule as Appendix 5, clearly indicating its planning and target dates for discharging its obligation"*

15 ADV SIBEKO: Now in respect of what he has recorded in paragraph 5, the separate business plans as you've pointed out earlier in your testimony were to be evaluated separately, the one for the NIP and the other for the DIP by the different departments, is that correct?

MR DE BEER: That is correct.

20 ADV SIBEKO: Now what was the purpose of the planning target and schedule as contemplated in that section as we will deal with later in Appendix 5?

25 MR DE BEER: The purpose of the Target Planning Schedule is for the bidder to indicate to ARMSCOR with regards to DIP how he plans his milestones for the discharging

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of a DIP obligation which typically runs over seven years. We would have liked to see the bidder discharging on a regular basis over the seven years and not all discharge planned for year number 7 only for instance.

5 ADV SIBEKO: Now paragraph 8 of that document makes provision for the principles that need to be complied with by the bidder with regard to their bid commitments, can I ask you to read paragraphs 8.1 to 8.7 into the record please.

MR DE BEER: Paragraph 8.1:

10 *“The DIP commitment portion is at least 50% as per paragraph 3.1 above. It is expected that at least 10% of the Ship Platform element value and at least 60% of the Combat Suite element value shall represent DIRECT DIP”.*

15 ADV SIBEKO: Can I ask you to pause there. Now this is what is regulated in this document, this is the RFO in respect of the Corvettes, and as you testified earlier the other bidders had an RFO without the 60/10% split, is that correct?

MR DE BEER: That is correct.

20 ADV SIBEKO: So, all other bidders who participated in the Corvette DIP were all aware of this requirement and the need to commit to that requirement?

MR DE BEER: That is correct.

ADV SIBEKO: Could you proceed to 8.2?

25 MR DE BEER: 8.2:

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5 *“The Bidder shall complete Appendix 3 (Defence Industrial Participation Confirmation by Bidder) in full and return together with his proposal. Please note that this document and the required business plan as per Appendix 4 will be used in order to evaluate the DIP proposal and any information that is vague or not supplied will be regarded as non-committal and evaluated accordingly. The total DIP commitment must be fully discharged within 7*

10 *(seven) years from the effective of the DIP AGREEMENT, or as otherwise agreed to by both parties”.*

8.3:

15 *“The DIP-programme shall be subject to a separate DIP AGREEMENT to be signed between ARMSCOR and the successful Bidder, prior to the award of the Main Agreement. This AGREEMENT shall be in accordance with the proforma attached (refer 1.2)”.*

8.4:

20 *“Should a Bidder offer more than the minimum requirements as stipulated by ARMSCOR, then the nett value of such benefits will be taken into consideration for evaluation purposes”.*

8.5:

25 *“For definitions of wording and terms please refer*

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to Article 2 of the proforma DIP AGREEMENT as provided under Appendix 2 hereto”.

8.6:

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“An acceptable bank or sovereign (Government) guarantee in the format of Annexure D to Appendix 2 and in term of Article 6.3 of the proforma DIP AGREEMENT (refer Appendix 2) will be required, prior to the signing of the DIP Agreement.

8.7:

10

“The attention of Bidders are in particular drawn to the requirements of paragraph 6.2.1 of Appendix 6, which deals with critical evaluation elements”.

ADV SIBEKO: Thank you. While you have your, if you put your finger on page 147 can I ask you to turn to page 198 of that same file. You have that document?

15

MR DE BEER: Yes, I do.

ADV SIBEKO: Could you please identify the document for the record?

20

MR DE BEER: Commissioners this is the Defence Industrial Participation Confirmation by Bidder, Appendix 3.

ADV SIBEKO: Is that the document referred to in paragraph 8.2 that you read into the record earlier?

MR DE BEER: That is correct.

25

ADV SIBEKO: Now can I ask you to read paragraphs 1, 2 and 3.1 of page 1 of 98 that we will talk about shortly.

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MR DE BEER: *“I/We, the undersigned hereby state as follows:-*

1. *It is clearly understood by me/us that the total industrial participation obligation is that percentages as described by the Department of Trade and Industry and the Department of Defence, represented by ARMSCOR.*

2. *It is furthermore clearly understood that the total obligation will be split as follows:*

2.1. *Defence Industrial Participation (DIP) portion of at least 50% of the total contract value which portion will be administered by ARMSCOR.*

2.2. *Non-Defence Industrial Participation (NIP) of at least 50% of the total contract value, which portion will be administered and controlled by the Department of Trade and Industry (DTI) of South Africa”.*

3. *With regard to the DIP obligation (refer par 2.1 above), I/We confirm the following:*

3.1 *That the DIP obligation shall be a firm commitment of at least 50% of the total contract value as per par 1 above, which will be split as follows:-...”.*

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ADV SIBEKO: Now that is in paragraph 3.1.1 it refers to “the complete vessel”, is that where the 10% would apply for the Direct DIP and Indirect DIP?

MR DE BEER: Commissioners, in 3.1.1 the Direct DIP
5 portion of the combat suite element shall only, shall be a percentage to be filled in by hand of the value of the Combat Suite, whereas 3.1.2 indicates the Direct DIP portion for the Ship Platform element shall only be a percentage to be filled in by hand of the value of the Ship Platform, so between 3.1.1
10 and 3.1.2 that must constitute a Direct DIP portion for the Corvettes.

ADV SIBEKO: So in respect of the split that you spoke about earlier on, how does that work in this paragraph?

MR DE BEER: Commissioners, as the indication is given
15 to the tenderers that for the Combat Suite under 3.1.1 the expectation was 60% of the value of the Combat Suite and in terms of 3.1.2 the Direct DIP portion of the Ship Platform the expectation was 10% of the contract value or the value of the Ship Platform, so what we would have expected as evaluators
20 is to see the percentages 60% under 3.1.1 and at least 10% under 3.1.2.

ADV SIBEKO: Now what would be the consequence of non-compliance with those provisions?

MR DE BEER: Commissioners, as per the instruction that
25 we have read earlier that would be evaluated accordingly, so if

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there is non-compliance our value system would have indicated what the specific score would be. For instance if a zero percentage was recorded under 3.1.1 the assumption is that zero points would have been allocated at that specific portion of the value system and the same counts for 3.1.2.

ADV SIBEKO: Right. Having dealt with those principles that applied if we go back to 147 and having dealt with those principles or requirements that needed to be complied with by bidders as recorded under paragraph 8 to paragraph ..., or 8.1 to 8.10, can I ask you then to turn to page 149. If you have page 149 I'm going to ask you to read paragraph 10 together with its two subparagraphs into the record.

MR DE BEER: Commissioners, paragraph 10, "General":

10.1 *The Department of Defence in consultation with the Department of Trade and Industry reserve the right to reapportion the respective DIP and NIP obligations, in the eventuality that specific business proposals should justify such a decision".*

10.2 *In the event the respective percentage obligations are interchanged between the Non-Defence and the Defence Industrial Participation programmes, it must be clearly noted and understood that the portion added/transferred will be evaluated strictly in*

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accordance with the respective evaluation prescriptions of the Department of Trade and Industry and/or ARMSCOR. This means that if a Defence related project is reappropriated to the NIP Programme this additional portion will be assessed and evaluated in terms of the Department of Trade and Industry prescriptions and visa versa”.

10

ADV SIBEKO: To your knowledge is there an instance during the evaluation of the various programmes that the issue of the reappropriation of the DIP and NIP scores was affected?

MR DE BEER: Commissioners yes, indeed there were such instances also under this programme.

15

ADV SIBEKO: What would justify in your knowledge the reallocation of the various scores of the DIP to the NIP or the NIP to the DIP as the case may be?

20

MR DE BEER: Commissioners, firstly I must note that I was not at that tier level of moderation, however, what would constitute is the nature of a project, even if it's offered under the NIP or the NIP side could be within the Defence related industry, although offered under NIP and in such a case that may be a good reason why to transfer the project and its evaluation to the DIP side but as per these prescriptions such a project then would have been re-evaluated in terms of the NIP evaluation and value system which is different from the

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NIP evaluation and value system.

ADV SIBEKO: So, if I understand you correctly it is the projects offered that might form the basis of a decision to reallocate points?

5 MR DE BEER: That is correct.

ADV SIBEKO: Now if we go back to your statement we are at page 17 thereof at this point, we will deal as we go along with the various documents that you have listed in paragraph 10.5 and in 10.6 you say you've discussed the DIP
10 Guideline below, save for the NIP Programme. Is that the document contained in paragraph or at least page 168 of file 1?

MR DE BEER: That is correct Commissioners.

ADV SIBEKO: Alright. The documents listed in paragraph 11.1 on page 18 of your statement, what are those?

15 MR DE BEER: Commissioners, paragraph 11.1 refers to the Proforma Memorandum of Defence Industrial Participation Agreement as per Appendix 2 of the DIP Guidelines and then it, the list of contents of such a proforma DIP Agreement is listed from 11.1.1 to 11.1.20.

20 ADV SIBEKO: The document at page 168 that I referred you to in file 1, is that the document you are referring to in paragraph 11.1 of your statement?

MR DE BEER: That is correct.

ADV SIBEKO: And what appears in the subparagraphs of
25 paragraph 11 actually would be the list of the contents page of

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that document, is that right?

MR DE BEER: That is correct.

ADV SIBEKO: Now you say in 11.2 of the statement that you deem it prudent to discuss some of the definitions contained in the guidelines for the benefit of the Commission. Would you like to do that?

MR DE BEER: Commissioners, paragraph 11.2, 11.2.1 starts with the definition of "Agreement". We must take note this is now forming part of the Memorandum of Defence Industrial Participation:

"'AGREEMENT' shall mean the Memorandum of Defence Industrial Participation Agreement concluded between ARMSCOR (DIP Division) and the foreign supplier / seller, including the appendices and attachments thereto as they may be amended from time to time (i.e. the DIP Agreement".

If we turn the page to 19, 11.2.2:

"'DEFENCE RELATED INDUSTRIES IN SOUTH AFRICA' shall mean any defence related company, partnership, association, organisation or other business entity organised or existing under the laws of or doing business in South Africa. This definition will also apply to companies, etc organised or existing after the signature of the AGREEMENT".

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11.2.3:

“DIP’ shall mean Defence Industrial Participation and ‘DIP’ shall cover those activities relating to items manufactured or services rendered by or purchased from ARMSCOR or defence related industries in South Africa, in accordance with the internationally accepted industrial and / or military specifications / standards”.

11.2.4:

“DIP COMMITMENT’ shall mean the total amount of DIP, denominated in the currency as per the MAIN AGREEMENT, which the SELLER undertakes to accomplish under the DIP activities, as defined under Article 4 herein. (Also referred to as ‘DIP Obligation’).”.

ADV SIBEKO: Can I ask you to pause there and just to break this down to us as to what DIP Commitment actually means in relation to, or as presented in the, by each individual bidder in their response to the RFO, especially in relation to the DIP Commitment or the DIP section that they are required to comply with.

MR DE BEER: Commissioners, that would be the DIP Commitment at least at 50% of the contract price as proposed by the bidder, so they should commit to at least 50% of that contract price as proposed.

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ADV SIBEKO: Using the example of a US\$100 million that we alluded to yesterday, could you just explain the concept with regard to that example?

MR DE BEER: Commissioners in such case of a price of
5 US\$100 million the DIP Commitment shall then be at least US\$50 million.

ADV SIBEKO: So, in the course of your evidence where you refer to a DIP Obligation that would be used interchangeably with a DIP Commitment?

10 MR DE BEER: That is correct.

ADV SIBEKO: Right. You can proceed with your DIP Contracts.

MR DE BEER: Commissioners:

15 *“DIP CONTRACTS’ means orders or contracts placed by the SELLER, industries in the SELLER’s country or by industries in other countries as the result of this AGREEMENT, on ARMSCOR, or defence related industries in South Africa, for which the SELLER qualifies for DIP CREDIT in terms of*
20 *the provisions thereof (i.e. a contract concluded between the foreign supplier and local beneficiary”.*

It is to be noted that a DIP contract must not be confused by the DIP agreement.

ADV SIBEKO: Could you just break it down and remind
25 us, we dealt with it, we touched on this aspect during the

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course of your testimony yesterday when you spoke about the umbrella agreement, the Supply Terms, the DIP Terms and the NIP Terms, could you just break it down again in respect of this 11.2.5?

5 MR DE BEER: Commissioners, the umbrella agreement, the Supply Terms and the DIP Terms and the NIP Terms is not equal to a DIP contract, a DIP contract is a contract between the foreign supplier or seller with a local South African Defence related industry or a company, so it's a contract or an
10 agreement between foreign seller and the local company.

ADV SIBEKO: So put simply the DIP contract would relate to that action of executing the DIP Terms?

MR DE BEER: That is correct.

ADV SIBEKO: Right, and then what is a DIP Credit?

15 MR DE BEER: Commissioners, 11.2.6 defines a DIP Credit:

“DIP CREDIT’ shall mean the actual amount for each DIP activity approved by ARMSCOR, to be credit to SELLER,”

20 That is where the definition ends in the agreement. The rest of the narrative in my statement as contained on page 19 is an example to illustrate and with your allowance I would like to illustrate it.

ADV SIBEKO: You may proceed.

25 MR DE BEER: *“A foreign supplier enters into a Main*

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Agreement with ARMSCOR, in so doing attracting a DIP Obligation of ZAR100 000 000.00”.

If that was 50% of the contract value the contract value would be ZAR200 000 000.00.

5 *“The Seller has 7 years to discharge this obligation, by placing DIP Contracts on local industry and transferring technology to a combined value of ZAR100 000 000.00, Each DIP Contract placed, or Technology Transfer successfully completed*
10 *contributes to the discharge of the obligation. ARMSCOR acknowledges the contract value and/or the value of the technology so transferred, upon a valid claim by the Seller with valid supporting*
15 *documentation as per DIP Agreement, excluding any foreign content thereto, in the form of a ‘DIP CREDIT’. If such value as claimed and approved is for instance ZAR10 000 000.00 the DIP Obligation is ‘credited’ with the same amount and the remaining obligation is thus ZAR90 000 000.000”.*

20 ADV SIBEKO: The remaining obligation has to be discharged, as I understand it, within the period of seven years, is that correct?

MR DE BEER: That is correct, or as otherwise will be agreed by the parties. I can clarify that by stating there are
25 amendments from time to time in the main agreement which may

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necessitate, it may be necessary to amend the DIP Agreement accordingly and then the seven years may become eight years or nine years.

ADV SIBEKO: Is it correct that for that to happen the DIP
5 Committee must give its approval for such extensions?

MR DE BEER: That is correct.

ADV SIBEKO: Right, you then deal with Direct Defence
Industrial Participation or Direct DIP.

MR DE BEER: " 'DIRECT DEFENCE INDUSTRIAL
10 PARTICIPATION' or 'DIRECT DIP' shall mean those
activities which are directly related (by
specification) to the products and related
equipment, material or services which are the
subject of the MAIN AGREEMENT, and may include
15 but not be limited to the supply of logistic
engineering software and other related support, and
also the transfer of technology".

ADV SIBEKO: Now how is that different from Indirect
DIP?

20 MR DE BEER: The difference is in the words "which are
the subject of the MAIN AGREEMENT". There may be similar
equipment, material or services which are not the subject of
the main agreement but still defence related which then will
constitute Indirect DIP.

25 ADV SIBEKO: And that Indirect DIP is the one you deal

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with at 11.2.9 is that right?

MR DE BEER: That is correct.

ADV SIBEKO: Now we dealt with Imported Content yesterday, could you just give a full definition of what that is in the context of the DIP Programme?

MR DE BEER: *“IMPORTED CONTENT’ means the duty-free, free-on-board (F.O.B) / free carrier (FCA) value of goods and services of overseas origin incorporated into the products and services to be supplied to the SELLER”.*

What is not stated there but for clarification, it is supplied to the seller by the local entity, the local South African Defence Industry.

ADV SIBEKO: And as you pointed out in your statement, in your evidence yesterday you say the Imported Content does not or is not considered for purposes of claiming DIP Credits, is that correct?

MR DE BEER: That is correct.

ADV SIBEKO: You then deal with Investment and with the definition thereof, could you before we discuss this aspect just read that definition into the record?

MR DE BEER: *“INVESTMENT’ shall mean either of the following:-*

- 1. It can be the amount of equity capital and/or value of capital equipment that the SELLER*

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invests, for purposes of performing its DIP Obligation, by physical transfer from the SELLER's country to South Africa for the Defence Related Industry's benefit.

5 2. *It can also mean the accrued interest differential advantage gained by the local supplier/entity for foreign loan capital granted by the SELLER as part of its DIP Obligation".*

ADV SIBEKO: Now regarding the first part of the
10 definition are you able to give an example of this kind of execution of a DIP Obligation with regard to investments?

MR DE BEER: Commissioners, an example of equity capital and capital equipment transferred to a defence related company in South Africa is the example of Turbomecca France
15 who invested in Denel Air Motor as it was known at the time, for the purposes also of performing its DIP obligations but also for business purposes until today.

ADV SIBEKO: And the issue relating to accrued interest differential advantage that may be gained, how does that
20 normally work with regard to DIP obligations?

MR DE BEER: Commissioner, I will give a layman's definition of what we meant. In simple terms what we meant is if a local company can have access to a bank loan with an interest rate of, let us say 10% whereas the foreign seller can,
25 offering that same loan at 5% interest rate, the difference of

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5% would be granted and would be considered as a DIP credit to the foreign seller.

ADV SIBEKO: You then deal with various other definitions that we dealt with yesterday and that would bring us to page 21 of your statement that deals with Appendix 3 of the Guidelines which we started to deal with earlier in your evidence. Now you state in paragraph 12.1.3 that the Appendix 3 of the Guidelines, which is the DIP Confirmation by Bidder Form states somewhere that no multipliers will be considered by ARMSCOR in determining any form of DIP Credit. Why was this necessary to be included in that appendix?

MR DE BEER: Commissioners, ARMSCOR had experience in offset and countertrade agreements since 1988 as indicated yesterday, so ARMSCOR's Countertrade Division as it was still known, was aware of the use of multipliers and in terms of ARMSCOR procedure at the time which before 1997 was KP-008 and in 1997 after April it was A-PROC-008, in terms of that procedure ARMSCOR did not allow for multipliers, so it was necessary to indicate that and that is in, it's a differentiation between the NIP Programme and the DIP Programme.

ADV SIBEKO: Now can I ask you to then go to Appendix 3 that we started to deal with earlier, you will find this at page 198 of file number 1.

CHAIRPERSON: Advocate Sibeko, you said which page?

ADV SIBEKO: Page 198. And you indicate that each of

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the bidders received a proforma document such as this.

MR DE BEER: That is correct.

ADV SIBEKO: And they were required to accept and/or confirm their DIP Obligations and Undertakings.

5 MR DE BEER: That is correct.

ADV SIBEKO: We had started to read some of the provisions of this document into the record, can I ask you to look at paragraph 199. Page 199, I beg your pardon, and just read some of those clauses, 3.2, 3.3, 3.4, 3.7, 3.8 into the
10 record.

MR DE BEER: Paragraph 3.2:

“That the DIRECT DIP will be executed in accordance with the attached schedule no”

For the seller to complete:

15 *“... of Business Plan containing all business proposals and that this Business Plan is a firm commitment and a true reflection of the facts and will form an integral part of the DIP Agreement”.*

3.3:

20 *“That the DIRECT DIP and INDIRECT DIP obligations will be discharged in accordance with the milestones and target dates as contained in the attached DIP Target Planning Schedule (Appendix 5”.*

25 3.4:

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5

“That the successful execution of the Business Plan is solely my/our responsibility and that any deviation therefrom shall be dealt with in terms of the provisions of Article 6 of the proforma DIP AGREEMENT”.

3.6:

10

“That I/We are committed to complete the DIP obligation as detailed in full in the Business Plan and the DIP Target Planning Schedule as per paragraphs 3.2 and 3.3 above”.

3.7:

“That it is fully understood by me/us or that the DIRECT and the INDIRECT DIP shall not include any civilian/non-defence related projects”.

15

3.8:

“That I/We understand and agree fully that no multipliers whatsoever will be considered by ARMSCOR in determining any form of DIP credit”.

20

ADV SIBEKO: Now if you turn the page to page 200 there is provision made for signature by the bidder or the bidder’s representative there.

MR DE BEER: That is correct.

25

ADV SIBEKO: What happened in the event that a bidder or a bidder’s representative did not append a signature to that document?

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MR DE BEER: Commissioners, that will be regarded as non-committal and will be evaluated as such as non-committal.

ADV SIBEKO: And the allocation of scores with regard to this obligation, what would that translate to?

5 MR DE BEER: That would translate to a score of zero.

ADV SIBEKO: Right. Now that would then bring us to Appendices 4 and 5 of the DIP Guidelines which makes provision for the DIP Business Plans and DIP Target Planning Schedule. Just in general terms before we go into these
10 documents what do these entail?

MR DE BEER: Commissioners, the proforma DIP Business Plan was provided in order to allow the sellers to indicate in a format that can be understood and evaluated by the DIP Division in terms of their commitment the DIP Business Plan.
15 There are various aspects indicated in the Business Plan and that would indicate their knowledge of offsets, countertrade, industrial participation worldwide, their experience and also the risk involved if ARMSCOR would enter into a DIP agreement, those would be deducted from the business plan
20 and then as well, and most importantly the DIP Business Plan will incorporate the DIP activities that are offered in the direct category as well as in the indirect category.

ADV SIBEKO: Now can I ask you to turn to page 201 of file 1 and will you identify that document for the record?

25 MR DE BEER: Page 201 is Proposed Business Plan

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Format for Defence Industrial Participation or DIP.

ADV SIBEKO: Now if you turn the page is that the proforma business plan? If you turn the page there is a heading "Proposed Layout and Schedule of Contents", what do
5 the aspects listed there signify just below that?

MR DE BEER: Commissioners, the sellers could provide an executive summary, to provide a brief overview and scope of the project, also from an Industrial Participation perspective and then the mission and objectives of the foreign seller with
10 its DIP Business Plan, the company structure and resources, organisation resources, track records, that was important for us from a risk point of view although there were no scores attached to the risk profile. Then a description of the projects or product provide full details of each proposal individually, we
15 also refer to these proposals as DIP Activities. Then under E, "NEW VENTURES":

"Provide full details substantiated with financial projections".

If the foreign seller intended to establish new ventures in
20 South Africa. And then lastly General Guidance Notes which is provided for in the document itself.

ADV SIBEKO: Now you mentioned in the course of your evidence that the Business Plan had to list the activities that were required to be carried out. Could you turn to page 203,
25 now you will see on page 203 provision is made for the Scope,

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the Direct DIP and Indirect DIP. Could you just expand on what is contemplated on that page?

CHAIRPERSON: I'm sorry Advocate Sibeko, if you are not going to take more than two minutes to wrap up this point we can continue, otherwise we'll take a tea break now.

ADV SIBEKO: Shall we take the tea break if this is ..., it's a convenient time Chair.

CHAIRPERSON: Okay, then we will break for tea then, thank you.

10 **(Commission adjourns.)**

(Commission reopens.)

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

MR DE BEER: I do.

15 ADV SIBEKO: Thank you Chair. Mr De Beer, when we adjourned we were about to deal with the issues provided for in an executive summary of the proforma business plan. Could you start to deal with that please?

20 MR DE BEER: Commissioners, on page 203 the business plan is divided firstly in two main sections where we would request the foreign supplier to indicate a summary of the direct portion of DIP that is paragraph 2 on page 203:

25 *"The direction portion of the DIP obligation will be directed towards a specific programme in the undermentioned areas, as more fully described in*

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the proposal - ...”

And the reference is for the seller to indicate. Now those undermentioned areas contain amongst others technology transfer, licence manufactures training, manufacture of typical products and integration and testing. In the case of Indirect DIP paragraph 3 a summary of the indirect portion of the DIP obligation will be directed towards the general defence industry as more fully described in references for the seller to provide and will cover such aspects as purchase of mine cleaning equipment, just by example, fuses, frequency hopping radios, electronic warfare upgrade for helicopter-type *et cetera*, so these are examples as provided by the foreign seller as a summary in the business plan.

ADV SIBEKO: Now a few pages later, and in particular at page 206 you find there that there is mention made of the description of the project product. Could you just explain what that entails and how it works?

MR DE BEER: Commissioners, this part of the business plan is the most important part from a scoring and evaluation point of view, this is the part where the foreign bidder will describe each of his projects or products that he intends to contract with local industry which eventually was called by the DIP Division and it's listed there in the block just a little bit lower "AN ACTIVITY", each of the activities. I can just briefly take you through page 206:

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5 *“The following activities are proposed in accordance with the South African Department of Defence’s military strategic and Defence Industrial Participation strategic requirements as well as the direct programme related requirements as contained in the referred to RFO”.*

10 “LIST EACH ACTIVITY SEPARATELY IN DETAIL”, that is important information to the seller that he should do the activity in detail and separately. Activity number 1, for instance the list from (a) to (i) is described and on the next page to number (p). I’m not sure if I should go through each of these points?

ADV SIBEKO: Just by way of example.

15 CHAIRPERSON: I’m sorry Advocate Sibeko, I think it is correct that the witness has asked that, I’m not quite certain if anything turns around the business plans, to me from what I’ve read up to now nothing turns around those business plans and I think that we have, in the previous (indistinct) these are the documents that they were using and I haven’t seen any documentation which seems to challenge that.

20 ADV SIBEKO: Chair, we ... In my recollection of the joint submissions there could be some of the joint submissions I think of Mr Feinstein and Holden. I seem to recall that there are certain issues or certain matters that they take issue with, I will just have to check during one of the adjournments today,

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perhaps we could deal with these issues at a later stage once I have very (indistinct), but the, my recollection seems to be that there are some of the issues that they raise which have a bearing on the business plans that would have been submitted, however, this is a matter that would be dealt with in probably greater detail by the next witness. But if we have recourse again to page 206, the evaluation which is conducted for the DIP Projects also depends largely upon what is offered in a business plan, is that correct?

10 MR DE BEER: Commissioners yes that is correct. From that point of view I must admit that it is extremely important that we have the foundation of these, the list of items that needs to be described in the activity, some of these which we will point out later are scoring points, that's where they can score or if they do not provide enough detail then the score will be affected, so it's very important from that point of view.

15 ADV SIBEKO: Now can you just by way of example just give a description of the kind of activities, especially with regard to the Corvette Project, is this a scoring item for purposes of the evaluation?

20 MR DE BEER: As mentioned some of these headings listed under paragraph (a) down to paragraph (p) on the next page are scoring headings and I do indicate it a little bit later in my statement all of those that are evaluated and carries a score. The rest that doesn't carry a score is evaluated only

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from a viewpoint of risk, whether it can really realise or not. I can identify those if I just page through my statement.

ADV SIBEKO: Right, can you identify the activities that scoring, during the course of your evaluation.

5 MR DE BEER: Commissioners I found the area where I do indicate it in my statement and that's page 34, paragraph 15.6.1 down to paragraph 15.16.9 is for information purposes, the information referring to does this carry a risk or is it a low risk type situation as indicated in the business plan from the
10 seller but if we look at paragraph 15.16.10, the: "Sustainability of the activity" is to be measured in the following way, 5-7 years, it carries a specific score which we will also identify to you a little bit later, or 7-10 years, or 10+years or is a once-off order. That sustainability is a
15 scoring factor and it is part of what we term "sectoral development" and we will identify and define that for you a bit later in the statement.

The 15.16.11 is still part of sectoral development, it's a scoring activity, whether the activity as offered falls
20 within any one of the Defence Strategic areas, for instance is it a combat advantage that the SANDF may gain through an activity offered to a local company or is it combat survivability, will it conform to the environmental needs within the product systems, is it technology and know-how, is it from a detect and
25 counter point of view, sensors, maintain and repair or other.

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These are scoring factors.

Then 15.16.12, the third part of sectoral development and it's a scoring factor, is the level of the activity, is the activity offered within the product system on the highest level or is it one level lower products only or is it subsystem level component or spares levels *et cetera*, or even bound to process materials. Each of these indications carries a specific score and we will define that to you.

If we turn the page 15.16.13, paragraph 15.16.13 on page 35 is for information, indication of some proof of Memorandum of Understanding between the foreign seller and local industry that did not carry a score. 15.16.14 indicates the value of the commitment, it's extremely important that that is indicated. I'm not going to read the full paragraph if you allow, but I indicate in brackets:

“(This is a scoring factor and it forms part of compliance and Conformance”).

Now at this point Commissioners with your allowance I must indicate that DIP evaluated and scored points under two main sections, the first one being sectoral development and the second one being conformance and compliance and that would conclude the definition of the information we subtract from the business plan that carried scores during evaluation.

ADV SIBEKO: Right, having explained those activities that are scoring in terms of the business plan we now go to

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Appendix 6 of the Guidelines that you will find at page 210 of file 1. Can I ask you to identify that document as well?

MR DE BEER: Commissioners, page 210 of ..., it is Appendix 6 of the DIP Guidelines as contained in the RFO, Defence Industrial Participation Evaluation Guidelines as will be applied in respect of the Corvettes.

ADV SIBEKO: Now there are certain ... Paragraph 6 of that appendix which you will find on page 221 deals with the Evaluation Philosophy. Would you like to expand on that, you will find that at page 221.

MR DE BEER: Commissioners, paragraph 5.2 starts off with the "Cost-Effective Local Sourcing of Non-Strategic Equipment". 5.2.1:

"System requirements for which local capabilities exist and for which local sourcing will be considered on a life-cycle cost basis, and will be identified by the Department of Defence and ARMSCOR as part of a routine defence industrial revision process".

These, although it is acknowledged as a type of activity that can be offered it would not score as much points because it is existing, it's not really new business, so but it can carry some score. 5.3 continue with "Non-Strategic Capabilities" which can be an activity but it's on the low-scoring end of the value system. 5.3.1:

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5 *“Some systems are neither strategically critical or economically viable to source locally. In these cases, the local capability should be to understand and support these systems in order to enable informed specification and selection, and to maintain and upgrade them locally with the support of an overseas supplier. Such systems will be identified from time to time by the Department of Defence and ARMSCOR as part of a routine Defence Industrial revision process”.*

10

At paragraph 6 we come to the Evaluation Philosophy which was actually the question asked. I beg your pardon Commissioners. 6.1:

15 *“The DIP element forms one of the evaluation factors (namely the industrial value [economic benefit factor (EBF)] ad devised for the RFO). In some instances the DIP element and the IB element (of DTI) might form a combined factor”.*

I must state that the IP element there refers to the NIP element. IP is actually an acronym that we should reserve for DIP and NIP combined as industrial participation.

20

ADV SIBEKO: Now in what circumstances or under what circumstances do the DIP element and the NIP element form a combined factor for purposes of evaluation?

25 MR DE BEER: Commissioners, the evaluations of DIP

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Business Plans took place in ARMSCOR by ARMSCOR officials and that is separate from the NIP Evaluation, so these two activities of evaluation takes place separate from each other. At the completion of these evaluations and with the final DIP scores available and also the NIP scores available these scores are combined to form one IP Index and that was supposed to be used at the highest level to combine them furthermore as contemplated by Mr Dawie Griesel last year in his evidence as the IP Index combined with the Military Index and the Financial Index, so the reference here “to form a combined factor” is actually referring to the eventual IP Index.

ADV SIBEKO: Now if you turn the page to page 222 you, it is provided at 6.2 that:

*“The DIP evaluation process involves two major components, namely a **critical** and **discriminating** element”.*

Could you expand on that?

MR DE BEER: Commissioners, the critical element is an area which the DIP Division prescribe that the tenderer must comply with:

*“The tenderer **must** comply with all the following critical elements to go through to the next level of evaluation (refer par 6.2.2|”.*

And that level is discriminating elements.

“The critical elements are:

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- *The prescribed DIP percentage to be offered.*
- *The prescribed business plan as a firm commitment.*
- *A bank guarantee to the value of the liquidated damages, as contained in the ‘Confirmation by Bidder’ form, and*
- *A duly signed ‘Confirmation by Bidder’ form”.*

These were contemplated as critical elements.

ADV SIBEKO: Now how are these different from your discriminatory elements and what is the purpose of the discriminatory elements?

MR DE BEER: Commissioners, the critical elements was supposed to carry an answer during evaluation, it’s either yes or no, he did not score points whereas the discriminating elements as indicated and also indicated a bit earlier, those are those elements to be elevated [sic] that were also for scoring purposes and I’ve indicated to you the two main categories for scoring was sectoral development and the other one conformance and compliance. That falls, both of these fall under discriminating elements.

ADV SIBEKO: Now if you go to your statement at page 24 it states at page 24 at 14.4 that:

“Bidders were informed that in order to proceed to the discriminating elements of the evaluation, the scores ...”

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Relating to the mandatory elements had to be, or mandatory elements also had to be complied with. What, could you explain what you mean in that statement?

5 MR DE BEER: Commissioners, at 14.4 I describe that in fact the mandatory elements scored either a 1 which equals the yes as discussed just now, or a zero which equals a no, so in the case of the mandatory the answers should all be 1 or yes, and if not then the mandatory requirements or some of them have not been complied with.

10 ADV SIBEKO: If we use the example of the non-compliance with the Confirmation by Bidder form and there is a bidder who does not comply with the requirements as set out in there, what would be the score in respect of such non-compliance?

15 MR DE BEER: The score would be a zero.

ADV SIBEKO: But it is so that the bid would be evaluated on the basis regardless of the non-compliance with that form?

20 MR DE BEER: Commissioners, the idea was at the time that such a proposal cannot be evaluated further but there must be advice from the divisional head of the division on what to do, but, and if that advice would be to continue then the discriminating elements would also have been evaluated so as to complete the total evaluation of all tenderers in a specific programme or project.

25 ADV SIBEKO: So, once the mandatory elements had been

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complied with the bidder would then proceed to the discriminatory, or the evaluation would then proceed to the evaluation of the discriminatory elements?

MR DE BEER: That is correct.

5 ADV SIBEKO: And what are these discriminating elements?

MR DE BEER: Commissioners on page 24 the discriminatory elements have been categorised into two main sections, firstly Defence Sectoral Development based on the activities offered and then a conformance and compliance element, and the evaluation scoring methodology can be depicted as follows in the diagram, the sectoral development would count for 50% of the DIP score and conformance and compliance would account for the balance of also 50%, so jointly those scores for discriminatory elements will then be added up to a score, the DIP score out of 100.

ADV SIBEKO: Would that be the evaluation methodology that is provided for at paragraph 7 of the guidelines or that appendix at page 225?

20 MR DE BEER: That is correct.

ADV SIBEKO: Yes. Now at paragraph 14.7 you deal with issues of conformance and compliance which you said you will elaborate on later. Would this be the appropriate time to elaborate?

25 MR DE BEER: That is correct.

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ADV SIBEKO: You can proceed.

MR DE BEER: If we page to page 25 Commissioners the evaluation will start off the most important factor for the DIP Division to evaluate is the percentage of Direct DIP that was offered, that is established in accordance with the RFO, the scoring, it's a scoring element and it's part of a conformance and compliance, compliance and conformance. 14.7.2 Will be the percentage Indirect DIP offered established in accordance with the RFO. Now those two in theory should add up to at least 50%.

14.7.3 refers to the discharge period and that would typically have to be 7 years. 14.7.4 would then be sustainability, it's the continuance of such an activity after the discharge period and that also possibly can shed some light on how we evaluated, is that an activity which is once off which is an activity typically in one year or two, up to three years, if the activity is 5-7 years it's still within the discharge period although that would score a higher mark, and if the activity is beyond 7 years up to 10 years, that would score even a higher percentage or score as well, and if the activity is sustainable beyond 10 years that would be the ideal for the DIP Division to achieve although the main aim is to discharge within 7 years.

14.7.5 Is an indication of the resources adjudicated for executing the DIP Project that did not score, was not part of the scoring elements. 14.7.6, the track record in respect of

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timeous completion of the specific bidder in terms of other obligations in other countries. If those indications are favourable then the risk factor of this foreign supplier to also discharge in time in South Africa would have been regarded as low, risk would be low.

14.7.7 the cooperation or joint venture in existence or in process of being signed, that would not have been scored, it's just information. 14.7.8 A memorandum of understanding with local industry. In the ideal conditions all the activities offered with different companies forming part of the South African related industry, in the ideal conditions the foreign bidder would have included in his business plan a MoU with each of those companies, it did not score points although it gave an indication of the risk of the activity actually realised later.

14.7.9 The indications of investments and loans in strategic areas, it's a scoring element and it formed part of compliance and conformance. 14.7.10 the promotion and marketing support of SA Defence Industry, the word "or" is wrong, it must be "of". In brackets it's a scoring element and its part of compliance and conformance. 14.7.11 economic empowerment or affirmative procurement that did not score points although it was viewed as very important and it would have been indicated in the evaluation as such.

ADV SIBEKO: But what do that concept entail of

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economic empowerment or affirmative procurement?

MR DE BEER: Commissioners, the DIP Division endeavoured in 1998 to also attract foreign suppliers towards local companies which, as it was called then, which formed part of historically disadvantaged individuals, ownership by, and we tried to channel some activities into such areas as well, but it must be noted that at the time there were very little companies specifically in the defence related industry that were owned by historically disadvantaged individuals.

10 ADV SIBEKO: Now if you turn the page the rest of the other issues listed under 14.7, these are part of your conformance and compliance is that correct?

MR DE BEER: That is correct.

15 ADV SIBEKO: Right. Now if you turn the page there is mention of Risk Assessment in paragraph 14.8, could you just briefly describe what that entailed?

MR DE BEER: Commissioners, the risk assessment was based on the type of activity and also how it conforms and complies to the requirements of the RFO and then what is important, risk would have been assessed first and foremost does this company have a good international track record with regards to offsets, countertrade *et cetera*, did they perform well, have they before been penalised *et cetera*. Now after that was also established the other factors were also considered by the DIP Division and indicated as

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such, for instance under 14.8.2:

“Some risk elements might be known, others will have to research”.

When we discussed and evaluate the business plan of the foreign bidder we might know about some risk factors and if we don't know about risk factors but we see from the business plan that there may be a risk then such would have been researched and that included the indigenous capacity of the local industry, extremely important. When an activity was offered to a local company but the capacity of the local company does not provide for that activity to be executed then we would indicate that as a risk, there is an example, local ship building industry participating in the Corvette platform building, very little capacity existed.

So, if for instance to make an almost ridiculous example, if it was offered that the platform hull would be manufactured in South Africa in one of the companies we would view that as a high risk element, it wasn't necessary viewed as impossible but it's a high risk element.

Then if we look at indigenous ability, that goes hand in hand with indigenous capacity, it's once again referred to the local company, if in the view of ARMSCOR the local company does not have that ability but an activity was offered and it must perform, then we would indicate that as a low, medium or high risk. Once again the sustainability, 14.8.5.4

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talks about the dependence on the foreign supplier to activate and perform in time for the local, for local reaction. It is a risk factor, especially in the direct DIP environment. If an activity was offered and the local company had to perform within a certain timeframe and from ARMSCOR's view, now that is not only the DIP Division's view, it's also the Technical Division's view and we would seek that view from the Technical Divisions, can this company really perform in time, do they have a track record, then we would have rated that as a low, medium or a high risk.

There were unfortunately examples of such taking place, not only for a scheduling point of view but also from a technical performance point of view.

ADV SIBEKO: Now once the various bidders had submitted their responses to the RFO the DIP Division for its part of evaluating these RFO's was then issued with the evaluation instruction which regulated how the evaluation of each respective bid was to be undertaken, is that correct?

MR DE BEER: That is correct.

ADV SIBEKO: Now you deal with the implementation of DIP during evaluation, the evaluation phase of the SDPP as from page 28 of your statement.

MR DE BEER: That is correct.

ADV SIBEKO: Now in that you under paragraph 15 you deal with the DIP Value Systems and who was responsible for

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what *et cetera, et cetera*. This evaluation instruction, is it the one that appears on page 227 of file 1?

MR DE BEER: That is correct.

5 ADV SIBEKO: Now could you identify that document for the record?

MR DE BEER: Page 227, "DIP Evaluation Instruction Applicable to the DIP Evaluation Teams. Assessments of all DIP Proposals Received in terms of the Package Deal. Request for Best and Final Offer (RFO) for the Supply or Delivery of
10 Corvettes, Submarines, Light Fighter Aircraft, Maritime and Light Utility Helicopters, Main Battle Tanks and the Lead-In Fighter Trainer Aircraft".

ADV SIBEKO: What is that, the date on that document? You will see it at the top ..., the bottom right hand corner.

15 MR DE BEER: The date is indicated as 1998-05-05 meaning the 5th of May of 1998.

ADV SIBEKO: That date corresponds with the timelines for the evaluation of the responses to the RFO as evidence has been led in the Commission, is that correct?

20 MR DE BEER: That is correct. This instruction had to be completed and approved before any tenders could have been received by ARMSCOR.

ADV SIBEKO: Now can I, while you have that page in your hand ask you to have a look at page 259. That document
25 page 259 has written somewhere there in the middle of the

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page "Compiled and Issued by". Could you just read the names of the people who compiled and accepted and approved that document.

MR DE BEER: Commissioners page 259, the document
5 was compiled and issued by J J Van Dyk, head of ARMSCOR's Countertrade Division, it was accepted, endorsed and approved by H D W Esterhuyze, General Manager Aeronautics and Maritime, ARMSCOR and also SOFCOM Chairman, and the
10 second signature C Shaikh, Chief of Acquisition of the Department of Defence, SOFCOM Co-Chairman.

ADV SIBEKO: Could you just in general terms describe what this DIP Value System Instruction regulated?

MR DE BEER: Commissioners, this instruction indicated
15 to the DIP Division, the head of the Division and the evaluation teams exactly the step by step process how to evaluate and how to score the responses received and with specific emphasis also on the activities which formed part of the business plan when it comes to the scoring elements.

ADV SIBEKO: Can I ask you to turn to page 230 of that
20 document where provision is made for the different tiers that would be involved in the evaluation process and ask you to read paragraph 3 into the record.

MR DE BEER: Page 230 paragraph 3, "Organisation":
25 *"The size of the contract warrants a two tier management process in terms whereof Mr Johan J*

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5 *van Dyk, Head of ARMSCOR Countertrade Division
will be the DIP Team Leader, with Mr Chippy
Shaikh, Chief of Acquisition acting as auditor and
moderator for the DIP process. Three evaluation
teams as per par 4 are appointed and will operate in
a parallel fashion. Mr C Shaikh (DoD) and Mr A
Hirsch (DTI) will discuss and agree on the
respective evaluations done by the ARMSCOR
Countertrade and the IP Secretariat of DTI before it
10 is collated by ARMSCOR Countertrade into a
combined input”.*

ADV SIBEKO: Now is it correct that you were the
chairperson of one of the evaluating teams?

MR DE BEER: That is correct.

15 ADV SIBEKO: Now in your experience or participation
through the evaluation process will you confirm that the
evaluation of the various programmes and bids occurred in
terms of what is contemplated in paragraph 3?

MR DE BEER: Commissioners, I can confirm it happened
20 exactly in that fashion.

ADV SIBEKO: If you turn the page to 231...

CHAIRPERSON: I'm sorry Advocate Sibeko, before we pass,
just for my own understanding this paragraph that you have just
read says that Mr C Shaikh and Mr Hirsch will discuss and
25 agree on the respective evaluations done by ARMSCOR

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Countertrade and the IP Secretariat of DTI before it is collated by ARMSCOR Countertrade into a combined input. I just want to understand what does it mean when he said they will discuss because there will be scores from the various groups. Now when it comes to Mr Shaikh and Mr Hirsch, what are they supposed to discuss and what are they supposed to agree on because the results will be coming from the various (indistinct). Can they change the results that came from the various groups and insert their own results or are they duty-bound to comply or to stick to the results which came from the various teams?

MR DE BEER: Commissioners, firstly I did not participate at that level, so my answer would be mostly my understanding of that process. There are words used to describe that process in other documents which speaks about moderation and under moderation one can probably try to understand what they did. Just from reading the paragraph it is supposed that they will take note of these results and then discuss the results with each other and then come to a conclusion, more than that I cannot contemplate.

ADV SIBEKO: Can I ask you to in that same paragraph you will see there that it's recorded that the size of these contracts warranted a two tier management process, what does that mean?

MR DE BEER: Commissioners, the two tiers of this

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evaluation was represented firstly the lowest tier, and we will refer to it as tier number 1, consisted of the specific evaluation teams that will be identified and the second tier will be the higher level tier or tier number 2 which consisted of Mr Van Dyk from a DIP perspective where he would then consolidate the results and enter the scores into an automatic scoring system on a computer.

ADV SIBEKO: Now the scores that were moderated by Mr Van Dyk, where do they come from?

MR DE BEER: Commissioners, the evaluators would in their specific different teams sit down and work through the business plan, specifically the activities as proposed and indicate on a predesigned form and format the areas of the result of their evaluation. Such a score sheet would be a combined score sheet from three evaluators forming one team and they, these three evaluators will sign the score sheet. That score sheet will be handed to the second tier or tier number 2, Mr Van Dyk, from which he will take the results and input the results thereof into the automatic scoring system.

ADV SIBEKO: Now what was the role of Mr Chippy Shaikh in this entire process that you have just described?

MR DE BEER: Commissioners, Mr Shaikh, and I must mention therefore the DTI representative which is indicated here as Mr Allan Hirsch, would only after Mr Van Dyk input the results into the automatic scoring system and print out those

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scores, would then look at these scores and similarly so the NIP would have scored on a system of their own and those results will then be tabled in front of Mr Shaikh and Mr Hirsh to look at, to discuss and to moderate as already stated.

5 ADV SIBEKO: Now before Mr Shaik would discuss with Mr Hirsh, if you look at the fourth line, yes, the fourth line of that paragraph, or perhaps let's start in the middle of the third line, it says:

10 *"Mr Chippy Shaikh, Chief of Acquisition acting as auditor and moderator of the DIP process".*

Now what does that mean?

MR DE BEER: Commissioners, only from my understanding that would mean that Mr Shaik would have seen the DIP evaluations and the results thereof and then would moderate that, he would audit it and moderate it on his own.

ADV SIBEKO: Now...

CHAIRPERSON: Advocate Sibeko before we move from there just you know I'm a bit confused. What does "moderate" mean? You use the term "moderate", what does that mean?

20 MR DE BEER: Commissioner, from my understanding it could mean that the results will be looked at and if there are any deviations from his knowledge, also from this evaluation instruction which the evaluation teams did not pick up he could note that and discuss that with the head of the Countertrade
25 Division to say for instance but did you take this factor into

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account because if I look at the result I cannot see, it seems there may be a problem with this result, so in my view that would have been part of that process.

ADV SIBEKO: Now the process of moderation, is it something that is common within the ARMSCOR Acquisition Process?

MR DE BEER: Commissioners, if I speak now with my other hat meaning a project manager from a technical, from Technical Acquisition, moderation does not take place, the scores are collated and added into an automatic scoring system and the end results will be tabled at an appropriate forum, although we have after the SDPP's, we have also what we call a process assurance division that would look at these scores and perform a role that one could equate to a role of moderation.

ADV SIBEKO: There is also a role of auditor by Mr Shaikh that is contemplated there, wouldn't that, the assurance that you have described now, wouldn't that amount to the auditing of the scores to make sure that the various items that are scoring were properly scored?

MR DE BEER: That is correct.

ADV SIBEKO: Now if that is so that when a person acts as ascertaining or assuring that the scores are properly scored, what would the process of moderation then entail which is different from assurances or auditing of the correctness of the

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scores?

MR DE BEER: Commissioners, in my view there would be no difference in, as discussed, there would be no difference. An auditing role, a moderation role to make sure that the evaluation teams of DIP in fact applied the evaluation instruction correctly and from another point of view to see if the numbers are correctly collated and already also correctly summarised.

ADV SIBEKO: Now I'm not sure if I am able to agree with you when you say the auditing and moderation could perhaps entail the same concept but perhaps we can take...

CHAIRPERSON: Advocate Sibeko, I'm not quite sure whether for you to agree with him or not is giving us his understanding. You might not agree with his understanding, but then I'm sure we are not quite interested to understand, to know what you think, I mean we are more interested in knowing what he thinks and knowledge that he has because this is his statement. If you still want to take the matter up with him you can but then just bear in mind that it is not what you think or what you understand (indistinct) interested to know is what he thinks (indistinct) is and in this matter what did (indistinct) do.

ADV SIBEKO: We will take the matter up with him as we go along because the issue arises later in this statement.

CHAIRPERSON: Thank you. Thank you.

ADV SIBEKO: Yes. Now in page 231 there is a flowchart

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that appears there, would it also explain the process contemplated in the previous paragraph?

MR DE BEER: That is correct Commissioners. That flow diagram just shows on the left hand side the activities in the DTI for the NIP section of the response and on the right hand side the DIP Division and some liaison in between. There would be independent interaction with respective bidders, that is an important point, the DTI would engage with independent interaction with the foreign bidders and so would the ARMSCOR Countertrade Division as well and then a little bit lower in the middle block you will see the results audited, DTI and Chief of Acquisition and then even one lower is a combined input.

Now that combination would be an interaction between the NIP leaders of the team and the DIP head of division whereas the DIP head of division was responsible as we have seen from the instruction to do the actual combination of the results and then the recommendation to a steering committee.

ADV SIBEKO: So, if one has a look at that flow diagram one gets a sense of activities that were conducted by the various tiers in the DIP evaluation process.

MR DE BEER: That is correct.

ADV SIBEKO: Right, that instruction then makes provision for the DIP Evaluation Team, could you just briefly describe what is contemplated there?

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MR DE BEER: Commissioners, this paragraph deals with the appointment of the evaluation teams for the projects and as in paragraph 4.2:

5

“Mr Van Dyk, Head of ARMSCOR’s Countertrade Division will act as overall team leader, coordinator and mentor for all three teams”.

And in paragraph 4.3:

10

“Each evaluation team will have a chairperson who will be responsible for such team’s output. The chairperson will also be an evaluator”.

ADV SIBEKO: The next page records the names of the various members of the teams and the chairpersons thereof. Could you read that into the record?

15

MR DE BEER: Page 232 paragraph 4.4:

“The three evaluation teams will comprise the following members:

4.4.1 Team 1:

(a) Mr J B De Beer – ARMSCOR Countertrade (Chairperson).

20

ADV SIBEKO: That is you?

MR DE BEER: That is correct.

ADV SIBEKO: Right, you can proceed with the rest of the team members and the other teams.

MR DE BEER: Paragraph 4.4.1”

25

(b) Lt-Col C Skinner – Chief of Acquisition

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representative.

(c) Mr D Sole – TMA ARMSCOR”.

Team A Division, that's Technology Management and Analysis Division, and:

5 *(d) Secretary.*

The projects for Team number 1 to be evaluated are the LUH which is the Light Utility Helicopter Project and also the Maritime Helicopter (MH). 4.4.2 is Team number 2, in point (a) Mr D H Glatthaar, ARMSCOR Countertrade will be acting as the chairperson. This is also the person referred to yesterday that in that year of 1998 would be retired by the end of that year.

ADV SIBEKO: No, I beg your pardon, it was a mistake. Continue.

MR DE BEER: Paragraph 4.4.2 (b) Colonel M B Delpont, Chief of Acquisition representative, paragraph (c) Mr L Butler from ARMSCOR Foreign Trade and (d), a secretary. The projects Submarines and MBT, Main Battle Tank, paragraph 4.4.3 Team number 3, paragraph (a) Mr J J Van Dyk, ARMSCOR Countertrade, chairperson. Paragraph (b) Captain (Navy) O v/d Schyff, Chief of Acquisition representative. Paragraph (c) Mr T B R Du Toit, ARMSCOR Foreign Trade, and paragraph (d) is the secretary.

The projects for Team number 3 is the Corvettes, ALFA which is Advanced Light Fighter Aircraft, and LIFT which is Lead-In Fighter Trainer. For this assessment, for this

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assessment exercise Messrs Glatthaar and De Beer will join
Team number 3 which means Mr De Beer from Team number 1
and Mr Glatthaar from Team number 2 would for that project
only also form part of Team number 3. The note just states
5 that:

*“A Secretary for each team will be provided. A
Secretary will not be an evaluator”.*

ADV SIBEKO: Right. The next page, page 233 makes
provision for the responsibilities of team members of the
10 various evaluating teams, I suppose these are common cause
but there is one that is of importance there, is that the results
of the evaluations which are done at that tier must be reached
by a consensus, is that correct?

MR DE BEER: That is correct, it is the last paragraph on
15 page 233.

ADV SIBEKO: Now how is this consensus reached in the
normal course of an evaluation process?

MR DE BEER: Commissioners, the three evaluators would
on their own, but in the same room evaluate activities until
20 each evaluator evaluated all of the activities and he would
score that on a separate score sheet or evaluation sheet. Then
upon completion of the business plan, evaluation thereof, the
three team members under the chairman will then discuss each
point and the different, or the results that were obtained from
25 each of the evaluators. If the results obtained were the same

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for each evaluator then that point would be ticked off so to speak and the next point would be discussed. In case of any differences those differences would be discussed from the three evaluators' different perspectives and a consensus would be reached whereby the other evaluators who might have differed might not have the right information and background to a specific activity, a specific point of an activity and a consensus decision would be reached by the three and then confirmed by the chairman on one evaluation sheet for the whole team. This evaluation sheet would then be signed off by all three evaluators which will then contemplate this team's end result.

ADV SIBEKO: What would then happen to that result?

MR DE BEER: Commissioners that what I have discussed just now was typically the activities within tier number 1. Tier number 1 was then supposed via its chairperson to provide the single scoring sheet per activity and then combine for all the activities to tier number 2 which is Mr J J Van Dyk.

ADV SIBEKO: Now in terms of the flow diagram that you referred to earlier on which appears at 231, where would you locate these activities?

MR DE BEER: Commissioners, page 231, the diagram, on the right hand column under the heading of "DIP" you would see the business plan and the target plan, that refers to the target planning schedule as earlier defined, that business plan would

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be provided to the, to tier number 1, the teams for evaluation, which is done within the confines of ARMSCOR Countertrade, such an evaluation would then be done. "CT" means Countertrade or Countertrade Division, plus the DoD.

5 Now you could see from the compilation of the teams that each team had a representative of the Department of Defence as well, so those three blocks would be regarded as tier number 1 activities and then it's handed over to tier number 2.

10 ADV SIBEKO: Now in that flowchart tier number 2 would be located at the block where it says "Results Audited DTI and Chief Acquisition".

MR DE BEER: That is correct, although a block that is not clearly indicated, and one could see probably half part of the block called "Evaluation" is where the results have been, that's where tier 2 could have started with Mr Van Dyk entering the score sheet results into the automatic scoring system and then hand it over to the, for auditing and moderation as in another paragraph to the DTI and the Chief of Acquisition.

20 ADV SIBEKO: Right. But all of this happens within the environment of the use of a particular value system, so when the team members, different team members evaluating they apply a particular value system, is that right?

MR DE BEER: That is correct, and that particular value system is the one that we are contemplating at the moment.

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ADV SIBEKO: Right. Can I ask you to turn to page 237. At paragraph 6.7 you will find the Value System. Could you explain what that entails.

MR DE BEER: Page 237 paragraph 6.7 “The Value System”:

“The Value System is a collection of aspects and factors which are taken into consideration when assessing the value of DIP proposals received. This process is based on the following: ...”

10 And I assume that follows on page 238.

ADV SIBEKO: Yes, you can continue with that.

MR DE BEER: Page 238 paragraph 6.7.1:

*“**Evaluation Guidelines** containing the framework used to direct all DIP proposals to satisfy defence strategic needs vested in the collective capability and capacity of the local defence industry. The DIP Guidelines are as per the issue O of 27/1/98 applicable to each of the package deal elements”.*

6.7.2:

20 *“Details as contained in the **proforma business plan** (concept as attached to the RFO) to be used as basis to determine what exactly has been offered”.*

6.7.3:

25 *“The information contained in the signed form*

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'Confirmation by Bidder'".

6.7.4:

"DIP policy and procedural issues as contained in the two ARMSCOR documents as derived from the MoD DIP Policy of 20/5/97), namely A-POL-6100, DIP Policy dated 1/4/97, A PRAC-008, DIP PROCEDURE dated 1/4/97".

6.7.5:

"Proforma DIP Agreement as attached to the RFO;

10 6.7.6

"Target Planning Schedule (as attached to the RFO)

6.7.7, this is a very important paragraph, not that the others are not important:

15 ***"A weighting methodology comprising of the following scores: -"***

0 for non-compliance/non-conformance. 1-4, so it could be 1 or 2 or 3 or 4 when it, the indication in the business plan falls short of expectations. A point 5 will be scored, and that is the norm of the proposals just meeting expectations. A score of 6 or 7 or 8 or 9 or 10 when the expectations are exceeded or conform to highly critical norms and the asterisk indicating in the paragraph below:

25 ***("Certain elements of critical value have been awarded a specific weight in accordance with its***

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importance - refer par 7 for details. This is done in order to acknowledge those bidders who came the closest to what has been ...”

And I will continue on page 239:

5 “... required and to distinguish between real value added proposals and elementary type projects)”.

ADV SIBEKO: Now in terms of the weighting methodology that was used or applied the maximum score that could be given to a bidder was 10?

10 MR DE BEER: That is correct.

ADV SIBEKO: And for non-compliance they get zero?

MR DE BEER: That is correct.

ADV SIBEKO: Right, now the next page deal with various other factors that form part of the evaluation principle, is that correct? Now if you turn to page 240, that page provides for Evaluation Aspects and Weights, could you just explain how that table or how that works in relation to the tables that are given there as examples?

MR DE BEER: Commissioners paragraph 7 states
20 “Evaluation Aspects and Weights”, and that was used for the assessment of the business plans and it also describes the evaluation methodology in detailed terms. In paragraph 7.1 “Conformance and Compliance” is described here below and I indicated to the Commissioners that conformance and
25 compliance was in scoring elements and it counted for half of

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the total DIP score, so the weight was 50%. The details are described and I would, I can go into the details depending on the question.

ADV SIBEKO: Now later in your evidence we'll deal with, specifically with some of the evaluation results that were, formed part of the process that you were engaged in, but if you look at, you go to paragraph or page 30 of your statement, in paragraph 15.8 you refer to a flow diagram that seeks to summarise the entire process that was followed in the bid evaluation. Could you just explain how that process works in terms of that diagram which appears on page 31.

MR DE BEER: Commissioners, on page 30 paragraph 15.8 reference is made to the flow diagram on the next page which will be page 31. This is the same diagram that we've discussed in terms of the evaluation description and if we page over to page 31 we will see the heading of the diagram is the "ARMSCOR and DTI Interaction and Liaison". The RFO Response is the start of the process of evaluation in the middle of the diagram. Then there are two columns, a left hand column for NIP Offers and a right hand column for DIP Offers. If we go down the right hand column DIP Offers which consisted mainly of a Business Plan and a Target Planning Schedule or a Target Plan as shortened in the block, that would be, the DIP offers would be distributed to the evaluation teams as described, and the evaluation teams, that is tier 1, would then

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perform the evaluations starting from the block with the wording "Business Plan and Target Plan". Then the DIP Division would liaise with the respective bidders to make sure that the RFO document is complete and the actual evaluation for the three teams take place in the block indicated as Evaluation by DIP and DoD. That is typically a tier 1 activity although we have not specifically indicated the tier 2 activity in terms of this block diagram, so part of tier 2 activity is in that block of evaluation and then tier 2 continues to overflow to the block in the middle of the diagram, which indicates "Results Audited DTI Mr Allan Hirsch and the Chief of Acquisitions Mr S Shaikh".

That would be more on the level of the tier 2 and then there is an arrow indicated to the right where that results of the auditing would come back to the DIP Division for the DIP Index, it's a tier 2 activity, approval by the DIP Committee, the DIP Committee is chaired by the Head of the DIP Division, and then that would go into a block for the combined input between ARMSCOR and the DTI for the NIP Index, the combined input would be done in that block, it's a tier 2 activity and the actual work is done by the Head of the Countertrade Division of ARMSCOR and that submission will then be made in the form of an Industrial Index to a Steering Committee as a recommendation.

ADV SIBEKO: Now we have in terms of the processes and

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documents applicable within the DIP Division in relation to the evaluation of the SDPP's set up the evaluating teams, we have now understood the principles that had to be applied, now we must go to work and start looking at some of the bids that were received and evaluated by these teams. Chair, would this be a convenient time to take the lunch adjournment?

CHAIRPERSON: Thank you, then we'll come back at 14h00.

ADV SIBEKO: Thank you.

(Commission adjourns.)

10 **(Commission reopens.)**

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

MR DE BEER: I do.

CHAIRPERSON: Thank you.

15 ADV SIBEKO: Mr De Beer, the responses to the RFO's have now been received and the various DIP teams have to do their work. You have the section of the documents that the different evaluating team members have regard to. Now you mentioned earlier in your evidence that in respect of the process followed the team will first look at compliance by the different bidders with the mandatory elements as prescribed in the principles, is that right?

20 MR DE BEER: That is correct.

ADV SIBEKO: Now in the course of doing your work certain apparent deviations on non-compliance by the bidders

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were observed. Now I see at paragraph 15.3 of your statement you deal with some of these issues as you introduce them. Could you just briefly give a summary of...

5 CHAIRPERSON: Advocate Sibeko, which page, which page are you referring to?

ADV SIBEKO: Paragraph 15.3 of the statement at page 32. I beg your pardon, it's 15.13. Yes, could you just briefly set out what is contained there?

10 MR DE BEER: Commissioners, on page 32 of my statement paragraph 15.13 we talk about the mandatory elements or the critical elements that first had to be confirmed. Now it appeared in general terms that all the responses for the bidders disqualified themselves.

15 ADV SIBEKO: Could you just stop there and remind us what these critical elements or criteria are.

MR DE BEER: Commissioners, I will just refer to my notes to find those critical criteria.

ADV SIBEKO: If you turn to page 23 of your statement you will find those mandatory elements at paragraph 14.2.

20 MR DE BEER: Commissioners, page 23 paragraph 14.2:
“The mandatory requirements or critical elements which were to be completed, signed and returned with their respective offers in order to go through to the next level of evaluation ...”.

25 Which is the discriminatory elements, were as follows:-

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14.2.1 *The prescribed DIP percentage (50%) to be offered.*

14.2.2 *The prescribed Business Plan as a firm commitment.*

5 14.2.3 *A bank guarantee to the value of the liquidated damages as contained in the confirmation by Bidder Form and the duly signed "**Confirmation by Bidder**" form".*

That concludes the mandatory elements.

10 ADV SIBEKO: Now you state in that paragraph 15.13 that the, from the responses by the respective bidders it appeared that they had disqualified themselves. Could you briefly set out in what respect you are saying they had disqualified themselves.

15 MR DE BEER: Commissioners, it was noted that in some of the responses the form which is called the Confirmation by Bidder form as per 14.2.3 on page 23 was not signed. In other cases the prescribed DIP percentage of 50% as per 14.2.1 was not conformed to. The DIP percentage offered was less than
20 the 50%.

ADV SIBEKO: Now perhaps to assist you in dealing with this matter the non-compliance was in respect of various of the bidders that we can identify and these are identified at page 33 of your statement in the table that has been compiled there and
25 the respect in which they had not complied. Could you deal

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with those just briefly?

MR DE BEER: Commissioners, on page 33 paragraph 15.15 there is a table, the table is a summary of the projects in terms of which certain bidders did not comply with the mandatory requirements, that's the middle column and then 5 third and last column indicate the type of non-compliance in a summary format. If we go through from the Project column right through to the Bidder and the Non-Compliance, the first problem was with the Corvettes from the German Frigate 10 Consortium, the GFC, they did not comply with the 50% DIP requirement in respect of the Confirmation by Bidder form. This form was, did not indicate 50% requirement has been met. Secondly it did not comply with the 60% requirement for the Combat Suite and thirdly it did not supply a DIP Business Plan 15 and a target planning schedule and number of smaller other deviations were also noted.

The second row indicates once again from the Corvettes another bidder, the DCN International from France did not comply with the 60% requirement for the Combat Suite 20 and the lack of supporting business plan, they claim problems experienced with African Defence Systems in the signing of a memorandum of understanding.

Then once again the project Corvettes the supplier or the bidder, the GEC from the UK did not comply in the 25 following respects; reference was made to a non-existing

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proactive agreement which is not mandatory but it is a non-compliance issue, secondly the GEC decided to alter paragraph 3.9 of the prescribed Confirmation by Bidder form which has precedence as indicated in this Confirmation by Bidder form in case of conflicting statements. The idea was that this Confirmation by Bidder form cannot be altered by the bidders except in the places where indicated that the bidder should indicate his percentage of commitment for total to DIP and also the percentages for Direct DIP and for Indirect DIP. And then lastly they did not comply with the 60% commitment for the Combat Suite.

If we move on to the Submarine Project the German Submarine Consortium or the GSC did not comply with the 50% DIP requirement, they confirmed only 19%. Secondly the Confirmation by Bidder form was not submitted with the tender, it was supplied after closure of the tender date. No detailed business plans and then lastly just information, it was indicated In the supplied Business Plan that a large number of memorandums of understanding with local partners were submitted and the GEC confirmed they will exceed the initial commitment once contracting is in place. This indicated a positive intent although it was nothing more than intent.

Then lastly once again the Submarine Project from a supplier from Sweden or a bidder Kockums, did not supply a signed Confirmation by Bidder form, subsequently the required

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percentages and split between Direct DIP and Indirect DIP and the target planning schedule and the guarantee could not be verified.

ADV SIBEKO: Now as I understand your evidence earlier
5 you indicate that in terms of your understanding of the principles as prescribed non-compliance with the mandatory elements would not enable a bidder to be considered in respect of the discriminating elements, is that right?

MR DE BEER: That is correct.

10 ADV SIBEKO: Now what happened in respect of the bidders that are referred to in paragraph, in page 33 after these instances of non-compliance were discovered?

MR DE BEER: Commissioners, the Evaluation Team indicated the problems as discussed and they did not continue
15 with the further evaluation of these business plans and referred it to the second tier as defined before lunch, the second tier being the head of the division Mr Van Dyk who then put these matters in a letter addressed to ARMSCOR's Internal Legal Division and a legal opinion was obtained whether we should
20 continue or whatever other remedy is provided by the ARMSCOR Internal Legal Team.

ADV SIBEKO: Now can I ask you to turn to page 368 of the, of file number 1. Could you just identify that document?

MR DE BEER: Commissioners, page 268 is the
25 Memorandum dated 18 May 1998 to Mr E Phiyega, the Company

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Secretary that is of ARMSCOR from Johan J Van Dyk. The heading is "Legal Opinion RE Submarine Proposal: German Submarine Consortium (GSC)".

5 ADV SIBEKO: Could you just read that letter into the record please.

MR DE BEER: The memorandum reads as follows:

10 *"It is the Submarine DIP Evaluation Team's contention that the GSC did not comply with the DIP requirements as contained in the Submarine RFO. Refer the statement attached. I also include for your perusal the copy of:*

- *The DIP requirements to the RFO.*
- *The official amendments issued.*
- *The complete copy of GSC's business proposal.*

15 *We are please ...".*

The construction of the sentence is not correct, nevertheless:

20 *"We are please requiring a legal opinion, whether this Bidder did or didn't comply with our tender prescriptions, before we proceed with our recommendations. Thanking you anticipation".*

Signed by Mr Van Dyk.

25 ADV SIBEKO: Now under cover of that letter there is a statement which appears to be made by members of the team that was responsible for the evaluation. Could I ask you to turn to page 269 and 270. If I could just ask you to have a

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quick look at page 269, would you confirm that that is the statement setting out the non-compliance by GSC as described in the letter prepared by Van Dyk?

MR DE BEER: Commissioners, page 269, I can confirm
5 this is the statement made by the Evaluation Team.

ADV SIBEKO: The next page 270, three names appear there with the signatures, would those be the team members of the Submarine Team?

MR DE BEER: Commissioners, the three names Mr L
10 Butler, M Delpont and Mr D H Glatthaar formed the team members that compiled this statement.

ADV SIBEKO: Now if you turn to page 271, that is another memorandum from Mr Johan J Van Dyk to Mr E Phiyega as you initially stated and this is in respect of the non-
15 compliance by DCM International, is that correct?

MR DE BEER: That is correct.

ADV SIBEKO: Can I ask you to read the first two paragraphs of that letter into the record please.

MR DE BEER: Commissioners, page 271 Memorandum
20 addressed to Mr E Phiyega, the memorandum reads as follows:

*“The Corvette DIP Evaluation Team is of the opinion that DCN International did not fully comply with our DIP prescriptions regarding the providing of a business plan for the 60% Direct DIP requirement
25 on the Combat Suite. A copy of the Corvette RFO is*

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already in your possession as part of my GFC enquiry dated 15 May 1998. DCN claimed that they had problems in getting ADS to sign an MoU with them, yet Bazàn, GEC Marconi and GFC have all signed MoU's with ADS (ADS is by tender prescription the appointed Combat Suite Coordinating Company in SA). A copy of the DCN Confirmation by Bidder is attached for your perusal".

10 ADV SIBEKO: Thank you. If I can ask you to turn your attention to pages 272 up to 274, will you confirm that that appears to be another memorandum prepared by Mr Johan Van Dyk and Mr Phiyega, but this one dealing with the Corvette DIP Proposal by the German Frigate Consortium?

15 MR DE BEER: I confirm this is a similar memorandum, page 272, with regards to the German Frigate Consortium.

ADV SIBEKO: At page 273 the instruction to Mr Phiyega is set out. May I ask you to read that into the record in full please.

20 MR DE BEER: Commissioners, for the record the page 273 is in fact a memorandum addressed to Mr Phiyega with regards to the Corvette offer made by the GEC Marine.

ADV SIBEKO: I beg your pardon, could you read that into the record as well.

25 MR DE BEER: This memorandum on page 273 reads as

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follows:

“The Corvette DIP Evaluation Team is of the opinion that GEC Marine might not have fully complied with our DIP prescriptions as contained in the Corvette RFO. The issues of concern are:

- *Their reference to a proactive agreement that does not exist as yet and which was not a tender requirement.*
- *Their redrafting of the Bidders Confirmation and specifically the omission of our required 3.9, replacing it with a cross-reference to 3.2.2 in their business plan executive summary.*
- *Their whole approach towards making what seems a commitment but simultaneously qualifying it with a no guarantee or condition.*
- *The fact that the DIP requirements specifically require that a business plan for the 60% direct on the ship’s Combat Suite must be furnished was ignored, although GFC stated that they will do the 60% but again in their paragraph 3.2.2 qualify it. (They claim to have been under the impression that the Combat Suite element will be a local contract, yet all the three the other bidders seem to have*

indicated otherwise)".

The memorandum continues on page 274:

"A copy of the relevant documentation is attached for your perusal".

5 ADV SIBEKO: Now if I could just draw your attention back to page 272, the heading of that memorandum you will see is Corvette DIP Proposal German Frigate Consortium (GFC). Now if you read that second last line of that letter, if I may ask you to do that please, into the record.

10 MR DE BEER: Commissioners, page 272, a memorandum, the second last sentence reads:

"It is my contention that GFC did not comply with the DIP requirements".

ADV SIBEKO: Now once an opinion or advice was sought
15 from the Company Secretary on what further course of action had to be taken regarding being had to the various instances of non-compliance, what happened then?

MR DE BEER: Commissioners, a legal opinion was
20 obtained, the summary of the legal opinion in that in all these cases the suppliers did not meet the DIP requirements, it was not indicated specifically what the course of action should be but the course of action taken by the head of the division, and that's a tier number 2 or second tier action that was taken, was to address these problems to the next higher level and that was
25 what is commonly known as the SOFCOM.

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ADV SIBEKO: Now the opinion, legal opinion that you are referring to, can I ask you to turn to page 260 of the file 1. Will you confirm that that is the legal opinion that was received?

5 MR DE BEER: Commissioners, page 260 up to page 267 contains the full legal opinion obtained.

ADV SIBEKO: Now without reading the opinion you indicated that that opinion confirmed the non-compliance by the various bidders in the manner that you described earlier in your
10 testimony as reflected in the table at page 33 of your statement.

MR DE BEER: That is correct.

ADV SIBEKO: Now you have indicated that Mr Van Dyk then took the matter to the upper tier, which is SOFCOM, for
15 consideration, is that correct?

MR DE BEER: That is correct.

ADV SIBEKO: What was the response received to the, received from the SOFCOM as you understand?

MR DE BEER: Commissioners, from my understanding the
20 guidance received from the SOFCOM to Mr Van Dyk was to continue with the discriminating factors evaluation by the DIP Evaluation teams in all of these cases.

ADV SIBEKO: Perhaps before we get to that point can I ask you to turn to page 277 of File 1. 277. You are familiar
25 with the document, is that correct?

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MR DE BEER: That is correct.

ADV SIBEKO: Could you just summarise to the Commissioners what that document entails?

MR DE BEER: Commissioners, on page 277 in summary it
5 seems that the deviations were already reported to the SOFCOM and at the instruction of the SOFCOM Chair on the 20th of May 1998 the Countertrade Division embarked on additional information gathering exercise and this memorandum also serves to indicate that, less than 1.3:

10 *“In order to create visibility of the actions taken to legalise everybody’s participation ...”*

“Everybody” referring to the bidders:

“... a matrix schedule as per Annexure ‘A’ has been drawn up for each of the contenders, clearly showing the deviations from requirements, additional info requested to correct these and the result of the responses received”.

15

ADV SIBEKO: And I know you were not part of the SOFCOM or you were not present when the decision was taken
20 to allow the non-compliant bidders to proceed to be evaluated with regard to the discriminatory elements but in your view why were these bidders not disqualified as one would have expected them to be disqualified?

MR DE BEER: Commissioners, it is only my own
25 understanding and as far as I understand it was required that

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the competition and the evaluation for all the bidders would be performed so as to compare the results and to really determine who offered the best solution but also who offered the best specific DIP business plan, it was allowed to continue.

5 ADV SIBEKO: Now we'll deal with these matters as we proceed with your evidence but once the DIP evaluating teams were then allowed to proceed with the evaluation of the DIP proposals you then proceeded to deal with these and produced DIP evaluation results.

10 MR DE BEER: That is correct Commissioners, although I must state in all the cases with deviations, as mentioned, I was not personally part of those evaluation teams.

ADV SIBEKO: But it is your understanding that that is what generally happened is that correct?

15 MR DE BEER: That is correct.

ADV SIBEKO: Now if I can ask you to go to page 35 of your statement...

CHAIRPERSON: I'm sorry Advocate Sibeko before we go to page 35 I just want to point out that in 15.15 on page 33 there
20 seems to be a typographical error, the third line should probably read "dated 20 May 1998" or 1997.

ADV SIBEKO: Thank you Chair, that seems to be correct.

COMMISSIONER MUSI: 1998.

CHAIRPERSON: Yes.

25 ADV SIBEKO: I shall refer the matter to the person who

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drafted the statement Chair. You were asked to explain to us how these DIP Evaluation Results were produced.

MR DE BEER: Commissioners, in the middle of page 35 the DIP Evaluation Results is summarised and is described in summary format. The DIP Evaluation Results is now referring specifically to the discriminatory elements. We have dealt with the mandatories and with the deviations as experienced. In 15.17 reference is made to 15.16.10, to 15.16.14 which represents the measurable data. You may recall Commissioners that I've indicated in brackets it's the scoring evaluation result and other of those, those paragraphs it is not indicated as scoring but indicated as information, so we specifically now will deal with those elements that are scoring elements for discriminatory elements and scored. That's the measurable data.

We also state in 15.17 that the results as scored is, was then uploaded into an automated software programme, the programme Quattro Pro was used to write a small programme to automate the scoring of the different bids. In paragraph 15.18 it is stated that:

"The original DIP evaluations were researched in preparation for this statement".

We will deal with this in detail Commissioners, although we must note at this point that during my research it was found that the averaging of scores on tier 2 and the normalisation

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throughout the programmes was erroneously calculated and this error in calculation was applied consistently in respect of, the words is missing, but in respect of all the programmes, the LIFT, the LUH, the ALFA, the Corvettes and the Submarines.

5 ADV SIBEKO: Now what do you mean when you say “the normalisation was conducted” or first the averaging of scores which was flawed”, what do you mean by that?

MR DE BEER: Commissioners I will explain, but we can also explain by an example, that is one of the annexures. By
10 “averaging” in general terms what we mean is we have nine lines for all the programmes to which scored, which was the scoring element where you can indicate a score out of 10, either a zero or as indicated earlier, up to 10. Now from the nine lines these nine lines does not have equal weights, two of
15 the nine lines only counts for a maximum total of five points whereas the other seven lines of the nine lines has got a total points per line of 10, so obviously it does not carry the same weight.

Now what happens in tier 2 in the calculation of the
20 score, the total of nine lines were used to average the score, in other words if a score of 10 was observed and counted the number of 10, the score was divided by the number 9, referring to the number of lines, which is wrong, it should have been divided by the total maximum score that can be obtained, which
25 then takes into account the different weighting of the lines. So

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that was the first error, this error I refer to generally as the averaging error.

The other error as indicated with the words “normalisation” will also be explained by a detailed example that is included but what basically happened, normalisation refers to a mathematical process where several scores are compared with each other, taking the highest score as the norm, therefore reference to the term “normalisation”, and all the other scores are expressed in relation to the highest score and that is then further expressed in layman’s terms as a percentage, so it is in relation to, the method used at tier 2 of normalising the results was incorrectly applied.

ADV SIBEKO: Now before we deal with those aspects of your evidence relating to normalisation and the averaging you mentioned in paragraph 15.16 of your statement where you make reference to the summaries of the completed forms of the bidders as found during the course of your research, is that correct?

MR DE BEER: That is correct.

ADV SIBEKO: Can I ask you to...

CHAIRPERSON: I’m sorry Advocate Sibeko, before the witness goes further there is a question that I want to put to you just so that one can understand his evidence as we go along. You spoke about the few errors that were made and which you discovered. Did the errors make any difference to

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the rankings of the various bidders?

MR DE BEER: Commissioners, the errors, both from averaging and from normalisation did not make any difference in the eventual, in the preferred bidders, in the scores of the eventual preferred bidders.

CHAIRPERSON: Thank you. Thank you.

ADV SIBEKO: We will deal with that aspect Chair as we deal with the various assessment results, but if, once again I ask you to turn to page 308 of file 3 and if you could identify that document for the record and perhaps just briefly state what its contents are.

MR DE BEER: Commissioners, page 308 is the front page of the Defence Industrial Participation Assessment Results for the Defence Package Deal dated 26 June 1998.

ADV SIBEKO: Now what does that entire document contain as from that page going right up to page 367?

MR DE BEER: Commissioners, with the help of the document page 309, the List of Contents, is the results for the evaluation of all the tenders received, number 1 is the Main Battle Tank, not the aim of the discussion. Number 2 contains the results for the submarines. Number 3, results for ALFA or the Advanced Light Fighter Aircraft. Number 4 is the LUH, the Light Utility Helicopter DIP results, number 5 Maritime Helicopter, not to discuss, and number 6 for the Corvette, and number 7 for the LIFT or the Lead-In Fighter Trainer, the final

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DIP recommendations.

ADV SIBEKO: Now this deals with the various projects that were part of the acquisitions, is that correct?

MR DE BEER: That is correct.

5 ADV SIBEKO: If you turn to page 315 of that document, could you just explain what that is?

MR DE BEER: Commissioners, page 315 was referred to as the so-called Annexure "D" and it contained the Final DIP Recommendation Schedule for the Project: Supply of 4
10 Submarines to the SA Navy. This is a summary sheet of the scoring results for the project, the Submarine Project. It contains the results of four contenders or four bidders, firstly from Italy, Fincantieri, secondly from France from DCNI, thirdly from Germany the GSC and lastly from Sweden Kockums.

15 ADV SIBEKO: Now there are various columns that contain certain values, could you also describe, explain what those mean.

MR DE BEER: Commissioners, if we go in the second column from the left with the heading "Factors" 7.1.1 down to
20 7.1.11, this is a summary and an extract from our value system and this is a summary of the scores to the right, all the columns to the right. I will briefly deal with all of these. 7.1.2 is a scoring element and that is the total value of DIP which was measured to be 50%. In the case of all the contenders you
25 can see the different percentages in the columns indicated

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accordingly. For Italy the commitment value as evaluated was 50% exactly. The second column or the next column for France indicated a commitment to 28% of the contract value. In the same row for Germany 19% of the cost of the submarines was indicated and obliged as a DIP obligation. The last column for Sweden indicated that Kockums committed themselves to 50% of the contract value. That deals with row number 7.1.2.

If we go further down 7.1.3 the total value of Direct DIP which was supposed to be at least 20%, in the case of Italy 39% was indicated and evaluated, case of France 5%, in the case of Germany 7%, in the case of Sweden 14%. You will note from these results that the norm was 20% and only in Italy from Fincantieri in fact conformed to that.

Row number 7.1.4 is yet again a scoring element, Local Industry Participation including SMME which is small, medium and micro enterprises and training, development *et cetera*. There was not a specific norm indicated in the summary sheet. Italy committed to 34% of their commitment value, not the price of the contract but the commitment value, 34% thereof, and then in the case of France DCNI 71%, in the case of Germany, the GSC, 100%, in the case of Sweden Kockums 28%.

If we move down to the next row 7.1.5 the Value of Technology Transfer offered by these four contenders or bidders which includes R&D, and R&D meaning Research and

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Development, Italy Fincantieri committed to a value of 35% of their bid, excuse me, of the confirmation to the 50%, 35% of 50%. In the case of France DCNI only 6%, in the case of Germany GSC, zero, in the case of Sweden Kockums, also zero.

5 If we move down to 7.1.6 Value of Globalisation (Export Revenues), Italy Fincantieri committed to a value of 23% of their DIP commitment, France DCNI 23% of their DIP commitment, Germany GSC zero, and Sweden Kockums 69%.

10 7.1.7, row 7.1.7 is a non-scoring element but taken into account, Value of Empowerment, PDIs – Capacitating, the acronym PDIs in this specific case refers to “previously disadvantaged individuals”. The row does not have any values, no percentages committed.

15 In row 7.1.8 the Value of Equity Investments, in the case of Italy Fincantieri, 8%. In all three the other bidders’ cases 0%. 7.1.9 The Value of Loan Interest Rate benefits, in all four cases, all four bidders, 0%. 7.1.10 Value of Marketing Support or Export Promotion, in the case of all the first three bidders, meaning Italy, France and Germany 0%. In the case of
20 Kockums from Sweden, 3%.

25 7.1.11, the last row was an indication of Job Creation or Retention, there is an indication of a type of formula that the bidders could have used which indicates 40% of the value of row 7.1.4 plus row 7.1.6 and the answer thereof to be divided by US\$30 000. In the case of Italy, Fincantieri

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they have indicated 3 840. In the case of DCNI from France they indicated 3 540. In the case of Germany GSC indicated 2 133. In the case of Kockums from Sweden indicated 7 080. Then the second last row without a number, "Overall Ranking as normalised". In the case of Fincantieri Italy 93%, this is indeed expressed as a percentage, 93%. In the case of DCNI France, they scored 100%. In the case of the GFC from Germany they scored 54%. In the case of Kockums Sweden they scored 93%.

10 The last row without a number with the words on the factors, Value of Activities not Counted, there is only one indication and that is in the column under France DCNI, they have indicated activities that was not taken into account by the evaluation team, in terms of the Value System Instruction and that amounted to US\$119 775 000. There are a couple of notes.

ADV SIBEKO: Now the process of normalisation, what did it entail with regard to this document as stated just under the column 7.1.11?

20 MR DE BEER: Commissioners, the figures that we read out into the record contains normalisation done erroneously. I can explain the specific error that took place by using the example but I can also try and do it without using the example.

ADV SIBEKO: Perhaps as we go on with your evidence we will deal specifically with this aspect of normalisation but

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what I sought to extract from you is when normalisation was being done what exactly, what activity exactly was being performed with the normalisation process?

MR DE BEER: Commissioners, the scores before
5 normalisation were evaluated by the second tier specifically by Mr Johan Van Dyk, the highest scores being taken as the norm and that score was a score out of 10 points. Mr Van Dyk used the highest score, for example 7.5 out of 10 and he used the difference between 10 and 7.5 being 2.5 and he added it to all
10 the four scores of the four bidders in this specific example, the end result is that the highest bidder will score 10/10 because 7.5 plus the difference between 7.5 and 10 which is 2.5 equals 10 and then what happened then is this value of 2.5 was used and added to the scores of all the other bidders obtaining a
15 score out of 10, so it is a form of "normalisation", if I may, that also express the scores in relation to the score of the highest bidder.

ADV SIBEKO: We will deal with that example in due course but again having regard to page 315 are we able to
20 ascertain which of the bidders was ranked the highest in relation to the DIP commitments?

MR DE BEER: Commissioners, the bidder from France, DCNI, was the bidder with the highest score and then that score as normalised and expressed as a percentage was 100.

25 ADV SIBEKO: Right, can I then ask you to, or before I

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ask you to turn to another page is there anything else you wish to add regarding this document?

MR DE BEER: Commissioners, just on the line or 7.1.11 the Job Creation and Retention, those numbers were numbers as informed by the bidders, but those numbers was not taken into account in what we will later discuss the calculation and projection of job numbers which we will later express, we used a formula which we tried to define as in terms of man years.

ADV SIBEKO: You said "man years"?

10 MR DE BEER: That is correct, man or person years.

ADV SIBEKO: We will get to that somewhat nebulous concept in due course. Can I then ask you to turn to page 343. Could you identify that document for the record?

15 MR DE BEER: Commissioners, page 343 is also at Annexure "D", this pertains specifically to the Project: The Supply of 4 Corvettes to the SA Navy, and this is the Final DIP Recommendation Schedule, it contains also the results of four different bidders.

20 ADV SIBEKO: Could you, as it did with the submarines, deal with some of the matters reflected in the various columns?

MR DE BEER: Commissioners, this is the only Annexure "D" summary sheet which contains a slight deviation from the norm as we have discussed under the submarines, the deviation I'm referring to is found under 7.1.1(i) and (ii). You will note that 7.1.1 refers to the Total Contract Value, that is not a

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scoring element, it's just the norm used to express the DIP obligation and percentages against. 7.1.1(i) the Total Platform Value is indicated as such for the different bidders. I will read it out for the record, in the first bidder's column which is the GEC from the UK the platform value is US\$550 million. The second bidder DCN from France indicated a price of US\$590 million. The third bidder being the GFC from Germany indicated a platform price of US\$533 364 133. The last bidder, Bazàn from Spain indicated a platform value of US\$423 million as indicated on the sheet.

(ii) is the Total Combat Suite Value, the bidder from the GEC from the UK indicated a price ... Excuse me. You will note that the price indicated for all four bidders are the same. This is the price advised by the Technical Team to the DIP Division and that was the price that was apparently also used for all bidders to indicate to them that that should be the price of the Combat Suite, the reasons why that is I cannot comment on.

If we then continue 7.1.2 shows the Total Value of DIP which is supposed to be 50%. For the first bidder from the UK, the GEC, they committed to 112%. The value is indicated. The bidder from France, the DCN committed to 42%. Bidder number 3 from Germany, the GFC committed to 30% and lastly the bidder from Spain, Bazàn, committed to 92% as a total value of DIP and this is expressed in terms of the total contract

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value which you can find in row numbered 7.1.1.

If we now continue to row 7.1.3, this is the Indication of the Total Value for Direct DIP which was supposed to be at 30%, I must indicate that row 7.1.3(i) actually broke it down in the total value of the platform element for Direct DIP which was 10% and the (ii), the Total Value for the Combat Suite element for Direct DIP, 60%, and (iii), the Total Value of Indirect Activities Offered.

If we go back to the commitments as indicated in row 7.1.3 the bidder from UK, the GEC, committed to 51% of the contract price, the bidder from France, the DCN, committed to 27% of the contract price, the bidder from Germany, the GFC committed to 29% and lastly from Spain, Bazàn, committed to 37%.

Then if we go to (i), 7.1.3(i) the commitments were as follows, the first bidder from the UK 8% as compared to 10%, the second bidder from DCN from France, 10%. From the GFC from Germany of 12%, from Bazàn Spain, 19%. 7.1.3(ii), Total Value of Combat Suite Element the indication was 60% or the preference, the requirement. The bidder from the UK, GEC, committed to 60% and the same percentage was as per this evaluation sheet indicated from all four bidders, 60%.

If we continue to row 7.1.4 for Local Industry Participation, from the UK the GEC committed to 24%, from DCN France 83% was committed, from the GFC Germany 97%

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was committed and from Bazàn Spain 54% was committed. Row 7.1.5, Value of Technology Transfers including Research and Development, from the UK 22%, from France DCN 0.1%. From Germany the GFC no indication, 0%. From Bazàn Spain 1%.

5 Row 7.1.6, the Value of Globalisation or Export Revenues, from the UK the GEC indicated 54%, from France the DCN indicated 17%, from Germany the GFC indicated 3%, from Spain Bazàn indicated 45%. The next number of rows that is rows number 7.1.7 up to and including 7.1.10 no indication
10 from any of the bidders, zero in all cases. And then lastly 7.1.11 Job Creation or Retention, from the GEC the UK indicated 10 093, from France the DCN indicated 5 026, from Germany the GFC indicated 3 413 and lastly from Spain Bazàn indicated 8 880.

15 If we then move on the first unnumbered row Overall Ranking as Normalised, this normalisation figures inclusive of an error. The GEC from the UK was ranked as at 92%, the DCN from France was ranked at 96%, the GFC from Germany was ranked at 81% and Bazàn from Spain was ranked in the first
20 position namely 100%.

The last row without any indication of a number is the Value of Activities offered but not counted, in the case of the GEC from the UK US\$832 million as offered was not used for counting purposes because they did not conform to the
25 rules and the requirements of the evaluation instruction. The

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same goes for DCN from France where a value of US\$129 500 000 indicated as not used and counted during the evaluation.

5 ADV SIBEKO: Now in terms of this document it appears that GFC was ranked last.

MR DE BEER: That is correct.

ADV SIBEKO: And Bazàn is the highest?

MR DE BEER: That is correct.

10 ADV SIBEKO: Can I ask you to, or before you go to the next page, is there anything else you wish to add by way of comment or explanation on any of the issues that appear here?

MR DE BEER: Commissioners, similar to the discussion for the G..., excuse me, for the submarines, row 7.1.11 the "Job Creation or Retention Figures are indicative as obtained from the various business plans and was not used during the final projection of the (indistinct) that we will discuss later.

15 ADV SIBEKO: Can I then ask you to go to another Annexure "D" which appears at page 352. Now if you could just identify that document for the record and perform the same exercise as you have with the previous Annexure "D"'s

20 MR DE BEER: Commissioners, this is an Annexure "D" typical summary of DIP results for the projects, for the "Project: Supply of 24 Lead-In Trainer Aircraft", it's actually supposed to be Lead-In Fighter Trainer or LIFT, "to the SAAF", and that is the South African Air Force. The "Final DIP

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Recommendation Schedule”, once again you will note that there are four bidders and with your permission I will continue from row 7.1.1 down to row 7.1.11. In row 7.1.1 the “Total Contract Value” is indicated, firstly in the case of the UK for the Hawk the value indicated there is US\$599 million, secondly from Italy for the aircraft, the MB339 the contract value indicated and used by the DIP Division was US\$278 100 000. From Italy/Russia for the YAK Aircraft the contract value US\$420 640 000, then lastly from the Czech Republic for the Aircraft, the Type L159 the total contract value indicated is US\$513 720 265.

In row 7.1.2 the total value of DIP supposed to be at 50% from the UK for the HAWK it was evaluated to be 72%, from Italy for the MB339 the indication was, as evaluated, 66%, from Italy/Russia for the YAK the DIP obligation commitment was for 56% and lastly from the Czech Republic for the L159 it was exactly 50%.

In the case of row 7.1.3 the total value of Direct DIP, the indication or the norm was supplied to all the bidders to be at 30%, in the case of UK for the Hawk the committed value was 66% of the 72% for the DIP commitment. In the case of Italy for the MB339 the percentage is 37%, in the case of Italy/Russia for the YAK Aircraft the indication as evaluated is 37%, and lastly from the Czech Republic for the L159 for Direct DIP the percentage of the DIP Commitment is 43%.

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If we move to row 7.1.4 for Local Industry Participation, from the UK for the Hawk 23% was committed. From Italy for the MB339 44% was committed, from Italy and Russia for the YAK 57% was committed, and for the Czech Republic for the L159 32% was committed and that is for local industry participation.

If we move then to row 7.1.5, the Value of Technology Transfer inclusive of research and development, from the UK for the Hawk 17% was committed, from Italy for the MB339 44% was committed, for Italy and Russia for the YAK, excuse me I'm reading wrong figures, I will repeat. In the row 7.1.5 for Value of Technology Transfer inclusive of research and development from the UK for the Hawk 17% was committed, from Italy for the MB339 11% was committed, from Italy and Russia for the YAK 9% was committed and from the Czech Republic for the L159 4% was committed.

In row 7.1.6, the Value of Globalisation or for Export Revenues from the UK for the Hawk 54% was committed, from Italy for the MB339 45% was committed, from Italy/Russia for the YAK 34% was committed and from the Czech Republic for the L159 58% was committed. The next three rows meaning row 7.1.7 up to and including 7.1.9 no values indicated and zero commitments offered.

In row 7.1.10, the Value of Marketing Support or Export Promotion, from the UK for the Hawk 3% was committed,

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from Italy for the MB339 and from Italy/Russia for the YAK 0% was committed and then lastly from the Czech Republic for the L159 6% was committed.

7.1.11 for Job Creation and Retention the figures indicated from the business plan was for the Hawk 4 403, from Italy for the MB339 2 190, from Italy/Russia for the YAK 2 893 and from the Czech Republic for the L159 the figure indicated there is 3 045 and I can note that these figures were not taken into account when the final projected "person years" was calculated. In the two rows that are not numbered the first of the two is the Overall Ranking as Normalised, normalised containing or inclusive of the error. In the case of the UK for the Hawk 94%, in the case of Italy for the MB339 95%, in the case of Italy/Russia for the YAK 100%, in the case of the Czech Republic for the L159 84%.

On this document I need to point out that the Italy/Russia proposal for the YAK was the winner at 100%, however, if we look at the notes, specifically to note number (g):

"PLEASE NOTE THAT THE YAK'S RISK IS 3 TIMES HIGHER THAN THAT FOR THE REST = UNACCEPTABLE".

From a DIP perspective.

ADV SIBEKO: There is a further reason why the YAK was unacceptable at paragraph (f) and could you read that also into

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the record?

MR DE BEER: Commissioners, paragraph (f):

***“PLEASE NOTE THAT THE YAK’S DISCHARGE
PERIOD UNACCEPTABLE – ONLY TO START IN
2004!!!!”***

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ADV SIBEKO: Do you have any understanding of what that reason entailed?

MR DE BEER: Commissioners, still on the same page 352 the note number (f), these evaluations were done in the year
10 1998 and the intentions at that stage was that contracting will take place very soon. You will recall from other testimonies already submitted at this Commission that actual contracting took place in 1999, on December the 3rd if I remember correctly. Now if we have those dates in mind the DIP
15 Division’s intention was that as soon as these contracts have been concluded and placed with these, with the winner, that the discharge can start.

Now if you read the dates in note number (f) Italy and Russia, the company there, and I cannot recall the
20 company right now, indicated that their DIP discharge will not start immediately but only in future, it’s approximately six years from 1998, that’s the year 2004 and that was found to be unacceptable. You will also recall that the DIP instruction and the DIP guidelines indicated that the discharge period must be
25 7 years typically and that means starting together with the

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implementation of the main agreement. So, note number (f) was unacceptable with that background.

ADV SIBEKO: Now the other programmes have similar sheets, we shall not deal with that but this would be typically a recommendation with regard to the DIP evaluation that would have been conducted, is that correct?

MR DE BEER: That is correct.

ADV SIBEKO: Now with regard to the recommendation in annexure, on page 352, which of the countries was ranked the highest there?

MR DE BEER: Commissioners, page 352, the company is not indicated but the proposal from Italy and Russia for the YAK Aircraft was ranked the highest at 100%.

ADV SIBEKO: That is the one that was found to be unacceptable, is that right?

MR DE BEER: That is correct.

ADV SIBEKO: Now the second highest ranking proposal?

MR DE BEER: Commissioners, the second highest ranking proposal for the supply of the 24 Lead-In Fighter Trainers is from Italy with the MB339 at 95%.

ADV SIBEKO: So, the bid from Italy then assumed the first position once the Russian was unacceptable?

MR DE BEER: Commissioners, that is a deduction that we can make but I cannot comment whether that indeed was the case at this point in time.

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ADV SIBEKO: But looking only at this document the bid that had 95 points is the one that at face value should go through, is that correct?

MR DE BEER: That is correct.

5 ADV SIBEKO: Now having focused our attention on these recommendation schedules you then stated earlier in your evidence that there was an error in the averaging and normalisation of scores and that you performed, or a recalculation of these scores was performed and this is
10 apparent from Annexure "BDB16" of the documents which is at page 368 of file 3. Can we go there? Do you have that page in front of you?

MR DE BEER: Yes, I do.

ADV SIBEKO: Now could you identify the exercise
15 conducted at page 368.

MR DE BEER: Commissioners, the exercise conducted at page 368 is the same up until and including page 374 and the exercise conducted is to recalculate the evaluation results for DIP without any of the errors and then combining it with the
20 NIP figures that was not recalculated, it was taken on face value from the information and then also combining the IP Index with the other two indexes, for instance the Military Value Index and also the Financial Index, that is basically what is shown on this page, the results of a recalculation.

25 ADV SIBEKO: I see in each of these pages there is a,

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what appears to be a note highlighted in yellow that says “No Change”. What does that mean?

MR DE BEER: Commissioners, after conducting of a recalculation of the DIP evaluation results and combining it with the NIP, and then including it into the final Military Value or best value, the indication on each page, whether the ranking change or not change, is indicated in yellow highlighting. On page 368 which is the recalculation for the LIFT Project there is indicated “No Change took place or happened” which could be allocated to the errors.

ADV SIBEKO: Now as the chairman asked you earlier whether the errors or the recalculation of the figures resulted in any change in the rankings you indicated that no change was effected by these recalculations in respect of the rankings.

MR DE BEER: That is correct, no change appeared.

ADV SIBEKO: And that is what is sought to be conveyed in these documents, is that correct?

MR DE BEER: That is correct, although there is a page, for information purposes it is numbered as 370, excuse me, correction, it’s 371A which is an indication of another aspect although it is not referring to the errors in calculations.

ADV SIBEKO: Can I ask you to deal with each of these pages in turn.

MR DE BEER: Commissioners, if we look at page 368 I will, with your permission spend a little bit of time to indicate

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what actually happened, I will not repeat the detail on each of the pages,

CHAIRPERSON: Advocate Sibeko, I realise that we are going to adjourn in around about five minutes. Do you want to deal with that point now or do you want to reserve it until tomorrow morning?

ADV SIBEKO: Chair, it does appear that this will take quite some time or at least more than five minutes, so we could reserve this for tomorrow morning and deal with the rest of the calculations made.

CHAIRPERSON: We'll adjourn until tomorrow morning. Advocate Sibeko, is it possible to start at 09h30?

ADV SIBEKO: we'll make the endeavour to start at 09h30 Chair.

CHAIRPERSON: Let's endeavour to start at 09h30 tomorrow morning.

ADV SIBEKO: Okay.

CHAIRPERSON: Thank you.

20 (COMMISSION ADJOURNS)