



Cook Islands Audit Office

Special Review Report

Ministry of Agriculture – Vehicle Tender Process



PARLIAMENT OF THE COOK ISLANDS

PARLIAMENT PAPER NO. 15

Speaker of Parliament
Parliament of the Cook Islands
Nikao, Rarotonga
Cook Islands

Sir,

I have the honour to present the Special Review Report on the Ministry of Agriculture –
Vehicle Tender Process.

Hon. Sir Dr Terepai Maoate, KBE
Deputy Prime Minister
Minister Responsible for the
Office of Public Expenditure Review Committee and Audit.

COOK ISLANDS



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30 May 2008

Speaker of Parliament
Parliament of the Cook Islands
Nikao
Rarotonga

Honourable Speaker

Pursuant to Section 33 of the Public Expenditure Review Committee and Audit Act 1995-96, I have the honour to submit my report on the Ministry of Agriculture – Vehicle Tender Process.

Following its delivery and presentation to Parliament, the report will be placed on the Cook Islands Audit Office's website (<http://www.auditoffice.gov.ck/>).

Paul R.S. Allsworth
Director of Audit

OFFICE OF PUBLIC EXPENDITURE REVIEW COMMITTEE AND AUDIT

AUDIT REPORT RELATING TO THE VEHICLE TENDER PROCESS ENGAGED BY THE MINISTRY OF AGRICULTURE

AUDIT SUMMARY

Please find enclosed the audit report relating to the Vehicle Tender Process engaged by the Ministry of Agriculture (MOA) when they tendered the GA 318 Toyota Rav Jeep Vehicle.

1.0 INTRODUCTION

In November 2006, Nga Mataio, the Secretary to the Ministry of Agriculture (MOA) decided to tender the vehicle due to its high maintenance cost, mechanical problems and excess supply of vehicles at MOA. The tender was advertised in the Cook Islands News for a week and four bids were received with the highest bidder being \$6000 and the lowest being \$1000. Nga Mataio awarded the tender to a staff member whose bid was \$3000. The former manager of the Punanga Nui was a staff member retiring at the time.

On the 4th of December, 2006, the Funds Manager at MFEM, David Lobb, forwarded a letter to the Secretary of Agriculture highlighting concerns about the tender process that he had undertaken when tendering the GA 318 vehicle.

David Lobb indicated in his letter that the tender process undertaken by the Ministry of Agriculture (MOA) was not in accordance with the Cook Islands Governments Policies and Procedures Manual (CIGFPPM) Part D Section 3. The concern here was that the tender process was not adhered to and fully understood by the Secretary of Agriculture.

This matter was then referred to the Public Service Commissioner (PSC) along with the Financial Secretary and the Audit Office for further clarification. The Audit Office has a responsibility under the PERCA Act to review and report areas of inefficiencies, waste, abuse and misconduct.

2.0 MAJOR AUDIT FINDINGS

Audit found that the MOA for this particular tender had four main areas of concern:

- **Non Compliance to the Public Tendering Section in the CIGFPPM:** The Tender Process followed by MOA does not comply with the tender process set in the CIGFPPM especially regarding advertising of a tender and setting up a tender team. The tender was advertised for five days and the decision to award the tender to the successful bidder was made solely by the Secretary of Agriculture. The CIGFPPM states that tenders need to be advertised for a minimum of 14 days and a tender team is required to make decisions in the tender process.

- **Misinterpretation of the Tender Requirements in the CIGFPPM and the MOA Policies:** The Secretary of Agriculture does not fully understand the government tender process particularly the interpretation of the clause “highest tender not necessarily accepted” and other procedures set out in the CIGFPPM regarding Public Tendering. The phrase “highest tender not necessarily accepted” is to eliminate tenders received who have not reached the reserve or in this case, the book value price of \$6,222.24 The Secretary also misinterpreted the current MOA Policies & Procedures Manual regarding tendering because he claims that their policy allows him to give first preference to staff when deciding on the successful tender. The policy only states that the HOM will take into consideration the tenders submitted from staff, however it does not indicate that staff preference would be given priority.
- **Biased Decision Making:** It was clear that the Secretary was biased in his decision when he awarded the tender to the third highest tender and that person was a staff member. By doing such, shows favouritism on the part of the Secretary of Agriculture. Rosie Blake, the successful bidder and staff member only tendered \$3000 while the highest bid was \$6000. The Secretary’s justification for awarding the tender to Rosie was because she was a staff member and also because of the condition of the vehicle having lots of mechanical problems. The Secretary felt that to award the tender to the highest bidder would be unfair due to the mechanical problems the vehicle had. Audit noted from MOA financial accounts, it showed that the budget allocation for repairs and maintenance of vehicles was well under the actual budget. This improper justification is more of an excuse to award the tender but more importantly, the Secretary’s actions led to the ministry achieving a net loss of \$3,222.24 on the sale of the vehicle.
- **Inadequate Tendering Information:** The Public Tendering section in the CIGFPPM lacks information regarding valuing vehicles in preparation for tender and it doesn’t really set out reasonable guidelines for tendering out government assets. The Tender Report included in the CIGFPPM specifies that the book value and the market value of the vehicle is required before the sale of the vehicle however it does not specify how one obtains that information. It also doesn’t indicate where one sources the valuing information from. The CIGFPPM also focuses more on purchasing rather than the selling of government assets and in both cases, their requirements would be slightly different.

3.0 AUDIT CONCLUSION

From this review,

Firstly, it is clear that the Secretary of Agriculture:

- Did not adhere to the CIGFPPM, regarding Public Tendering
- Breached the MFEM Act 1995/96 by failing to comply to the CIGFPPM
- Failed to ensure that MOA Policies are in conformity with the CIGFPPM
- Contravened the CIGFPPM by adhering to the MOA Policies and Procedures Manual
- Showed bias in awarding the tender to the third highest tenderer

- Showed favouritism by awarding the tender to a staff member
- Provided justifications for the successful tenderer which after scrutiny lacked substance and validity

The effect of the Secretary of Agriculture's actions is that it actually gave the Ministry a \$3,222.24 loss on the sale of the asset. This practise is totally unsatisfactory and question's the integrity and intentions of the HOM. The Public Service Commissioner needs to consider the major findings and anomalies by the Secretary of Agriculture that impact under his employment contract and performance agreement and takes the appropriate corrective measures accordingly.

It is also evident that the Secretary's decision to award the tender to his staff was bias, prejudiced and reflected elements of favouritism. We also found the explanations provided by the Secretary of MOA in justifying his decision to be irrational and groundless. It is our view that the Secretary of MOA was irresponsible and negligent in awarding the tender to his staff, which resulted in a net loss of \$3,222.24 to the MOA.

Secondly, it appears that there are some inadequate provisions in the CIGFPPM that sets out clear instructions and procedures for ministries and crown agencies to follow in respect to tendering government vehicles.

MANAGEMENT REPORT

1.0 INTRODUCTION

On the 4th of December, 2006, the Funds Manager from the Treasury Management Division at MFEM, David Lobb, forwarded a letter to Nga Mataio, the Secretary of Agriculture highlighting concerns about tender process that Nga had undertaken when tendering the GA 318 vehicle.

David Lobb indicated in his letter that the tender process undertaken by the Ministry of Agriculture (MOA) is not in accordance with the Cook Islands Governments Policies and Procedures Manual (CIGFPPM) Part D Section 3. The concern here is that the tender process was not adhered to and fully understood by the Secretary of Agriculture.

This matter was then referred to the Public Service Commissioner (PSC) along with the Financial Secretary and the Audit Office for further clarification.

2.0 AUDIT OBJECTIVES

The objectives of this review are to:

- a. Determine whether the tender process followed by the Ministry of Agriculture has compliance issues with Public Tendering section in the CIGFPPM.
- b. Review and determine whether the Secretary of Agriculture understands the government tender process.
- c. Determine as to whether there was any bias or favouritism in the Secretary of Agriculture's decision to award the tender to his staff.
- d. Determine whether the Crown received maximum economic benefit from this tender.

3.0 AUDIT SCOPE

The scope of this audit was limited to the financial year period 1 July 2005 to 30 June 2007. Even though the vehicle was purchased in May 2005, the major activities pertaining to this vehicle took place during this period. The following documents were reviewed;

- Cook Islands Government Financial Policies and Procedures Manual (CIGFPPM)
- MOA Financial Records – Maintenance Budget
- MOA Maintenance Records - GA 318 Vehicle
- Tender Documentation & Correspondence
- MOA Policies & Procedures Manual – Vehicle Tendering

4.0 BACKGROUND

In May 2005, the Ministry of Agriculture (MOA) was allocated \$12,000 to purchase a vehicle for the Punanga Nui. A Black Toyota Rav4 Jeep was purchased and assigned to Rosie Blake, the former Manager of the Punanga Nui Market and former MOA staff member. According to Nga Mataio, the vehicle had been plagued with mechanical problems and they've had to spend a lot of money on maintaining it. In November 2006, Nga Mataio

decided to tender the vehicle due to its mechanical problems and the excess supply of vehicles at MOA. The tender was advertised in the Cook Islands News in the last week of November 2006 for a week and four bids were received. The tenders received were:

- \$6,000 by Tender X
- \$5,000 by Tender Y
- \$3,000 by Staff Member
- \$1,000 by Tender Z

The names of the other tenders have been kept confidential due to Audit policy. The staff member's identity was disclosed to Cook Islands News by a member of the public.

David Lobb, Funds Manager of the Treasury Management Division, MFEM, was alerted to the sale and shown the tender notice in the Cook Islands News. The Funds Manager wrote on the 4 December 2006 to the Secretary of MOA regarding the short period that the tender was advertised and the reason the vehicle was being disposed of when it was only purchased in May 2005.

The Secretary of MOA responded to the Funds Manager on the 5 December 2006 and provided his justifications for advertising the tender within a short period and the reason for disposing the vehicle. The Secretary's explanations were that he advertised the tender for one week instead of two weeks to minimize cost as required by MFEM. He further stated that due to the high maintenance cost of the vehicle, he decided to tender the vehicle.

The Funds Manager in his letter dated 11 December 2006 to the Secretary of MOA requested that a Tender report be completed by MOA and submitted to the Tender Committee. The Secretary of MOA provided a Tender report including his justifications for awarding the tender to the successful tender to the Funds Manager.

The justifications provided by the Secretary of MOA to the Funds Manager were found to be unsatisfactory and prompted the Funds Manager to report this matter to the appropriate authorities for further investigation.

5.0 AUDIT FINDINGS

5.1 Non Compliance to the Public Tendering Section in the CIGFPPM

5.1.1 Audit found that the tender process followed by MOA did not adhere to the tender guidelines set in the CIGFPPM. Audit found that the vehicle tender was only advertised for seven days and that the decision making process for the tender was only determined by the Secretary of Agriculture without involving anyone else.

5.1.2 According to Part D Section 3, Subsection 3.3 of the CIGFPPM, a Tender Team is to be established to "develop, document and manage the tender process". In this case, we confirmed that no Tender Team was setup by MOA. The Secretary of Agriculture was fully responsible for managing the tender process and awarding the tender for the vehicle to his staff, Rosie Blake.

5.1.3 According to Part D Section 3, Subsection 3.5.1.2, "A minimum of 14 days is required prior to the closure of the invitation, for advertising to the public. This will

provide a reasonable period of time for potential tenderers both here, outer islands and overseas to submit proposals”.

- 5.1.4 The Secretary provided his justifications to MFEM as to why he only advertised the tender for 5 days and not 14 days. He stated that all ministries were instructed by MFEM to minimise their ministry expenditure because the 2006 budget had not been passed at that time. Hence, he decided to advertise the tender for only 5 days instead of the 14 days to minimize costs.
- 5.1.5 According the Cook Islands News, the average cost for advertising a 30-words ad is \$10.00 a day, so an ad in the Cook Islands News for two weeks would be around \$120.00. Audit is of the view that the Secretary’s justification for advertising the tender for a week only is unwarranted and baseless as the advertising costs for two weeks would not have any dramatic impact on the ministry budget.
- 5.1.6 Clearly, the Secretary failed to comply with this provision in the CIGFPPM tender guidelines and he has admitted his mistakes however Audit finds his justification for mistakes made to be unreasonable.

5.2 Misinterpretation of the Tender Requirements in the CIGFPPM and the MOA Policies

- 5.2.1 Audit found that the Secretary of MOA did not fully understand the government tender process specified in the CIGFPPM, the purpose of these provisions and the MOA policies. This was evident in the manner in which, he conducted the tender and the way he interpreted the requirements specified in the tender section of the CIGFPPM and the MOA policies.
- 5.2.2 Part D, Section 3, Subsection 3.7.6.12 of the CIGFPPM states that “the tender that is the lowest (for purchases) or highest (for sales) may not always be the preferred tender but a comprehensive justification for why they are not preferred must be documented in the assessment report.”
- 5.2.3 Audit is of the view that the purpose of this clause is to eliminate any tender, where the highest tender is less than or well below the book value or the reserve price. Book value is the net value of the vehicle, which is calculated, based on the cost price less the accumulated depreciation incurred up to any point of time. The reserve price is the benchmark or price that a Ministry wishes to obtain from the sale of the vehicle. Normally, the benchmark or the reserve price is determined by the book value or the market value.
- 5.2.4 Where the highest tender is greater than the book value, then it is conventional to award the sale to the highest tender, thus, this clause becomes impractical. This principal should be applied in the right context and only where the highest tender does not meet the book value.
- 5.2.5 The clause “highest tender not necessarily accepted” was used in the advertisement of the tender in the Cook Islands News Paper. The fact that the Secretary awarded the tender to the third highest tender of \$3,000, which was well below the book value, indicates that he misinterpreted and incorrectly applied this clause to the

circumstances of this tender. The justification provided by the Secretary of MOA in awarding the tender to his staff was that he was not obligated to award the tender to the highest tender of \$6,000.

- 5.2.6 The Secretary confirmed that he did use some of the requirements of the tender process in the CIGFPPM along with requirements in the 2005 MOA Policies & Procedures Manual but only included sections where he felt were applicable to the MOA tendering process. His reason for doing so was because he wasn't comfortable and familiar with the CIGFPPM. Audit found this reason to be mediocre because he could have sort and obtained clarification from MFEM if he wasn't sure or unclear what the requirements were in the manual.
- 5.2.7 Part A, Section 4, Subsection 2.5 of the CIGFPPM states that "any person subject to the provisions of this manual who is unsure of the meaning of the content, or who is confronted with a subject that is not covered, must seek clarification from the MFEM".
- 5.2.8 In the event where a requirement is not covered in the CIGFPPM, the Head of any Government Ministry is required to seek clarification from MFEM and must not create their own requirement.
- 5.2.9 Audit is of the view that the Secretary's justification for awarding the tender to his staff member, Rosie Blake was unjustified because there was nothing specific in both the MOA policy and Part D Section 3 of the CIGFPPM that specify that first preference be given to staff when awarding tenders. Although the MOA policy states that careful consideration would be given to staff tenders, it does not state that first preference will be given to staff tenders.
- 5.2.10 The purpose of the tendering process outlined in the CIGFPPM is to ensure a level playing field and that all tenders are given equal opportunity to bid. The CIGFPPM procedures do not make any reference to giving preference to staff tenders. This shows that the Secretary overlooked the tendering guidelines in the MOA policy and the CIGFPPM for this case, which resulted in him making a biased decision in awarding the tender to Rosie Blake.
- 5.2.11 Audit finds the actions of the Secretary of MOA to be improper and irresponsible. The justifications provided by him were also found to be unconvincing and unreasonable. As an experienced HOM, Audit is of the opinion that the Secretary should be familiar with CIGFPPM requirements and should have made sound decisions during this case. According to Section 29 (a) of the MFEM Act 1995-96,

"All Heads of Departments are responsible for ensuring that all activities of the Government Department are undertaken in a manner which is consistent with Government financial and fiscal policies and sound financial management."

- 5.2.6 The Secretary, in this case, being a long serving senior public servant should have been more responsible in ensuring that he fully understood and complied with the CIGFPPM. Failing to do so would only reduce the public's trust in his judgment and management of the Ministry of Agriculture.

5.3 Biased Decision Making

- 5.3.1 It was clear that the Secretary was biased in his decision when he awarded the tender to Rosie Blake. Rosie was a staff member at the time of the tender and was planning to retire as a public servant in December 2006. Rosie tendered only \$3,000 while the highest bid was \$6,000. Her bid was the third highest as compared to the higher bids of \$5,000 and \$6,000.
- 5.3.2 Audit question's the Secretary's justification for awarding the tender to Rosie given that her tender was third highest tender received. The Secretary claimed that the MOA tendering policy allows for staff tenders to be considered when awarding tenders. Audit found that the MOA tendering policy did not specify that staff tenders are to be given first preference when awarding tenders, but it only mentions that staff tenders are considered. Rosie's bid was well below the other two higher bids and it didn't even come close to the book value of \$6,222.24 highlighted in the tender report, however she was still awarded the tender. Audit notes that a Head of Ministry should always maximize the economic benefit to the Ministry, given that the book value of the asset equaled the highest tender of \$6,000. By selecting the third highest, the Ministry made a \$3,222.24 loss of the sale of the asset.
- 5.3.3 The explanation provided by the Secretary for not awarding the tender to highest tender was because of the frequent mechanical problems of the vehicle. The Secretary felt that it would be unfair to award the tender given frequent mechanical problems identified with vehicle which may result in the person complaining of it later. Audits found the Secretary's justification to be absurd and inappropriate because the vehicle was tendered as he put it to, due to mechanical problems and public tenderers submitted their tenders and expect to get the vehicle in whatever condition it comes in.
- 5.3.4 Audit also queried the justification given by the Secretary for tendering the vehicle due to high maintenance cost because MOA did not overspend their maintenance budget for motor vehicles. The Secretary agreed with Audit that MOA had not overspent their vehicle maintenance budget however he wanted to minimise the vehicle maintenance cost and had other MOA vehicles to look after. The Secretary felt that the maintenance cost incurred by one vehicle, namely the GA318 Toyota Rav Jeep over a short period of time was too high hence the reason for it to be tendered. Audit's analysis found the justification given by the Secretary to be unreasonable because there was another vehicle (GA235) that had higher maintenance cost of \$2,156.62
- 5.3.5 Audit also had concerns over the timing of the tender given that it took place in November 2006. Audit reviewed the MOA vehicle maintenance records and financial records and found that the only major repair to this vehicle took place in January 2006 at a cost of \$1,769.75. Although other minimal maintenance costs of \$99.00 were incurred to this vehicle, no other major repair cost was incurred except that in January 2006. The vehicle's total maintenance cost was \$1,868.75. If the Secretary's justification to tender the vehicle was due to the high repairs and

maintenance cost, then we expected the vehicle to be tendered just after the repairs were conducted in January 2006 and not 11 months later.

- 5.3.6 Audit is concerned that the timing of the tender of vehicle does not fit in well with the explanations given by the Secretary, as the vehicle was not tendered just after it was repaired, but 11 months later in the period when Rosie Blake retired from the MOA. Audit is of the opinion that the decision to tender the vehicle in November 2006 was influenced by Rosie Blake's retirement.

5.4 Inadequate Tendering Information

- 5.4.1 It appears that there are inadequate provisions in the CIGFPPM that sets out clear instructions and procedures for ministries and crown agencies to follow in respect to tendering government vehicles.
- 5.4.2 Part D Section 2 Attachment 1 of the CIGFPPM states that All Vehicles and Other Assets Over \$5000 must follow the specific tender process in Part D, Section 3.3. Section 3.3 only makes reference to the establishment and composition of the Tender Team with a "Terms of Reference" to develop, document and manage the tender process. However, we did not find any Terms of Reference as referred to in Section 3.3 in the CIGFPPM. It is recommended that the CIGFPPM should provide the Terms of Reference to guide the tender team in developing, documenting and managing the tender process.
- 5.4.3 Audit also notes that reference is made in the CIGFPPM to the tender report, which must be completed by Ministry or Crown Agency in the event of a tender. The tender report requires the Ministry to provide a book value and the current market value, however, no reference have been made to any procedures of where and how the current market value can be obtained by Ministries. There should also be a standard or a list of approved registered valuers allowed providing the assessment or value of vehicles.
- 5.4.4 Audit is of the view that there needs to be added in the clause the "as is" to eliminate any risk or liability to any government agency that may arise after the sale of vehicles. The Secretary's justification in this case for not awarding the tender to the highest tenderer was because he wanted to avoid complaints about the mechanical problems. An "as is" clause would protect the Secretary and the ministry from any possible complaints that may arise due to the sale of an asset.
- 5.4.5 Audit also found that Part D Section 3 on Public Tendering in the CIGFPPM caters more for purchasing rather than selling government assets. This is evident because of the detailed technical requirements needed, the personnel requirements for teams and committees needed for evaluating tender documentation and the extensive documentation required to be submitted. These requirements are necessary if a ministry or crown entity wishes to compile a tender for projects that cost over \$30,000 plus however, it seems unnecessary and time consuming to follow these requirements if a ministry wishes to tender out a vehicle worth between \$1,000 and \$10,000. Based in these finding, it appears that the Public Tendering Section in the CIGFPPM would need to be revised.

6.0 AUDIT RECOMMENDATIONS

The following recommendations are addressed to Secretary of the Ministry of Agriculture, Financial Secretary and the Public Service Commissioner.

Ministry of Agriculture

The Secretary of the Ministry of Agriculture:

- 6.1 Must follow the CIGFPPM tendering procedures at all times in any tender process engaged by the Ministry.
- 6.2 Must update the MOA tendering policies and ensure that they are in conformity with the tendering guidelines set in the CIGFPPM.
- 6.3 Must seek clarification from MFEM if unclear about the provisions in the CIGFPPM
- 6.4 Must exercise professional and impartial judgment in any decision made to ensure that financial dealings of any nature are contestable, transparent, accountable, arms length and without favouritism.
- 6.5 Must improve MOA tender process and documentation to reflect tendering guidelines set in the CIGFPPM.

The Ministry of Finance and Economic Management (MFEM)

The Financial Secretary:

- 6.6 Should revise Part D, Section 3 of the CIGFPPM to separate and differentiate the purchasing requirements from the selling requirements of government assets as both activities have different requirements.
- 6.7 Should consider incorporating the “as is” clause to eliminate any risk or liability to a ministry or crown entity when tendering government assets.
- 6.8 Should consider incorporating a provision that stipulates that all tenders are to be treated equally without any special preference given to staff tenders. It should be make clear that HOM’s should not give first preference to staff
- 6.9 Should provide clarification on the application of the clause “highest tender not necessarily accepted” and further clarify Part D, section 3, and subsection 3.7.6.12 of the CIGFPPM.
- 6.10 Should set out specific procedures of when and how to:
 - ž Obtain asset valuation and quotes
 - ž Determine the reserve price of an asset
 - ž Re-tender the asset when the tenders received do not meet the requirements.

The Office of the Public Service Commission

The Public Service Commissioner:

- 6.11 Should consider the major findings and anomalies arising from this report and take appropriate actions under his employment contract and performance agreement.
- 6.12 Should take corrective measures as he sees fit in order to rectify and remedy this unsatisfactory situation.

7.0 AUDIT CONCLUSION

The findings of this audit review revealed a number of anomalies and irregularities in the manner in which the MOA managed the tender process. It is clear that the Secretary of MOA:

- ž Failed to follow the correct tendering procedures set in the CIGFPPM
- ž Failed to ensure that the MOA tendering policies are in conformity with the CIGFPPM
- ž Misinterpreted the MOA tendering policies.

It is also evident that the Secretary's decision to award the tender to his staff was bias, prejudiced and reflected elements of favouritism. We also found the explanations provided by the Secretary of MOA in justifying his decision to be irrational and groundless. It is our view that the Secretary of MOA was irresponsible and negligent in awarding the tender to his staff, which resulted in a net loss of \$3,222.24 to the MOA.

RESPONSE TO THE ABOVE REPORT

The Audit of the Audit Report for the Vehicle Tender Process engaged by the Ministry of Agriculture was issued on the 19 February 2007 to the following:

- Hon. Dr. Sir Terepai Maoate, KBE Deputy Prime Minister and Minister of Finance and PERCA
- Hon Ngamau Munokoa, Minister of Agriculture
- Nga Mataio, Secretary of Agriculture
- Kevin Carr, Financial Secretary, MFEM
- Michael Mitchell, Solicitor General, Crown Law
- Navy Epati, Public Service Commissioner
- Charles Little, Chairman, PERC

Specific Recommendations were addressed to the following:

- Nga Mataio, Secretary of Agriculture
- Kevin Carr, Financial Secretary, MFEM
- Navy Epati, Public Service Commissioner

This report was issued on 16 February 2007 and a reply is required by 02 March 2007. The reply therefore will not be attached if received after the tabling of this report in Parliament.

Audit notes that the response deadline of 14 days has yet to lapse as at the date of this report.