



Report of the Auditor General on the COVID-19 Border Security Contracts for Static Marine Platforms [COI R23]



29 November 2022

Towards Greater Accountability

Special Report of the Auditor General

This report has been prepared under section 20 of the Audit Act 2003 which prescribes that:

- 20. (1)** The Auditor General may at any time prepare and submit a special report to the Governor if she is satisfied that there is a matter that should be brought to the attention of the Governor.
- (2)** The Governor shall, within three months of the receipt of the special report, cause the report to be laid before the Legislative Council.
- (3)** The Auditor General shall at the same time as submitting the special report to the Governor submit a copy of the special report to the Minister and the Financial Secretary.

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Executive Summary

- E-1 On 22 March 2020 the Virgin Islands Government closed its territorial borders to incoming travellers as a precautionary measure to control the spread of COVID-19.
- E-2 During the COVID-19 induced border closures, law enforcement agencies were faced with challenges with monitoring unauthorized and illicit activity along and inside the territory's marine borders. This was due primarily to limited resources.
- E-3 On 6 May 2020 the Government received an Unsolicited Proposal from Clyde Chalwell of EZ Shipping Ltd in which he offered to let two of his barges to the Government as marine radar platform to assist with the border security challenges at the rate of \$17,000 per day.
- E-4 The Unsolicited Proposal was rejected by the Commissioner of Police who advised Mr Chalwell that the Government was achieving the same results offered in his proposal, virtually free of cost.
- E-5 Provision for EZ Shipping barges was incorporated into the JTF Border Security Plan following a directive from Cabinet to revisit the shipper's unsolicited proposal.
- E-6 The National Security Council (NSC) approved the use of the barges on 24 July 2020 and mandated a rapid tender process to source competitive submissions.
- E-7 The barges were engaged by the Premier before conclusion of the rapid tender process, without the knowledge or approval of the Governor and without prior approval of the NSC or Cabinet.
- E-8 Multiple limitations and issues impacted the effectiveness of the marine platforms which were abandoned after three months of use.
- E-9 The Government paid \$2.04 million to EZ Shipping Ltd for five months' services under three contracts which covered the period 23 August 2020 to 22 January 2021.
- E-10 EZ Shipping Ltd was paid a total of \$738,000 for the period 26 November 2020 to 21 January 2021 when the barges were not being used by the Government.
- E-11 The contracts with EZ Shipping were extended twice without any written request for continuation or reports on effectiveness.
- E-12 The Ministry of Finance's tendering for radar platforms to be used by the Customs Department occurred outside the remit of that Ministry which does not bear responsibility for border security.

Introduction

1. On 11 March 2020 the World Health Organization declared the COVID-19 virus a global pandemic. Eleven days later, on 22 March, the BVI Government announced the closure of the territory's ports to all incoming travellers. The following week the territory confirmed its first two cases of COVID-19 infections.
2. Despite the border closures and territorial shutdown, the territory continued to suffer from spikes in COVID-19 infections. These were attributed to people smuggling activities from the neighbouring USVI to the BVI. Infected persons were entering the territory undetected. This called for increased efforts to secure the borders.
3. The Joint Task Force (JTF) was formed in April 2020 by the three law enforcement agencies to combine their limited marine resources and coordinate efforts to secure the borders more effectively. The Joint Task Force prepared a Border Security Strategic Plan (the Plan) outlining the needed resources. This included land based radars among other things.
4. The Government engaged EZ Shipping for five months to provide three floating platforms (barges) as mobile radars and launching stations for the Joint Task Force at a total cost of \$2.04 million.
5. The borders were opened in phases starting from June for returning nationals, to September for residents and work permit holders, then December 2020 for visitors. Commercial businesses reopened earlier by category starting from April 2020, for businesses certified compliant with the COVID-19 safety protocols. Commercial shipping also resumed along with limited ferry service to transport passengers out of the BVI only.

Audit Mandate

6. This audit was undertaken in accordance with the Audit Act 2003 and pursuant to Recommendation B23 of the British Virgin Islands Commission of Inquiry Report dated 4 April 2022. This audit report has been prepared under section 20 of the Audit Act for submission to the His Excellency the Governor as prescribed.

Audit Objective

7. The purpose of this investigation is to provide independent information and advice on whether efficiency, economy and effectiveness were achieved from the award and payment of contracts engaged by the Government for border security.

Audit Scope and Methodology

8. This examination included a review of the relevant contracts issued by the BVI Government for border security, interviews with key individuals and department heads, reviews of related correspondence, documents and files, and a review of the policies and regulations governing the award of contracts.

Audit Limitations

9. The records reviewed were in many cases incomplete. This was due in part to the events having occurred during the COVID-19 shutdown period where record keeping may have been compromised because of remote working conditions.

Part A: Engagement of Static Marine Barges

Resource Challenges

10. *Limited local resources created challenges for law enforcement agencies to effectively monitor illicit border activity.*

11. The pandemic induced closure of the borders on 22 March 2020 presented challenges for the three agencies charged with enforcement, the Royal Virgin Islands Police Force, Her Majesty's Customs, and the Immigration Department. At that time there were only two functioning vessels between them to be used to address the territory's broad and porous borders. This was insufficient, especially given the territory's proximity to the United States Virgin Islands.

12. With limited marine resources and overlapping objectives, the three agencies combined their efforts and resources in April 2020 to form a coalition referred to as the Joint Task Force (JTF). Its mandate was to secure the borders from illegal entries and smuggling. Added to this, was the objective of preventing the undetected incursion of the COVID-19 virus into the territory.

13. The newly formed agency was initially led by the then Commissioner of Police (CoP). This responsibility was subsequently passed to the Acting Commissioner of Customs in what was assumed would be a rotating chairmanship. Thirty-four officers from Customs and Immigration were sworn in as auxiliary police officers on 17 April 2020 to ensure that the members of the JTF were functioning with adequate authority.

14. The agencies of the JTF supplemented their deficient marine assets in various ways. Customs rented fast boats from local vendors to assist with marine patrols and interceptions. The Police relied heavily on volunteers from the charter industry to provide marine platforms and avail their radar capabilities.

15. In their initial Border Security Plan, the JTF refers to the 24-hour patrols as heavily affecting limited resources resulting in burnt-out officers and spontaneous breakdowns of assets.

16. To assist in alleviating the situation, the Governor (in a meeting of the National Security Council (NSC) on 5 May 2020) offered to invite the UK military ship, HMS Medway to provide support and strategic advice on border defense. The Medway had recently replaced the RFA Mounts Bay in the Caribbean region to undertake anti-smuggling assignments and work on common missions with Caribbean states and US agencies. The proposed service would be provided at no cost to the BVI Government.

17. The Premier refused the offer of assistance referring to it as UK military intervention and stating that he preferred to use local resources.

18. The following day, on 6 May 2020, the Government received a proposal from a local company, EZ Shipping Ltd, offering to provide its barges to assist with border security. This proposal led to the Government spending US\$2.04 million on private marine platforms over a period of 5 months.

The Unsolicited Proposal

19. The EZ Shipping unsolicited proposal was submitted by Mr. Clyde Chalwell to the Premier and copied to the Governor, the Financial Secretary, and the Commissioner of Police.

20. The single page proposal was accompanied with a rate sheet which offered two barges, Midnight Stone at \$9,500 per day and Midnight Chief at \$7,500 per day and appended with the particulars and registration certificates for these two vessels.

21. The Commissioner of Police declined the proposal in an email to Mr. Chalwell dated 15 May 2020. The email advised that the agencies were successfully achieving the same objectives using volunteers from the charter industry and the private sector “virtually cost free”.

22. The EZ Shipping proposal was, in addition, deemed incongruent with the JTF’s Border Security Plan (the Plan) which was at the time being developed and specified land based radars. The Plan was completed and forwarded to the NSC on 25 May 2020 for approval. It was sent back to the JTF on 2 June 2020 with a request that it be revised showing three-month and six-month plans, inclusive of timescales and funding requirements.

Border Security Plan

23. *Provision for EZ Shipping barges was incorporated into the JTF Border Security Plan following a directive from Cabinet to revisit the proposal.*

24. On 3 July 2020, as work progressed on the revised three-month and six-month border security plans, the JTF heads received a directive from Cabinet to revisit the EZ Shipping proposal and to confirm their attendance at a special meeting of the National Security Council (NSC) to be held on 7 July 2020 where the matter would be considered.

25. The Commissioner of Police wrote to the other JTF heads on 5 July 2020 indicating that he was not in support of the EZ Shipping proposal and suggested that the funds, if available, could be better used for items requested in the JTF Plan.

26. The CoP also expressed concern that Cabinet had not consulted with the JTF heads prior to issuing the directive for what he stated was “a law enforcement operational decision” and that the barges did not feature as a priority in the plan submitted to NSC. He expressed the view that if JTF was pressured to use barges this should be put out to tender.

27. The CoP’s opposition to the EZ Shipping proposal was not sufficient to garner dismissal of the idea. The matter was discussed in the NSC meeting on 7 July but did not result in any decision or instruction from the Council.

28. Following the NSC meeting the Deputy Commissioner of Customs (Mr Romney) amended the JTF Border Security Plan to include EZ Shipping’s two marine platforms with a provisional sum of \$500,000 for a period of one month. The change, he said, was done based on his understanding that the barges were to be used.

29. The revised Plan, with references to EZ Shipping, was submitted to NSC on 24 July 2020 and approved. In its approval NSC directed for the immediate priority funding for “at least two 24-hours platforms, in principle, to be negotiated by the JTF in conjunction with the Ministry of Finance following a rapid invitation of proposals for approval by the National Security Council.”

Engagement of Static Platforms - Barges

30. *The barges were deployed before conclusion of the rapid tender process. As a result, there was no prior approval of the Governor, NSC or Cabinet. Thus there was no legislative authority to support this unilateral action.*

31. In keeping with the NSC’s decision, the Ministry of Finance and the JTF commenced the process of sourcing proposals for marine radar platforms. The project was one with significant cost implications. The circumstances required an expedited process. The Procurement Unit was not engaged, nor were the procurement regulations.

32. Tenders were solicited through an informal selective process. The Deputy Commissioner of Customs sent requests for submissions to two local companies (Caribbean Transport Ltd and Global Ocean Transport) on 27 July 2020 for the provision of two barges. No invitation was sent to EZ Shipping. There was no open or public solicitation and no submission deadline.

33. At the same time, efforts were undertaken by the Police to generate options from the chartering community. These were not successful as the Police reported that persons contacted had already moved their vessels into safe harbors as was customary for the approaching hurricane season.

34. Both companies contacted by Customs responded on 11 August 2020. Caribbean Transport advised that they would not be able to provide the requested services.

35. Global Ocean submitted a proposal of \$15,000 per day for one vessel. This price was inclusive of fuel and crew. This bid may however have been influenced by information received by the shipper who had contacted Customs seeking guidance for his submission.

36. The Financial Secretary met with Mr. Chalwell of EZ Shipping on 12 and 21 August 2020 to negotiate an arrangement. During that period Mr. Chalwell submitted two proposals.

- i. The first dated 12 August 2020 and received on 13 August offered two vessels at \$7,200 per day. This rate was not inclusive of fuel, which was to be billed at the current fuel rate (\$2.50 per gallon) at the end of each charter period. This was, notwithstanding, a substantial reduction from his initial offer of \$17,000 per day, for the two barges.
- ii. The second proposal (also dated 12 August 2020) was received on 21 August for the use of three barges at \$14,000 per day inclusive of all costs.

37. Two days after receiving the second revised submission from EZ Shipping, on 23 August 2020, the Premier held a meeting with Customs and Immigration officers at Port Purcell after which he dispatched the EZ Shipping barges. This was done:

- i. Before the JTF and the Financial Secretary completed the process mandated by NSC;
 - ii. Before any recommendation was made to NSC on the results of the procurement efforts;
 - iii. Without prior knowledge or approval of NSC;
 - iv. Without prior knowledge or approval of Cabinet;
 - v. Without the knowledge or approval of the Governor; and perhaps most concerning,
 - vi. Without any legislative or Constitutional authority to support a unilateral decision on territorial security arrangements.
38. The heads of Customs and Immigration both confirmed that they were informed that their agencies would be using the barges prior to the August 23 meeting at the Port Purcell dock.
39. The formality of regularizing the deployment of EZ Shipping barges (for a period of two months) followed with the NSC and Cabinet's approvals on 25 September 2020 and 7 October 2020 respectively.
40. The contract for this service was signed on 14 October 2020, six days before expiration of the contractual period and 5 days before payment of the final amount. This would be followed by two additional contracts to extend the barge service and resulting in further costs of \$1.2 million. The total paid under the three contracts was \$2.04 million.

Part B: Policy Objectives and Efficacy of Arrangement

42. *Multiple limitations and issues impacted the effectiveness of the marine platforms which were abandoned after three months of use.*

43. The deployment of EZ Shipping barges on 23 August 2020 was immediately followed by a statement from the Premier to justify this action and later by steps to regularize the same under the COVID-19 border security policy.

44. In his statement, the Premier informed the public that Customs and Immigration officers would be using the barges and that the purpose of the barges were to:

- i. Allow for more intense 24 hour surveillance of the sea borders;
- ii. Provide platforms for launching patrol and interceptor vessels to quickly intercept any suspicious vessels in the territorial waters;
- iii. Further strengthen the sea borders and close any foreseeable gap that would allow the illegal entry of persons to our shores; and
- iv. Ensure that no one is able to bypass the screening and precautionary protocols for persons entering the BVI.

45. He also stated that the Government was working towards establishing a permanent network of radars that will enhance border protection and assist the authorities in clamping down on human trafficking, drug smuggling and other illegal activities.

46. The Premier concluded that the Government of the Virgin Islands has zero tolerance for these nefarious activities.

Implementation of Platforms

47. The EZ Shipping Ltd vessels were inspected by senior personnel from the Customs and Immigration departments on 23 August 2020, hours prior to launching. Use of the platforms commenced on the same day.

48. A separate logbook was established for each of the barges. These logs were used to record the date and time, name of the reporting officer, incident/sighting/alert, location, action taken, and remarks. The logs also contained names and contact numbers for the Customs mobile officers. The recording in the logbooks commenced on 26 August 2020.

49. The individuals reporting for duty on the platforms were primarily Customs Officers, but also included Immigration Officers and one Prison Officer. A decision was taken by the Police Commissioner that his officers would not be occupying the platforms. However, the Police officers continued to participate in sea patrols with the JTF team.

50. The platforms availed the JTF team to 24 hours surveillance from their marine outposts. The officers on the platforms worked in 1 to 2 person shifts usually for 6 hours. Some were more meticulous than others in recording events and results. The operation encountered several issues.

Effectiveness

51. *Challenges with detection, impracticability of launching interceptors from the platforms, and insufficient patrol/interceptor boats limited the effectiveness of the platforms.*

52. In the information papers submitted by the Premier to NSC and Cabinet the barges were lauded for their effectiveness as having:

“...resulted in improved border security measures that are quantitatively successful in deterring illicit border activity and have effected a marked reduction in marine traffic.”

53. These claims were echoed by the Commissioner of Customs who recommended to NSC and Standing Finance Committee that the Government purchase a marine platform for ongoing use by all Government agencies.

54. There were however deficiencies impacting the effectiveness of the barges. These included challenges with detection, impracticability of launching interceptors from the platforms, and insufficient patrol/interceptor boats.

Insufficient Patrol Boats

55. One of the points raised repeatedly by the Commissioner of Police in his objection to the engagement of the platforms was the absence of patrol and interceptor boats to respond to sightings. The Commissioner reasoned that priority should be placed on outfitting the agencies with adequate response capabilities as failure to do so would present a severe handicap for the JTF in addressing incursions.

56. In April 2020 when the JTF was formed the Customs Department had only one operational vessel and the Police had an inflatable rib. At the time the barges were launched on 23 August the Police’s rib was inoperable (from 17 August 2020) and the JTF was reduced to one boat.

57. For Customs this presented a problem as the one vessel used for patrols was also used for transporting officers to and from their assigned shifts on the platforms. This process sometimes took hours and resulted in the unavailability of the vessel to respond promptly to suspicious activity on the waters. As a result, there were moments of vulnerability when illicit activity could occur.

58. This vulnerability was made worse by the openness of the marine bases where the vessel operated from. These left the vessels exposed to hillside vantage points from where JTF vessel activity could be observed. There was therefore concern that civilians were monitoring the HM Customs vessel movements and had intelligence on when the patrol vessel activity.

59. This meant that persons were aware when the vessel was in port, when it had left for staffing the platforms, and when it was on the water performing patrols. A Senior Custom’s reported that unauthorized vessels were, at times, observed launching from various ports during the time the Customs vessel was on the water transporting staff to the platforms.

Launching Patrols from the Platforms

60. One of the justifications given by the Premier for engaging the barges was that they would be used as a launching point for patrol and interceptor vessels thus enabling officers to quickly intercept any suspicious vessels in the territorial waters. This was never implemented.

61. Stationing response vessels to be launched from the platforms was deemed impractical for two reasons. The first was the lack of vessels for patrol and interception. Customs for most of the relevant period operated only one vessel.

62. Secondly, the logistics of mooring and stationing the fast boats next to the barges created risks of the smaller vessels being damaged. Particularly in rough sea conditions.

63. During the period that the barges were used, sightings of unauthorized vessels were reported to the marine task force, which would respond either from port or from their location while patrolling the waters.

Fisherfolk and Ferry Traffic

64. In April 2020, permission was granted by Cabinet for commercial fisherfolk to fish and make deliveries. Applicable persons licensed by the Department of Agriculture were required to obtain a curfew pass from the Ministry of Health which allowed them to be on the water from 6:00 am to 7:00 pm daily. These crafts were repeatedly picked up by the officers on the barges creating false alerts and further taxing the JTF limited resources. Similarly, the ferry boats to Necker Island and Moskito Island were repeatedly flagged and reported in the logs. These benign activities padded the incident reporting in the logs, particularly for Midnight Chief.

Detection Limitations

65. The proximity of the BVI to the USVI and the invisible marine borders separating the two territories create much flexibility and opportunity for persons determined to traverse the short distance. Small crafts can make the trip from St Thomas to Jost Van Dyke in approximately 30 minutes and from St John to Tortola in even less time.

66. The platforms' radars would typically be able to pick up crafts venturing within their range. [REDACTED] A vessel is detected when the radar's electromagnetic signal bounces off a target and returns as an echo to the radar's receiver. [REDACTED]

67. [REDACTED] Interviews with officers on the platforms indicated that a significant number of the detections were with binoculars.

Response & Interception Limitations

68. A protocol for reporting suspicious vessel sightings was established on the platforms. After a vessel is spotted, the officer contacts the Joint Task Force and informs them of the location. Contact is also made with the immediate supervisor. The marine team from the task force would then respond to the area and intercept the vessel entering the exclusion zone. If the unauthorised vessel is successful in reaching land the land based team from the task force intercedes to apprehend the individuals.

69. The availability of interceptor vessels was key to an effective response. This proved a major limitation in the month after launching the barges. For reasons discussed previously, the marine task force was for a period functioning with only one vessel and was at times unable to respond because this vessel was otherwise engaged.

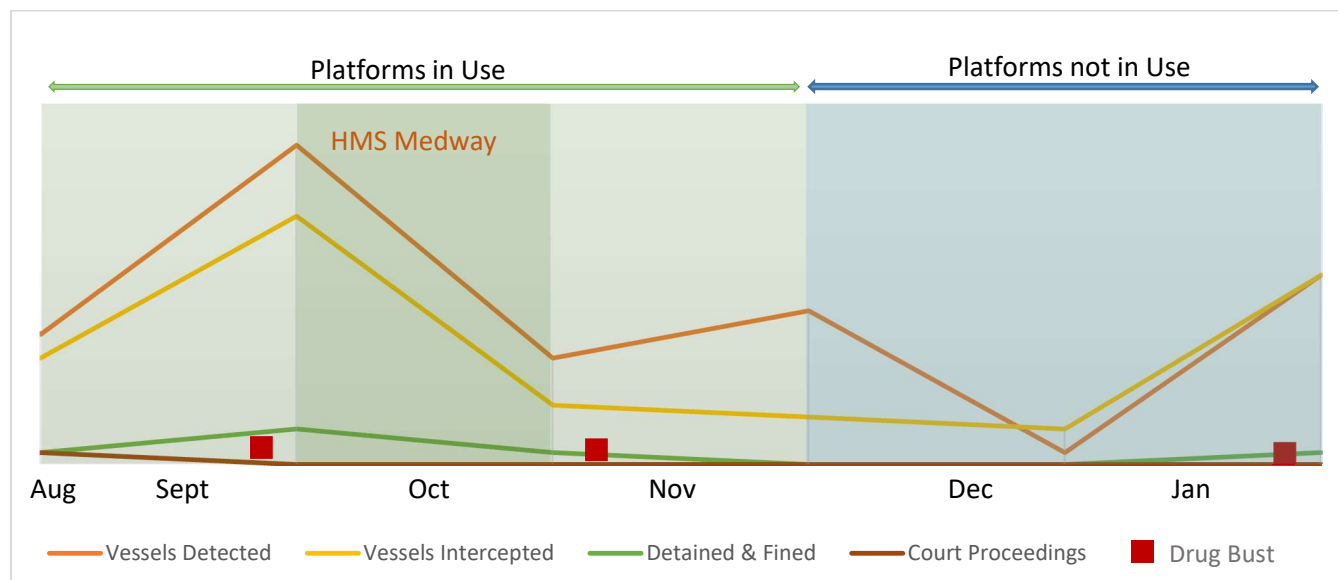
70. As funds became available, the inoperable enforcement vessels were repaired. The logs show the return of one Customs boat and one Police vessel to marine patrol duty on 21 and 30 September 2020 respectively. This meant that there were three vessels available for response and interception. These were joined by a second Police vessel on 2 December 2020.

Marine Traffic Reduction

71. Monthly statistics provided from the joint border patrols show fluctuating activity during the five month period from 24 August 2020 to 31 January 2021. The statistics provided could not be verified against the logs maintained on the three platforms.

72. The Commissioner of Customs explained that the data demonstrated a reduction of activity during the period the barges were in use. No comparatives were provided for activity before or after the five month period to support this claim.

73. The submitted data shows a demonstrated increase in activity in the month after the barges were launched and a sharp decline during the period the MS Medway was patrolling the territorial waters in October 2020.



74. The submitted statistics are insufficient to show the platforms' impact with respect to nefarious activity. JTF officers expressed concern that there was a change in modus as boaters resorted to using more intelligence to avoid detection and evade interception.

75. During the period the barges were in use the Royal Virgin Islands Police conducted two major drug busts (indicated by the red squares on the chart) that were not detected by the barges. One on 27 September 2020 and the other on 6 November 2020 yielding cocaine valued at more than \$250 million. A suspect from the second drug bust escaped the BVI and travelled to St John at a time when law enforcement was on high alert and one of the barges was located between Tortola and St John. The individual was later apprehended by US border agencies on 18 November on a vessel headed to Puerto Rico.

76. The events demonstrated the limitations of the barges in effectively detecting and deterring serious criminal activity.

HMS Medway

77. The HMS Medway (the Medway), shown on the above chart, patrolled the BVI waters during the month of October 2020. The UK military vessel was invited by the Governor in September 2020 to assist the JTF in tackling the immediate threats to border security, provide additional support with surveillance, and act as a deterrent to unauthorized incursions. This invitation occurred days after the HMS Medway, partnering with the US Coast Guard, completed major drug interdictions at sea resulting in seizures of cocaine valued at more than US\$100 million. The Medway's assistance came at no cost to the BVI Government.

78. Opposition was raised to the Medway's presence by the Premier who referred to it as a "military intervention." It also created friction within the JTF when the Commissioner of Customs insisted that he needed to know the location of the Medway in the territorial waters and was told by the Commissioner of Police that the information was classified, and his office had no such information.

79. The detection statistics provided by the JTF indicate that during the month that the Medway was in the territory the detection rate dropped by 67% implying, by Customs success benchmarks, that the military vessel was an effective deterrence. It is also notable that the two police drug busts during the period that the barges were in place occurred immediately before and after the Medway's presence in the territorial waters. This reinforces the point that the Medway may have been a greater deterrent than the EZ Shipping barges.

Part C: Value For Money

80. The Government paid \$2.04 million to EZ Shipping Ltd under three major contracts for the period 23 August 2020 to 22 January 2021. The payments included a two-month period when the barges were not in use.

Cost of Closure

81. The comparative used by the Premier in the NSC and Cabinet papers and later by the Financial Secretary in the 2021 Standing Finance Committee suggested that the cost per day for the platforms paled in comparison with the cost per day of the territory having to close its borders in the event of a COVID outbreak.

82. The Financial Secretary approximated the cost of shutdown to the entire economy at \$3.6 million per day. No source was provided for this estimate. It is unclear whether the amount takes into consideration that the financial services industry, which accounts for more than a third of the GDP, continued largely undisrupted despite the shutdown.

83. The impact on the agricultural industry is ambiguous as both farmers and fisherfolk were allowed to continue to work and ply their wares. The report out of the Premier's Office indicates that this industry reported higher than normal sales activity.

84. The hospitality/tourism industry which relies on travelers would continue to be impacted whether the borders were open or not because of the global scale of the pandemic's impact on travel. The retail industry (excluding supermarkets) would likely be most affected by the mandated closures.

85. No official assessment has been provided on the actual impact of the closures on the various industries.

Value on EZ Shipping Contracts

86. The first major contract "MOF/006M/2020" was for \$840,000 from 23 August to 22 October 2020. The contract was for leasing three barges at \$14,000 per day to be used as offshore bases for the border patrol crafts and their personnel. This was followed by a second major contract, MOF/009M/2020, for the continued leasing of three barges at a cost of \$840,000, to 22 December 2020.

87. Approval was granted by Cabinet on 15 February 2021, for a third contract (MOF/005M/2021) to be issued to EZ Shipping Ltd. for the use of two barges from 23 December 2020 to 22 January 2021. The agreed rate was \$12,000 per day for a contract sum of \$360,000. Payment was made in full on 20 May 2021. A summary of the contracts is shown in the schedule below.

	Contract # Date Signed	Approved NSC/Cabinet	Duration / Rates	Payment Dates	Payment Amount
First Contract	MOF/006M/2020	25-Sep-20	23 Aug to 22 Oct 2020	24-Sep-20	420,000
	14-Oct-20	07-Oct 20	\$14,000 per day /3 Barges	21-Oct-20	420,000
					840,000

	Contract # Date Signed	Approved NSC/Cabinet	Duration / Rates	Payment Dates	Payment Amount
Second Contract	MOF/009M/2020	30 Dec 20	23 Oct to 22 Dec 2020	25-Nov-20	420,000
	29-Dec- 20	30 Dec 20	\$14,000 per day/3 Barges	24-Dec-20	420,000
					840,000
Third Contract	MOF/005M/2021	10 Feb 21	23 Dec 20 to 22 Jan 2021	20-May-21	360,000
	17-Feb-21	15 Feb 21	\$12,000 per day/ 2 Barges		360,000
					2,040,000

Platforms Usage

88. The Customs mobile vessels logs show that officers were transported to all three barges on 23 August 2020 to commence duty. The platform logs and Customs staffing schedules show that use of all three barges was discontinued in November 2020. Use of Midnight Chief ceased on 15 November 2020, Midnight Czar on 21 November 2020, and Midnight Stone 25 November 2020.

89. The platform logs are corroborated by the mobile vessels logs which show that no officers were transported to the platforms after the dates indicated above. The supervising officer on the barges confirmed that no roster was prepared for the barges after 25 November, thus no officers were assigned.

90. No information was provided on why usage ceased, and no instruction seen for discontinuance. There was however some reported discontent by officers who were averse to ongoing duty on the platforms, especially as preparations commenced for reopening of the borders.

91. The Commissioner of Customs, Mr. Wade Smith, in correspondence to the then Acting Financial Secretary, Mr Jeremiah Frett, on 26 March 2021 asserted that the barges were used from “September 2020 to January 2021.” In the same correspondence Mr Smith refused to sign the certificate on the payment voucher to confirm that the barges had been used during the period 23 December to 22 January for the last contract.

92. We have requested, and have not received, any evidence that the platforms were used after 25 November 2020.

93. Despite discontinuing use of the platforms after three months, the Government made full payments to EZ Shipping for five months under the contracts. Payment for the period 26 November 2020 to 22 January 2021 when the barges were not in use is estimated at \$738,000 as shown below.

Period	Days	Rate PD \$	Amount \$
26 Nov - 22 Dec	27	14,000	378,000
21 Dec - 22 Jan 21	Term	12,000	360,000
			738,000

94. Section 10.1 in all three contracts with EZ Shipping provides that the agreement could be terminated by either party by giving 48 hours written notice of termination or two days remuneration in lieu of notice. This was not done.

95. The concerns regarding these contracts and the related payments are discussed below.

Contract 1 (MOF/006M/2020) Unauthorised Engagement

96. *The first payment of \$420,000 was made to EZ Shipping before the deployment was ratified and before there was a contract in place. The second payment of \$420,000 was made before full performance under the contract.*

97. The unauthorized launching of the barges on 23 August was subsequently ratified by the NSC on 25 September 2020 and approved by the Cabinet on 7 October 2020. The contract with EZ Shipping was signed on 14 October 2020, for \$840,000 eight days before expiration of the contractual period.

98. Despite not having a contract in place, the first payment of \$420,000 was made by the Government on 24 September 2020. The Acting Accountant General was instructed by the then Financial Secretary to make the payment, supported only by an unsigned draft contract before the matter had been considered by Cabinet. There is no legislative authority to support this payment.

99. The platform logs confirm that the barges were used for the full period under this first contract, from 23 August to 22 October 2020.

Contract 2 (MOF/009M/2020) Incomplete Service

100. *Full payment of \$840,000 was made under the second contract for the period November and December 2020. The platforms were not used in December 2020.*

101. There is no correspondence on file between the Commissioner of Customs, the barge owners, or the Financial Secretary regarding extension of the service beyond the first contract. Notwithstanding, use continued for an additional month from 23 October to 25 November 2020 beyond the initial contract period.

102. On 30 December 2020, more than a month after the officers stopped using the platforms, the Premier submitted a paper to Cabinet requesting that a contract be issued to EZ Shipping for the period 23 October to 22 December 2020. This period included four weeks (26 November to 22 December) when the barges were not used. The paper stated that *“The platforms have and continue to function as strategic outpost locations from which Her Majesty’s Customs or RVIPF Marine vessels are rapidly deployed to intercept suspicious maritime activity”*, this was not the case.

103. The agreement was signed on 29 December 2020 and approved by NSC and Cabinet one day later.

104. At the time that the contract was signed the parties, EZ Shipping and the Government (Customs) would have known that the platforms were not in use. The contract should have ended on 25 November and the second payment should not have occurred under this contract. The Government paid \$378,000 for services that were not received under contract MOF/009M/2020.

Contract 3 (MOF/005M/2021) No Service

105. *The third contract was approved and signed after the fact, for a service that was not received.*

106. Of particular concern is the third contract issued to EZ Shipping Ltd for the period 23 Dec 2020 to 22 Jan 2021.

107. The information paper to continue EZ Shipping services was sent by the Premier for approval to the NSC on 10 February 2021 and to Cabinet on 15 February 2021. Almost three months after the JTF stopped using the barges. The Cabinet Paper contained the same incorrect narrative that the platforms were in use and vessels were being launched therefrom.

108. There was no accompanying report from Customs or the JTF requesting the continued use of the barges, and no correspondence to or from EZ Shipping regarding the change in terms. The contract was approved and EZ Shipping paid in full an additional \$360,000 under contract MOF/005M/2021 for a service that was not provided.

Budgetary Provisions

109. On 17 April 2020, the Premier wrote to the Governor advising that he (the Premier) would be using the necessary instruments to immediately make available \$2.0 million to fund the acquisition of four suitable boats for border protection. This announcement was made before the submission of the JTF Border Security Plan and before the COVID-19 prevention and stimulus programmes were launched.

110. The COVID-19 prevention and economic stimulus programmes were announced on 28 May 2020 with a provision of \$45.9 million. This was funded via a \$40 million grant from the Social Security Board and transfers of \$5.9 million from Government funds. These provisions did not include funding for border security's new vessels.

111. The provision for a border security budget was made in August 2020 after the JTF included EZ Shipping in their Border Security Plan. A supplementary budget was passed on 6 August 2020 for \$1.04 million, followed by a second supplementary passed on 9 March 2021 for \$840,000. These were further augmented in the 2021 budget with a provision of \$550,000, for a total of \$2.43 million as shown below.

Date Posted	Description	Amount
Aug/06/2020	SAP NO. 1 of 2020	1,040,000.00
Dec/31/2020	SAP NO. 2 of 2020	840,000.00
	2021 Budget	<u>550,000.00</u>
	Total Budgetary Provision 2020/2021	2,430,000.00
	Payments to EZ Shipping	<u>2,040,000.00</u>
	Balance	<u><u>390,000.00</u></u>

From the \$2.43 million a total of \$2.04 million was paid to EZ Shipping. Other payments from the border security budget during the period August 2020-January 2021 included boat repairs of \$41,527.06 and fuel of \$28,428.30 as indicated below. The amounts do not include the duty allowance paid to JTF officers.

Detail	Amount
Police Vessels repairs	32,027.06
Customs vessels repairs	<u>9,500.00</u>
Total	41,527.06
Fuel	<u>28,428.30</u>
Repairs and Fuel	<u><u>69,955.36</u></u>

Part D: Compliance with Statutory Obligations

Adherence with the Procurement Regime

112. *The receipt of an unsolicited proposal upended all of Government’s procurement processes and resulted in a payout of \$2.04 million dollars. The process that led to the engagement of EZ Shipping Ltd failed to satisfy the procurement requirements as set out in section 173 PFMR for an open tender and the amended expedited process adopted by NSC to accommodate the unique circumstances were overridden.*

113. The COVID-19 border security challenges were unanticipated and immediate. The pandemic created an environment where work processes and methods were modified as the public service adapted to remote working conditions. Notwithstanding the challenges, it was still possible to undertake and comply with the requirements of the procurement regulations. This process was not deemed satisfactory as it would require time to complete.

NSC Procurement Process

114. On 24 July 2020 the NSC agreed to use marine platforms and sought to modify the procurement process to obtain multiple options through an expedited process. NSC instructed that:

- i. at least two 24-hours platforms, be negotiated by the JTF in conjunction with the Ministry of Finance following a rapid invitation of proposals, and
- ii. the results of the expedited process were to be approved by the National Security Council.

115. While the JTF and the Ministry of Finance took steps to comply with this instruction, the process was aborted abruptly by the launching of the three barges on 23 August 2020. As a result the process was not concluded and there was no outcome to submit for NSC consideration.

116. Therefore, instead of reaching a decision based on a procurement process, the NSC, was faced with ratifying an obligation created outside of its instructions. There was no indication that attempts were made to secure emergency authorization from the NSC members prior to the launching of the barges although both Customs and Immigration heads confirmed that they had prior knowledge of the launching.

117. We could find no Constitutional or legislative provision that supports or allows for a decision affecting national security to be handled in the manner indicated.

Cabinet Approval

118. No tender waiver was sought from Cabinet for the first contract. Instead, Cabinet relied on the documents and correspondence from the aborted process to endorse EZ Shipping and ratify the draft contract.

119. The continuation of EZ Shipping’s services under two additional contracts occurred without any formal request or report on the functioning of the platforms from the JTF. The information papers submitted to NSC and Cabinet contained the same misinformation regarding the service. They claimed that the platforms were being used by Customs and Police to launch vessels, which was not the case, and

more significantly that the platforms were in use for December 2020 and January 2021 when they were not. This led to contracts and payments for a service that was not received.

120. None of the papers to Cabinet requested a waiver of the process, but rather ratification of a decision and adoption of the commitment that had been created through an unauthorized process.

121. Having failed to complete the modified tender process a waiver should have been sought giving reasons why the process was not allowed to conclude for compliance with NSC instructions.

Border Security Legislative Remit

123. The Constitutional position with respect to territorial security remit is that this rests with the National Security Council and the Governor. The Constitution provides that the Governor must act in accordance with the advice of NSC unless he considers this would adversely affect His Majesty's interest either in the United Kingdom or Virgin Islands.

124. Other legislation conveys authority and processes which have security oversight implications. The Custom Duties and Management Act, 2010 gives the Customs Department broad powers to board vessels in the territorial waters, vehicles on land and non-residential properties and perform searches to ensure that prohibited or restricted goods do not enter the Territory and goods are declared as required. The legislation is aimed at addressing smuggling of unauthorized substances or undeclared goods. It does not convey powers for territorial or border security beyond the smuggling of goods. The Customs Act also provides for Customs to call upon the Police for assistance in carrying out its mandate.

125. The Police have more comprehensive and inclusive powers which include the duty to stop, search and detain aircraft, vessels, vehicles, and persons with respect to stolen, smuggled, or unlawfully obtained goods. They also have the duty to apprehend smugglers and seize goods liable for seizure. Because of the more comprehensive powers, Immigration and Customs Officers working within the JTF during the shutdown were temporarily given policing powers which empowered them to detain individuals suspected of breaches. The Police also have the duty to defend the Territory against external aggression or the threat thereof when called out to do so.

126. Whereas the Customs legislation provides powers regarding the search and confiscation/forfeiture of goods and conveyance entering the Territory, the Immigration legislation provides powers for the regulation of persons entering and leaving the Territory. It also makes provision for Immigration to call on the Police and Customs to assist in carrying out its duties.

127. There is no legislation that vests the border security remit with the Premier. The Constitution does, however, provide that the Governor may delegate matters of internal security to the Premier under terms and conditions as he (the Governor) thinks fit. This did not occur, either during the period of the COVID-19 border closure or at any other period before or after.

128. Throughout the COVID-19 lockdown and thereafter there were ongoing efforts by the Premier to assume responsibility for border security. This was demonstrated in:

- i. Ongoing correspondence which sought to control and exclude the Governor's offers of UK surveillance assistance for, and contribution to, the Territory's border security challenges;
- ii. The tendering for border security equipment (land based platforms) without consultation or approval of NSC or the Governor; and
- iii. The launching of EZ Shipping barges without any legislative authority or approval.

129. This activity led to a number of legislative failures and costly missteps. There is a need for the roles with respect to border security to be fully articulated so that persons are aware of their responsibilities and limitations. The failure to do so can potentially result in further confusion and overstepping of authority.

Conclusions

130. The border security crisis was an unanticipated consequence of the COVID -19 pandemic. The formation of the Joint Task Force to combine law enforcement resources and address this issue was a commendable initiative that was widely supported. This unit was ultimately used to engage the Government in a contract that they (the JTF) did not request and was not fully supportive of.

131. The JTF was compelled to adopt the floating platforms after receiving a directive from Cabinet to reconsider the barges that had previously been declined by the Police Commissioner. Following the directive, the JTF's Border Security Plan, which sought funding for the border security activities, was amended to include one month's use of the barges. This was extended to five months without official request from the JTF for continuation of the service.

132. The expedited procurement process approved by NSC to secure competitive bids for marine platforms was aborted by the unauthorized deployment of the barges. This occurred before the information received from the procurement efforts could be returned to the NSC for consideration. The cancellation of the procurement process meant that a contract should have been ratified by Cabinet in the form of a tender waiver.

133. No evidence has been presented to support statements regarding the effectiveness of the barges. The statistics provided show that the greatest reduction of activity occurred during the period that the UK military ship Medway was patrolling territorial waters. In addition, the continuance of illicit activities was evident in drug busts that occurred during the period the barges were in use. The Customs staff reported a change in modus as persons engaged in avoidance tactics to circumvent the sphere of the platforms.

134. The payments made to EZ Shipping covered two months when the barges were not used. Incorrect information was provided to the NSC and Cabinet to facilitate approval of the contracts and support unearned payments of more than \$700,000.

135. Actions taken by the Premier and the Ministry of Finance with respect to border security without authorization of the NSC and the Governor may have amounted to overstepping their legislative authority. The former by engaging the barges and the latter by issuing public tenders for territorial surveillance equipment for border security.

Recommendations

1. Each of the Departments should be reminded of their respective roles for territorial and border security to avoid future instances of overstepping authority.
2. An assessment should be performed by the Attorney General Chambers to determine whether the Government should pursue recovery of the amounts paid to EZ Shipping for the period 26 November 2020 to 22 January 2021 when the barges were not in use by the Government.
3. An assessment should be performed by the Police and the Director of Public Prosecutions on whether any offences were committed with respect to the engagement of the marine platforms.
4. There should be clear legislative repercussions at all levels for persons who disregard legislative authority and knowingly commit the Government to an expenditure in a manner that is not approved.

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