



25 January 2007
www.wao.gov.uk

WALES **AUDIT** OFFICE

SWYDDFA **ARCHWILIO** CYMRU

The Princess Elizabeth Hospital Clinical Block –
Consideration of the circumstances which led to the
withdrawal of the preferred tender in August 2006

The Princess Elizabeth Hospital Clinical Block – Consideration of the circumstances which led to the withdrawal of the preferred tender in August 2006

I have prepared this report for the States of Guernsey Public Accounts Committee in accordance with Article 11, Resolution 5 of the States of Guernsey concerning Billet d'Etat No. XVII dated 6 October 2006, and under an agreement with the States of Guernsey, facilitated by section 96C of the Government of Wales Act 1998.

The Wales Audit Office study team that assisted me in preparing this report comprised Gill Lewis, Chris Bolton, Iolo Llewelyn and David Rees.

Jeremy Colman
Auditor General for Wales
2-4 Park Grove
Cardiff
CF10 3PA

The Auditor General is wholly independent of Government and the other bodies that he audits and inspects. He and his staff together comprise the Wales Audit Office. For further information about the Wales Audit Office please write to the Auditor General at the address above, telephone 029 2026 0260, email: wales@wao.gov.uk, or see web site <http://www.wao.gov.uk>

Report prepared by the Auditor General for Wales for the States of Guernsey Public Accounts Committee

The withdrawal of the RG Falla Limited tender for the Princess Elizabeth Hospital (PEH) Clinical Block was the culmination of a series of process and procedural weaknesses, and a series of unplanned and unconnected events and actions which led to an outcome which was neither anticipated nor desired.

Summary	6
----------------	---

Recommendations	11
------------------------	----

1 Part 1: The States' processes and procedures for developing and managing capital contracts were not always followed. Furthermore, the procedures and processes were inadequate, incomplete and unclear	12
There was no methodology for the prioritisation and allocation of capital budgets leading to confusion and uncertainty in the tendering process	12
The guidance for developing capital schemes was not always followed. Furthermore, the guidance was inadequate, incomplete and unclear. However, the mechanics of obtaining and evaluating tenders for the Clinical Block generally complied with good practice	16

2 Part 2: A series of unplanned and unconnected events and actions led to the withdrawal of the RG Falla Limited tender, an outcome which was neither anticipated nor desired	18
The role of the Health and Social Services Department (HSSD) in developing the scheme was generally satisfactory with some significant exceptions	18
The actions of the Treasury and Resources (T&R) Department with regard to the Clinical Block scheme were generally appropriate, but with some significant exceptions	20
The T&R Minister was consistent in raising a number of legitimate concerns. However, some of his statements to the Policy Council were inaccurate, inconsistent with advice from his officers, the views expressed in meetings of the T&R Board and T&R's Letter of Comment. Moreover, his actions in discussing matters raised in the Policy Council with RG Falla Limited were inappropriate	24
The Policy Council discussions on 7 and 9 August 2006 were confused. The Policy Council failed to provide the Chief Minister with clear guidance for his discussions with the Minister for Commerce and Employment. The various conversations of 7 and 8 August between a number of those present at the Policy Council meeting of 7 August and the Minister for Commerce and Employment were inappropriate	26
The Chief Minister did not effectively perform his role as Chair of the Policy Council and failed to obtain clarity from the Policy Council as to his remit when meeting the Minister for Commerce and Employment	29
We have seen no evidence to suggest that the Minister for Commerce and Employment acted inappropriately regarding the withdrawal of the tender. However, he should have provided greater clarity regarding his responsibilities for RG Falla Limited	31

The Secretariat to the Policy Council sent commercially sensitive agenda papers to the Minister for Commerce and Employment and did not retain the notes used to prepare the minutes of Policy Council meetings 33

Appendix

Appendix 1: Sequence of events 34

Summary

- 1 The States of Guernsey Public Accounts Committee (PAC) was established in 2004 to ensure the proper scrutiny of the financial affairs of the States of Guernsey (the States). The PAC examines whether public funds have been applied wisely for the purposes intended by the States, without extravagance and waste. The PAC carries out investigations into States' departments, either directly or via third parties, in this case the Wales Audit Office.
- 2 The States have recognised the need to improve the quality of Guernsey's public sector infrastructure over a number of years and specifically to meet the equivalent of UK NHS minimum standards for health facilities.
- 3 From the mid 1990s onwards, the former Board of Health (now replaced by the Health and Social Services Department (HSSD)), planned a scheme to redevelop the Princess Elizabeth Hospital (PEH), the centrepiece of which would be a new Clinical Block. In September 2003, the States approved expenditure of £5.2 million to cover the detailed planning and consultancy costs of the Clinical Block element of the scheme and certain infrastructure works, which would facilitate the main development. By December 2005, expenditure totalling some £12 million had been authorised in respect of work connected with the Clinical Block.
- 4 In January 2006 tenders were invited for the main construction phase of the project. The lowest cost tenderer, RG Falla Limited was selected as the preferred contractor following an evaluation process which considered both cost and quality of bid. The RG Falla Limited bid was recognised by both the HSSD and the Treasury and Resources (T&R) Department as representing good value for money, being some £2.4 million less than the price of the alternative tender received. The contract price was also less than the original cost estimates provided by external quantity surveyors.
- 5 On 15 August 2006, following two Policy Council meetings, RG Falla Limited withdrew its tender, giving rise to widespread public concern in Guernsey.
- 6 The PAC invited the Auditor General for Wales to undertake a review in accordance with a resolution of the States concerning article 11 of Billet d'Etat XVII dated 6 October 2006. *"To instruct the Public Accounts Committee to cause to be carried out a full independent review of all the circumstances leading to the withdrawal of the lower tender (referred to in section 8 of Article 11, on page 1896) and to report back to the States with the findings of that investigation as soon as possible"*.
- 7 To address this issue we sought to confirm the nature and extent of the problem and the roles and actions of key individuals and groups. We have not only focused on the recent events such as the Policy Council meetings but sought to understand the environment in which capital schemes are developed and progressed.
- 8 We have concluded that the withdrawal of the RG Falla Limited tender for the PEH Clinical Block was the culmination of a series of process and procedural weaknesses, and

a series of unplanned and unconnected events and actions which led to an outcome which was neither anticipated nor desired.

- 9 It is unclear which factors directly influenced the decision of RG Falla Limited to withdraw its tender and which were incidental. The impact is clear, the States and its taxpayers will incur £2.4 million of unnecessary expenditure.

The States' processes and procedures for developing and managing capital contracts were not always followed. The procedures and processes were inadequate, incomplete and unclear

- 10 The States are required to approve expenditure on large capital schemes. There was no formal methodology in place to prioritise and allocate capital resources to schemes over the medium term.
- 11 In the absence of medium term capital planning, certain schemes have been funded on an incremental basis, even where approval in principle has been given for the whole scheme. In the case of the Clinical Block, the States approved the former Board of Health's site development plan for PEH in 1999. By December 2005, expenditure totalling some £12 million had been approved in respect of work connected with the Clinical Block. Approval for the main construction phase of the project was not given by the States until October 2006.
- 12 The uncertainty created by elongated procurement processes, as experienced in the case of the Clinical Block, is likely to perpetuate the States' reputation within the construction industry as being an undesirable client and make it difficult in future years to attract contractors to submit tenders for its capital schemes.
- 13 Historically, capital expenditure by the States had been kept at a relatively low level, but, over recent years, the level of expenditure has increased in order to improve Guernsey's essential public sector infrastructure. This increase has placed greater pressure on the States' capital resources, which are not sufficient to meet all the identified needs. The importance of developing a methodology to prioritise capital expenditure was formally raised by the Board of Industry as early as 2002 but little progress was made to put this in place until the Summer of 2006.
- 14 The failure of the States to address the issue of prioritisation in a more timely fashion was a key factor in the T&R Board's decision in July 2006 not to support the Clinical Block scheme at that time. This influenced the debate in the Policy Council which ultimately led to the withdrawal by RG Falla Limited of its tender. It is unclear why it took the States so long to address this issue, nor is it clear who was responsible for its progression. In July 2006, the Policy Council tasked T&R with producing a report on capital prioritisation. This was then progressed quickly by T&R and was submitted to the October 2006 meeting of the States.
- 15 The Board of Industry's 2002 report recognised the advantages for the States of developing an Economic Model of the local construction industry, to predict the impact of projected schemes in the public and private sectors on the industry and in so doing help the States to better plan when to undertake major construction schemes. However, as the States had not developed a medium term prioritised capital programme, there was no mechanism for utilising the outputs from the Model in a realistic way to inform the timing of capital schemes. In practice, the Economic Model appears to have had little influence over the timing of major capital schemes.

- 16** The States' guidance that outlines the processes to be followed when developing and letting capital contracts pre-dates the Machinery of Government changes introduced in 2004. As a consequence the guidance does not reflect current best practice, the practices that are actually followed by the States and the current structure and responsibilities of the States and States' departments and boards.
- 17** The guidance regarding roles, responsibilities and processes for developing capital schemes is very limited. There are no detailed descriptions of many of the processes to be followed when developing capital projects.
- 18** Gleeds International Management and Construction Consultants were appointed as the Project Manager in 2003 following a tender process. Whilst we have not undertaken a detailed review of their work, based on our limited examination, it appears to have undertaken its work in an effective and efficient manner, in line with industry and UK NHS good practice.
- 19** The HSSD was responsible for developing the proposals for the PEH Clinical Block and for overseeing the procurement and tender processes. In general, the HSSD appears to have undertaken this role effectively. The scheme was acknowledged by the T&R Department as representing good value for money and the procurement and tendering arrangements were generally satisfactory. However, the HSSD's actions were deficient in some material respects.
- 20** T&R officers played an important role in advising the T&R Board of the risks associated with the scheme. These officers generally supported the T&R Board effectively, with one exception.
- 21** The role of the T&R Board included commenting on the resource implications of the proposals, agreeing to the HSSD issuing tender documentation and providing a Letter of Comment to the States in respect of HSSD's States' report. Whilst, in general the T&R Board fulfilled this remit effectively, certain of its actions have risked perpetuating Guernsey's reputation within the construction industry of not being a desirable client.
- 22** The T&R Minister was consistent in raising a number of legitimate concerns. However, some of his statements to the Policy Council were inaccurate, inconsistent with advice from his officers, the views expressed in meetings of T&R Board and T&R's Letter of Comment.
- 23** On 10 August 2006, the Minister for T&R returned a telephone call from the Managing Director of RG Falla Limited. The resulting telephone conversation covered matters discussed at the Policy Council. In our view, the Minister for T&R acted inappropriately and exposed the States to allegations that there had been political interference in commercial matters.
- 24** The remit of the Policy Council included considering the merits of the HSSD proposal in order to advise the States whether the Policy Council supported these proposals.
- 25** Some elements of the Policy Council discussions on 7 and 9 August 2006 were confused. Whilst the meetings considered issues highlighted in T&R's Letter of Comment, much of the debates focused on the Minister for Commerce and Employment's perceived 'political exposure'.

A series of unplanned and unconnected events and actions led to the withdrawal of the RG Falla Limited tender, an outcome which was neither anticipated nor desired

In consequence the discussions did not remain focused on the merits or demerits of the Clinical Block proposals presented to the Policy Council.

- 26** The Policy Council failed to provide the Chief Minister with clear guidance for his discussions with the Minister for Commerce and Employment. In our view, the instruction from the Policy Council to the Chief Minister was unclear and inadequate. The Chief Minister was left in the invidious position of being expected to convey the various concerns of individual members of the Policy Council to the Minister for Commerce and Employment without clarity as to what these concerns were and what expectations the Policy Council had.
- 27** On 7 and 8 August 2006, following the Policy Council meeting of 7 August, six attendees at this meeting had conversations with the Minister for Commerce and Employment in which matters raised at the meeting were discussed. The Minister for Commerce and Employment had declared his interest and withdrawn from the Policy Council meeting and therefore under States' convention was not eligible to receive the minutes of the meeting. Therefore, the disclosure of information discussed at the meeting of the Policy Council on 7 August 2006 undermined this practice and was therefore inappropriate.
- 28** As Chair of the Policy Council, the Chief Minister was responsible for ensuring that the Policy Council meetings of 7 and 9 August were conducted effectively. In our view he did not effectively perform his role as Chair.
- 29** The confused discussion in the Policy Council meeting of 7 August 2006 could not have provided the Chief Minister with clarity as to his remit when meeting the Minister for Commerce and Employment. In our view, the Chief Minister was mistaken in considering he had obtained clarity, and he acted beyond the instruction given him by the Policy Council when he suggested to the Minister for Commerce and Employment that he could consider standing down from his political position.
- 30** The Minister for Commerce and Employment is a major shareholder in and Chairman of the Garenne Group, the holding company of RG Falla Limited which had been selected as the preferred tenderer for the Clinical Block scheme. The Minister for Commerce and Employment declared his interest in accordance with the States' procedures and he withdrew from meetings whenever the Clinical Block contract was discussed. The Minister for Commerce and Employment had no role in the development, tendering or evaluation of the Clinical Block scheme.
- 31** Whilst the Minister for Commerce and Employment is a major shareholder in the Garenne Group, he has no day to day responsibilities for the company and is not a member of its Board. However, he does retain certain strategic responsibilities for the company. In our view, the Minister for Commerce and Employment should have endeavoured to make his position in respect of RG Falla Limited clearer. We recognise that as he was not present at Policy Council meetings where his interests were discussed, he had limited opportunity to make this clear.
- 32** The effectiveness of the Policy Council is dependent upon the secretariat support provided by officers. This work is crucial to effective government. We have identified two procedural weaknesses relating to the secretariat support of the Policy Council in the context of the Clinical Block scheme. The first deficiency is that there is no set procedure for the handling of minutes or agenda papers and we understand there is no rule to prevent members of the Policy Council receiving agenda papers relating

to matters in which they have an interest. As a result sensitive agenda papers relating to the Clinical Block scheme were sent to the Minister for Commerce and Employment prior to the Policy Council meeting of 7 August 2006.

- 33** This has led to speculation by a few members of the Policy Council that RG Falla Limited withdrew its tender for commercial reasons on discovering that its bid was significantly lower than its competitor. No evidence has been provided to support this. Both the Minister for Commerce and Employment and the Managing Director of RG Falla Limited have told us that the contract was not withdrawn for commercial

reasons and that RG Falla Limited was prepared to honour its offer to put on hold its preferred contractor status including the tender price subject to cost of living increases only.

- 34** The second deficiency is that the Secretariat does not routinely retain the notes used to prepare the minutes of Policy Council meetings. Some members of the Policy Council have told us that they consider the Policy Council minutes of the 7 and 9 August were incomplete/inaccurate. However, as the notes used to prepare the minutes have been destroyed we have been unable to test this assertion.

Recommendations

R1	The States should determine whether the total funding requirements for capital schemes should be approved prior to undertaking detailed design work and inviting tenders.
R2	The States should review and update the processes and procedures for letting, managing and scrutinising capital contracts to take into account the Machinery of Government changes and public sector good practice.
R3	The State should review its guidance on contract letting arrangements to clearly define roles and responsibilities.
R4	The States should decide whether to introduce limits upon the amount of work it is prepared to award to a single contractor, and what these limits would be.
R5	The States should review its current policy of not mandating the requirement for performance bonds, insurance cover and review parent company guarantees to establish if these practices should be made mandatory.
R6	The States should evaluate whether the construction industry Economic Model is fit for purpose. If it is considered to be fit for purpose, the roles and responsibilities for its management need to be clearly defined and executed.
R7	The States should ensure that the timing of major capital schemes is effectively managed to avoid, wherever possible, 'peaks and troughs' within the construction industry as a result of the confluence of major schemes.
R8	The States should develop a robust methodology for prioritising capital expenditure which sets out the criteria to be used and the frequency of prioritisation exercises.
R9	The States should clarify the procedure and formalise the methodology used to undertake financial evaluations of contractors. This needs to cover responsibilities, timing, documentation and the criteria to be applied.
R10	The States should issue guidance to officers on the compilation and retention of notes used to support briefings given to States' Deputies, Boards and Committees, in order to minimise the risk of misinterpretation.
R11	The States should develop guidance for politicians on meetings or discussions with external parties. This guidance should cover appropriateness of meetings, procedures, recording, timing and whether officer support is needed.
R12	The States should consider if the notes of key meetings used to prepare minutes are kept for a defined period in case of dispute. An option to make audio recordings of proceedings would achieve a similar objective.
R13	The States should consider whether to debate the general issues of States' Deputies interests, in particular the compatibility of political and business and other outside interests.
R14	The States should put in place a procedure for the handling of minutes or agenda papers which sets out whether such documentation should be distributed to individuals who have declared their interest in an item under discussion.

Part 1: The States' processes and procedures for developing and managing capital contracts were not always followed. Furthermore, the procedures and processes were inadequate, incomplete and unclear

- 1.1 Part 1 considers the processes and procedures relating to capital prioritisation, budgeting, timing and guidance for capital schemes.

There was no methodology for the prioritisation and allocation of capital budgets leading to confusion and uncertainty in the tendering process

- 1.2 The States are required to approve expenditure on all large capital schemes. There was no formal methodology in place to prioritise and allocate capital resources to schemes over the medium term. Capital budgets have traditionally been published on an annual basis, although for many schemes, particularly the larger ones, total allocations, covering a number of years are approved. As the former Board of Industry's 2002 report 'The Construction Industry and the States' Spending Programme' notes, *'the closest the States comes to having a capital plan is the list of projects which committees state they wish to undertake and which is appended to the annual Policy Planning Report. Such a list is not a programme, it is an indication of projects that may, and in many cases may not, take place'*.

The budget allocation process was both incremental and confusing

- 1.3 In the absence of medium term capital planning, certain schemes have been funded on an incremental basis, even where approval in principle has been given for the whole scheme. In the case of the Clinical Block, the States approved the former Board of Health's site development plan for the Princess Elizabeth

Hospital (PEH) in 1999. In September 2003, the States approved an updated site plan and also approved expenditure of £5.2 million to cover the detailed planning and consultancy costs of the Clinical Block element of the scheme, and also certain infrastructure works, which would facilitate the main development. By December 2005, expenditure totalling some £12 million had been approved in respect of work connected with the Clinical Block. However, approval for the main construction phase of the project was not given until October 2006.

- 1.4 The States' policy has been to finance capital expenditure from available resources to avoid recourse to borrowing. As capital resources are limited, this policy has resulted in the States having limited flexibility to spread the cost of large capital schemes. We understand that this is one of the main reasons why the States have developed schemes on an incremental basis.

- 1.5 Nevertheless, we consider that there are risks associated with funding projects on this basis, as it can lead to:

- abortive work, where extensive design and other works are undertaken, but the main construction phase is not undertaken. We were told by a number of ministers and officers that there was a risk that the construction of the Clinical Block would not be approved by the States during 2006, as a result of a number of other competing priorities, such as education and mental health schemes.

■ elongated procurement processes. The short list of potential tenderers for the Clinical Block contract had been drawn up in May 2005. However, at that time, no budget had been approved by the States for the construction contract. For various reasons, but mainly as a result of delays arising from the States' failure to determine its capital priorities, tenders were not invited until January 2006 and the contract was not formally awarded until October 2006. The Board of Industry's report in 2002 found that over a half of capital projects did not proceed within stated timescales. In this instance, the failure to establish a budget in advance for the whole scheme contributed directly to the protracted procurement process.

- 1.6 The 2002 Board of Industry report also found that within the construction industry the *'States of Guernsey is not generally perceived to be a desirable client'*, As a result, in times of high demand for construction work, it could be difficult to find contractors willing to undertake work for the States. The production by contractors of expressions of interest and priced tenders is an expensive process which ties up significant senior staff resources. The uncertainty created by elongated procurement processes, as experienced in the case of the Clinical Block, is likely to perpetuate the States' reputation as an undesirable client within the construction industry, and make it difficult to attract contractors to submit tenders for its capital schemes.

Capital prioritisation was not progressed with sufficient urgency

- 1.7 Historically, States' capital expenditure has been kept at a low level, but over recent years, the level of expenditure has increased in order to improve Guernsey's essential public sector infrastructure. This increase has placed greater pressure on the States' capital resources, which are not sufficient to meet all the identified needs. As noted above, the Board of Industry drew attention to the lack of a proper forward programme of capital works in 2002.
- 1.8 In April 2002, the States resolved that *'The States Advisory and Finance Committee devise a system of prioritisation for future capital projects which enables projects to be considered on a strategic and corporate basis'*.
- 1.9 A further Board of Industry report in May 2003 recommended that the States should *'focus on the difficult, painful but vital task of devising a system for prioritising States capital projects to ensure the best returns and to maximise value for public money'*. Despite this, limited progress was made to address this issue until the summer of 2006 and this has had a significant adverse impact on the progression of the Clinical Block scheme.
- 1.10 By May 2005, the HSSD had progressed the Clinical Block proposals to the point where it was in a position to invite tenders for the work, and it issued tenders to companies on the select tender list. However, within a few days it withdrew the tenders as T&R requested that the tender exercise be deferred, pending a States' debate on capital prioritisation, which was expected to take place in December 2005.
- 1.11 By November 2005, as the scheme had already been significantly delayed, and the prioritisation debate was still not imminent, HSSD requested that T&R authorise it to undertake a tendering process. T&R granted this approval but stressed that this did not *'indicate the place which the project might occupy in a prioritisation programme agreed by the States'*, and requested that the HSSD ensure that tenderers were aware that States' approval, which might not be forthcoming, was required before the contract

could be awarded. In January 2006 the HSSD invited tenders for the scheme. In June 2006, the HSSD identified RG Falla Limited as the preferred tenderer for the scheme, and prepared a States' Report to be submitted to T&R, the Policy Council and eventually the States to argue the case for accepting the tender.

- 1.12** In accordance with normal States' practice for major capital schemes, the States' Report was first submitted to T&R for its comments. On 18 July 2006, the T&R Board considered a draft Letter of Comment on the scheme. This concluded that the project represented good value for money, but also identified risks to the States arising from:
- the depletion of the capital reserve if the scheme were to be approved;
 - the commercial risk of awarding the contract to the lowest tenderer (RG Falla Limited) who was already undertaking a significant amount of work for the States; and
 - the potential impact of the scheme on the local construction industry.
- 1.13** The draft Letter of Comment concluded that on balance the scheme should be supported. However, T&R Board members amended the report, as they were entitled to do, to state that *'the Treasury and Resources Department is not able to recommend that the States approve the Health and Social Services Department's proposals for the development of the PEH Clinical Block at this time'*. The minutes of the meeting make it clear that members' main concern, related to the absence of capital prioritisation. This was confirmed to us when we met with individual T&R Board members.
- 1.14** The uncertainty as to whether the Clinical Block was a key priority of the States had resulted in a very protracted procurement process. The failure

of the States to address the issue of prioritisation in a more timely fashion was a key factor in the T&R Board's decision not to support the scheme at that time. This in turn influenced the debate in the Policy Council which ultimately led to the withdrawal by RG Falla Limited of its tender.

- 1.15** In July 2006, the Policy Council requested T&R to produce a report on capital prioritisation. This was progressed quickly by T&R and was submitted to the October 2006 meeting of the States. This exercise resulted in a prioritised list of schemes but did not set out a methodology for prioritisation or establish criteria for use in the future.
- 1.16** It is unclear why it took the States so long to address capital prioritisation, nor is it clear who was responsible for progressing the issue prior to July 2006.
- 1.17** In July 2004, the Minister for T&R wrote to all States' members, departments and committees stating that *"in order to assist the T&R Department to consider how best to develop a mechanism to prioritise capital expenditure I am writing to you to find out your, and if appropriate your department's / committee's views on this matter"*. This indicated that T&R had accepted some form of remit for capital prioritisation.
- 1.18** However, the Budget Report 2005 published in November 2004 outlined the results of this consultation and found that there was uncertainty regarding *'which body or bodies should make the initial recommendations..... although naturally Treasury and Resources Department was frequently mentioned'*.
- 1.19** In November 2004, the T&R Department received a report commissioned from external consultants which examined States' projected construction spend over the forthcoming 10 years, to assess whether this would be

achievable with the available capital funding and the capacity of the local construction industry. The exercise provided valuable information which could have been used to develop capital prioritisation. Despite this, capital prioritisation was not addressed until 2006.

1.20 Members of the T&R Board have told us that the instruction given by the Policy Council to T&R in July 2006 to produce a report on capital prioritisation indicates that the Policy Council was responsible for progressing prioritisation.

1.21 We have been provided with various explanations why capital prioritisation was not progressed earlier. These include the pressure of work arising out of the Machinery of Government changes in 2004 and the burden of developing a new tax strategy. We were also told that capital prioritisation could not be progressed prior to the development of the Government Business Plan or the Economic and Taxation Strategy. Whilst these were important exercises, they should have been used to update capital prioritisation and not to delay its introduction. We consider therefore, that the States should have been more proactive in addressing this matter as it was clearly causing confusion in terms of capital planning.

There was no clear rationale for the timing of major capital schemes

1.22 The Board of Industry's 2002 report recognised the advantages for the States of developing an Economic Model of the local construction industry, this was to better predict the impact of projected schemes in the public and private sectors and in so doing help the States to better plan when to undertake major construction schemes. Whilst the Economic Model is a useful planning tool, it is not intended to be the sole determinant of the timing of such schemes.

1.23 The last comprehensive update of the Model had been undertaken during 2004, and a further partial update was undertaken in September 2005. Whilst the Clinical Block project had been included in the Model from 2003, these updates did not reflect changes to the scheme.

1.24 The September 2005 update predicted that the construction industry would experience a downturn in trade starting in 2006 and, as a result construction prices were already beginning to fall. The Deputy Chief Minister, who chaired the group developing the Model, commented that it was '*a good time to obtain competitive prices*'. This view was supported by the T&R Minister who stated that it was '*a good time to be planning capital projects*'.

1.25 However, as noted above, the States had not developed a medium term prioritised capital programme. As a result, there was no mechanism for utilising the outputs from the Economic Model in a realistic or coordinated way to inform the timing of capital schemes.

1.26 In practice the Economic Model appears to have had little influence over the timing of major capital schemes. In the case of the Clinical Block, the timing of the attempted tendering exercises appears to have been determined less by the output of the Economic Model and more by the HSSD's desire to progress the scheme as soon as possible.

1.27 The limited influence of the Model on the timing of capital schemes is further demonstrated by the minutes of the T&R Board of 20 June 2006, which states that '*Members agreed that the fact that the Economic Model had not taken account of the [Clinical Block] works was not a suitable basis on which to withhold support [for the Les Nicolles School Scheme], particularly given the protracted process undergone to reach this point....*'

1.28 In November 2005, when T&R authorised the HSSD to obtain tenders for the Clinical Block contract, it requested in writing that the HSSD provide details of the scheme's latest estimated costs and timings to the Commerce and Employment Department, in order to update the Model. This information was not provided, and consequently the Model was not updated to reflect the changes in the estimated cost and timing of the scheme between 2003 and 2005.

1.29 Although the Model had not been updated, in its Letters of Comment on the scheme prepared in July and September 2006, the T&R Department expressed concern that the *'addition of this project into the local market will consume the remaining available resources and contribute to pressure on the local construction industry in the short term'*.

1.30 That concern is not consistent with the Model's predictions published in September 2005 which, as stated above, predicted a downturn in demand for construction work from 2006 onwards. Neither is it consistent with the two very competitive bids obtained for the Clinical Block contract, which supports the view that local construction industry prices were starting to fall in light of the reduced anticipated workload.

The guidance for developing capital schemes was not always followed. Furthermore, the guidance was inadequate, incomplete and unclear. However, the mechanics of obtaining and evaluating tenders for the Clinical Block generally complied with good practice

1.31 The guidance relating to capital schemes was out-of-date and, as a consequence, was inconsistent with the new structures

introduced by the States' following the Machinery of Government changes in 2004. However, the mechanics of obtaining and evaluating tenders for the Clinical Block generally complied with good practice.

The guidance for developing capital schemes was not always followed. Furthermore, the guidance was inadequate, incomplete and unclear

1.32 The States' guidelines that outline the processes to be followed when developing and letting capital contracts are set out in the Administrative and Accounting Guidelines. This includes the States' Tendering Procedures Guideline.

1.33 This document was out-of-date (the States' Tendering Procedures Guideline was dated 1995), and pre-dated the Machinery of Government changes introduced in 2004. Therefore, it does not reflect:

- current best practices;
- the practices that are actually followed in the States; and
- the current structure and responsibilities of the States and States' departments and boards.

1.34 The guidance regarding roles responsibilities and processes in respect of developing capital schemes is very limited. For example, there are no detailed descriptions of many of the processes to be followed when developing capital projects, such as:

- the responsibilities of various parties to the contract (the client department, project manager, etc.);
- procurement options – traditional, design and build, partnership, etc;

- quality assurance arrangements;
 - the range and nature of output specifications required;
 - reporting progress against milestones;
 - authorising variations; and
 - post contract/implementation reviews.
- 1.35** All these aspects of managing capital schemes represent significant risks and we would expect to see guidance on how each part of a capital scheme is to be undertaken and audited.
- 1.36** Placing too much work with one supplier represents a risk to the States that any one supplier could become:
- financially overstretched;
 - managerially overstretched; or
 - given the unique nature of the construction market in the Channel Islands, a monopoly supplier.
- 1.37** The guidelines however make no reference to these risks, or how they should be addressed and/or mitigated. In the case of the Clinical Block tender, issues such as these were not raised with the HSSD until after a preferred tenderer had been appointed.
- 1.38** Paragraph B.1 of the States' Tendering Procedures Guideline states that departments have discretion as to whether contractors should be required to provide performance bonds or insurance cover, to ensure that the States are financially compensated if a contractor fails to deliver the contract. However, we understand that it has not been the practice for the States to

request such bonds or insurance cover, on the basis that these will increase the cost of tenders submitted by contractors who, if successful, will seek to recover these additional costs from the States. We understand that the States have therefore decided to bear these risks, although this policy has not been reviewed in recent years.

- 1.39** It is considered good practice for clients to obtain guarantees regarding performance from parent companies, when entering into contracts with subsidiaries, particularly where the subsidiary may be financially or managerially weak. The guidelines do not address this issue.
- 1.40** It should be noted that both contractors short-listed for the Clinical Block contract were subsidiaries of larger groups.

The mechanics of obtaining and evaluating tenders for the Clinical Block generally complied with good practice

- 1.41** In light of limited architectural, project management and quantity surveying skills available within the States', the HSSD appointed external consultants to undertake these functions. Gleeds International Management and Construction Consultants (Gleeds) as appointed as the Project Manager in 2003 following a tender process. While we have not undertaken a detailed review of Gleeds' work, based on our limited work, it appears to have undertaken the work in an effective and efficient manner, in line with industry and UK NHS good practice.
- 1.42** However, as noted in paragraphs 2.5 to 2.8, there was a failure by the HSSD to undertake financial checks on the tenderers short listed for the scheme, as required by States' guidance.

Part 2: A series of unplanned and unconnected events and actions led to the withdrawal of the RG Falla Limited tender, an outcome which was neither anticipated nor desired

2.1 The decision of RG Falla Limited to withdraw its tender for the Clinical Block was preceded by a number of actions and events. This section considers the role of the following parties:

- the HSSD;
- the T&R Department;
- the Minister for T&R;
- members of the Policy Council;
- the Chief Minister;
- the Minister for Commerce and Employment; and
- the Secretariat support to the Policy Council.

The role of the HSSD in developing the scheme was generally satisfactory with some significant exceptions

2.2 The HSSD was responsible for developing the proposals for the PEH Clinical Block and for overseeing the procurement and tender processes. In February 2006, following a reorganisation, T&R assumed greater responsibility for the technical procurement aspects of the scheme. In general, the HSSD appears to have undertaken this role effectively. The scheme was acknowledged by the T&R Department as representing good value for money and as set out in [paragraph 1.41](#) the tendering arrangements were generally satisfactory. However, the HSSD's actions were deficient in some material respects.

2.3 On 16 November 2005, the Minister for T&R requested that the HSSD provide details of the scheme to the Commerce and Employment Department in order to update the Economic Model and for the latter to be forwarded to T&R as soon as the updated Model was available. The HSSD accepts that this was not done and consequently the Model was not updated. In their subsequent consideration of the scheme, both the T&R Board and the Policy Council raised concern about the impact of the timing of the Clinical Block contract. Had the Model been updated it might have enabled a better informed judgement to be reached regarding the most appropriate timing for the scheme.

2.4 We have been told by officers in the HSSD that the information was not provided to the Commerce and Employment Department because the Model was not being kept up-to-date generally and therefore in their view, there would have been little benefit in updating the Model with details of the Clinical Block. They have acknowledged that they should have informed the T&R Department of this decision but overlooked doing so due to staff sickness and because the Department was going through a period of restructuring.

2.5 [Paragraph A.6.8](#) of the States' Tendering Procedures requires that for all high value and special projects, a financial evaluation of the stability of tenderers should be undertaken. The aim of such an evaluation is to establish whether they are likely to be sufficiently financially robust to be able to complete the contract without exposing the States to the risks which would arise if they were to default

on the contract. The Guidelines require the evaluations to include a review of current audited financial statements and in the case of a local company, a company search at the Greffe.

2.6 HSSD officers acknowledge that the HSSD did not carry out financial evaluations of the two contractors included in the short list for the Clinical Block scheme. We have been advised that evaluations were undertaken of both these companies by the Education Department in April and May 2005, albeit as part of the process for letting contracts for the Education Department construction schemes. The timing of these evaluations coincided with the period in which the short list for the Clinical Block scheme was being compiled. The evaluations for the Education scheme were favourable.

2.7 However we have concerns that:

- there is no evidence that the HSSD was aware of the evaluation undertaken by the Education Department;
- the evaluation undertaken by the Education Department did not take into account the possibility that RG Falla Limited could be awarded two major contracts; and
- in light of the delay in awarding the tender, no further financial evaluation was undertaken to ensure that the original evaluation was still valid.

2.8 The HSSD officers have informed us that they understood that T&R was responsible for undertaking the financial evaluations. However, the States' Tendering Procedures are clear that committees, (replaced by departments under the Machinery of Government changes), are responsible for this, but *'should call on the assistance of the States' Treasurer or their own financial staff as and when required'*.

2.9 HSSD was also remiss in issuing tender documents to the two contractors on the short list in May 2005, given the fact that T&R had not indicated its support for the tender process proceeding. The tender documents were subsequently recalled at the request of T&R after being with the short listed contractors for no more than a few days. This was potentially embarrassing for the States and a situation that should not have occurred.

2.10 Furthermore, the decision to issue tender documents to the two short listed contractors in January 2006 does not represent good practice and was inconsistent with **Paragraph A.2** of the States' Tendering Procedures Guideline. This requires departments to ensure that the estimated cost of the proposed purchase has been provided for in the appropriate budget before inviting tenders, albeit we accept that this guidance is not mandatory.

2.11 At this point there was no certainty that the States would approve a budget for the construction element of the scheme.

2.12 As a result of the above, contractors incurred significant tender costs with no certainty that a budget would be approved. These are not the actions of a good or responsible client.

2.13 We recognise that the development of the Island's healthcare facilities had been identified over many years as a key priority. The States had, on various occasions, approved in principle the HSSD's proposals to redevelop the PEH site. Furthermore in September 2003 the States had also noted that the HSSD was working on the basis that some £25 million would be made available for the Clinical Block construction in 2006.

2.14 The HSSD has stated that its actions in issuing tender documentation in advance of a securing a budget was consistent with usual practice for States' departments. We accept this was the case.

The actions of the T&R Department with regard to the Clinical Block scheme were generally appropriate, but with some significant exceptions

T&R Officers generally supported the T&R Board effectively, with one exception

2.15 Officers of the T&R Department had limited involvement in the development and tendering process for the Clinical Block scheme. They did however play an important role in advising the T&R Board of the risks associated with the scheme.

2.16 In general, it appears that the officers who provided this support did so effectively, with one exception.

2.17 Throughout 2005 and 2006, the T&R Board scrutinised the proposals for the Clinical Block scheme on a number of occasions. In these discussions several legitimate concerns were raised by the T&R Board regarding the proposals. It correctly sought the advice of the appropriate T&R officers in respect of these concerns.

2.18 One particular concern was highlighted at several T&R Board meetings, namely, the risk to the States of one contractor undertaking two large States' contracts, (the Les Nicolles School and Clinical Block schemes) simultaneously. In our view, this risk included two distinct aspects, namely, whether:

- the contractor had the operational and management capacity to deal with the work; and

- the contractor was sufficiently financially robust to deliver on both contracts.

2.19 It is not normally the role of T&R to undertake evaluations of the financial or operational capacity of contractors, (other than for their own projects). However, in this instance, as the two contracts comprised such a large element of the States' overall capital programme, and they were being undertaken by different departments, these risks were corporate risks which could not be addressed at a departmental level.

2.20 Once concerns were raised by the T&R Board regarding the risk to the States, T&R officers should have ensured that these risks had been addressed.

2.21 Whilst there is evidence that the HSSD had discussed and obtained assurances from the external Project Managers regarding the first issue as noted above, the remaining issue does not appear to have been addressed.

2.22 T&R officers have told us that they had received assurances that financial stability checks had been undertaken. However, the assurances they refer to are that financial information would be assessed as part of the tender evaluation strategy, not that checks had actually been undertaken. In any event, the HSSD was not in a position to assess the financial status of the tenderers to undertake both contracts as it did not have access to all the details of the Les Nicolles School scheme.

2.23 As set out above, the HSSD had not undertaken financial evaluations of the tenderers for the Clinical Block contract.

The T&R Board raised legitimate concerns relating to the Clinical Block proposals. However, agreeing that the HSSD could proceed to tender without budget approval was inconsistent with the States' own guidance. Whilst the T&R Board identified concerns regarding RG Falla Limited being awarded two major States' contracts it did not inform the HSSD of its concerns. Moreover, the T&R Board's Letter of Comment was poorly drafted and failed to make clear why it did not wish to support the scheme at that time

2.24 The T&R Board's role in respect of the Clinical Block included commenting on the resource implications of the proposals, agreeing to the HSSD issuing tender documentation and providing a Letter of Comment to the States in respect of the HSSD's States' Report seeking authorisation to proceed to a capital vote. Whilst in general the T&R Board fulfilled this remit effectively, in our opinion, certain of its actions have risked perpetuating Guernsey's reputation within the construction industry of not being a desirable client.

2.25 On 16 November 2005, T&R wrote to the HSSD stating that it had *'given approval for the Health and Social Services Department to proceed to the tendering phase of the project'*. This agreement was given despite the fact that there was no certainty of the scheme being approved by the States and no budget had been approved for the construction stage of the scheme. This was inconsistent with the States' tendering guidance which states that before inviting tenders, the estimated cost of the proposed purchase should have been provided for in the appropriate budget, albeit we accept that this guidance is not mandatory.

2.26 This decision led to both the States and contractors incurring significant tender costs with no certainty of the scheme going ahead. We acknowledge that this is usual practice within the States and all tenderers are advised that they tender at their own risk subject to States' approval. However, in our view, the States should give further consideration to this practice as it is not conducive to the encouragement of competition.

2.27 Some members of the T&R Board have told us that in their view it would not have been appropriate to ask the States to approve a capital budget for the scheme as tenderers would then use this budget as a guideline for their tender price. We do not accept this argument. If the budget is based on a professionally assessed accurate pre-tender estimate, it provides with a guide as to what would constitute a competitive bid without necessarily signalling a price to bidders. This can lead to keener competition and avoid the cost and time of tenderers submitting uncompetitive bids.

2.28 There appears to be varying views as to whether the States had approved a capital budget for the construction phase of the Clinical Block scheme prior to October 2006. Some States' Deputies have told us that in their view part of the Capital Reserve had been earmarked for this purpose and therefore there was a budget in place. Whilst, we accept that there may have been an 'informal budget', only the States' had the ultimate authority to agree a formal budget for the scheme and authorise capital expenditure. This did not take place until October 2006. Furthermore, the T&R Board recognised in its Letter of Comment of 18 July 2006 that the Capital Reserve did not have a sufficient balance to cover the Clinical Block scheme and other known capital commitments. The Letter states that, *"if the development of the Clinical Block is*

to proceed, additional monies of £10m to £15m will need to be put into the Capital Reserve by the end of 2008 if the known commitments, including the completion of the Les Nicolles Schools development are to be met”.

- 2.29** Nevertheless, as noted in [paragraph 2.13](#), we recognise that the development of the Island’s healthcare facilities had been identified over many years as a key priority for the States. Furthermore the States had noted that the HSSD was working on the basis that some £25 million would be made available for the Clinical Block construction in 2006.
- 2.30** At its meeting on 18 July 2006, the T&R Board considered a draft Letter of Comment, prepared by T&R officers under Ministerial direction. This draft Letter was deficient in a number of respects.
- 2.31** The draft Letter of Comment was confusing. Whilst recommending the scheme, it identified a number of concerns/risks in regard to the proposals. The issues identified were, in our view, legitimate issues to highlight. However, the Letter failed to distinguish between general concerns regarding the timing and relative importance of the scheme, and concerns specific to the RG Falla Limited tender, namely the risk of one contractor undertaking two major States’ projects simultaneously.
- 2.32** Furthermore, the draft Letter of Comment failed to indicate the relative importance or quantify the individual concerns or risks identified, although in terms of the risk relating to the appointment of R G Falla Limited it concluded that it was not sufficient to justify the expenditure of an additional £2.5 million by appointing the second lowest tenderer.
- 2.33** It expressed a concern regarding the impact that the scheme would have on the local construction industry and concluded that the scheme was likely to exhaust the available local labour supply. This conclusion does not appear to have been based on the latest available information. As set out in [paragraph 1.22](#), the States had compiled an Economic Model in order to assess the impact of major States’ schemes by analysing both available demand and supply. The Model had not been fully updated since 2004 and updated details of the Clinical Block scheme had not been included in the Model. However, the last iteration of the Model indicated that there would be a likely downturn in the local construction industry during 2006.
- 2.34** Indeed the Deputy Chief Minister who chaired the group developing the Model stated in September 2005 that it was ‘a good time to obtain competitive prices’. This view was supported by the T&R Minister who commented that it was ‘a good time to be planning capital projects’. The statement in the Letter of Comment does not appear therefore, to be consistent with the output of the Economic Model.
- 2.35** The Minister for T&R told us in interview that it was not possible to rely on the Economic Model as it was out-of-date. Had this been the case then the draft Letter of Comment should have recorded that the impact of the scheme on the local labour market was unknown.
- 2.36** At its meeting of 18 July 2006, the T&R Board resolved, as it was entitled to, to change the recommendation from supporting the proposal to not supporting the proposal.
- 2.37** The recommendation was changed to indicate that the lack of capital prioritisation was a key factor in the decision not to recommend the HSSD proposal. However, the Letter does not make clear whether the scheme would have been recommended if a capital

prioritisation debate had taken place and the Clinical Block had been deemed by the States to be a capital expenditure priority.

2.38 In our view, there is no clear rationale set out in the Letter of Comment to either support or withhold support for the scheme. This is highlighted by the fact that the T&R Board was able to amend the recommendation of the original draft with minimal amendment to the body of the Letter. The deficiencies in the Letter of Comment had important implications for the events that followed. The T&R Letter of Comment was unclear as to the extent of the risks and concerns that had been identified and to what extent they had already been addressed or mitigated.

2.39 We have discussed with members of the T&R Board why the recommendation in the Letter of Comment was amended. Whilst some members have told us that it was the range of risks identified in the Letter which led them to reach their conclusion, most members of the Board indicated that their overriding consideration was not concern about the proposals themselves but the lack of a States' debate on capital prioritisation. The majority of the T&R Board members have told us that whilst they wished to support the HSSD Clinical Block proposals. The Minutes of the T&R Board of 18 July 2006 record that it hoped that the Letter of Comment which withheld support for the scheme would bring *"to a head the need for the capital prioritisation review being undertaken"*.

2.40 It is understandable that T&R Board members felt that the scheme should not progress until the States had debated prioritisation. In our view however, the advice given by T&R in its Letter of Comment was ambiguous because it failed to explain clearly why support was being withheld at that point. This is in contrast to T&R's Letter

of Comment dated 6 September 2006 which stated that *"if, as a result of the debate on capital prioritisation, the States resolves that the Clinical Block is their key priority then, on balance, the Treasury and Resources Department recommends the States to approve the Health and Social Services Department's proposals for the development of the PEH Clinical Block"*.

2.41 In parallel with their schemes for improving health facilities, the States were investing significant resources into several new schools. In May 2005, following a competitive tender exercise, RG Falla Limited had been appointed as the preferred tenderer for the construction of two new schools at Les Nicolles. The company was not formally awarded the contract until June 2006, because of the need for extensive post tender negotiations on the size of the scheme. As a result, there existed for some significant period of time, a possibility that RG Falla Limited might be awarded the contracts for both the Les Nicolles schools and the Clinical Block.

2.42 During various meetings of the T&R Board, concerns were raised regarding the risk to the States of one contractor undertaking these two very large States' contracts. However, these concerns were not conveyed to the HSSD prior to T&R's Letter of Comment of July 2006.

2.43 We have been told by members of the HSSD Board and officers within the HSSD that T&R did not advise them of these concerns prior to them appointing RG Falla Limited as the preferred tenderer in July 2006. By this time there was no opportunity for the HSSD to address or mitigate the risk, or seek guidance from T&R as to whether this risk was insurmountable. This is unfortunate as it was an important element of the Policy Council discussion of 7 August 2006.

The T&R Minister was consistent in raising a number of legitimate concerns. However, some of his statements to the Policy Council were inaccurate, inconsistent with advice from his officers, the views expressed in meetings of the T&R Board and T&R's Letter of Comment. Moreover, his actions in discussing matters raised in the Policy Council with RG Falla Limited were inappropriate

2.44 The Minister for T&R had a key role to play regarding the Clinical Block, both as a member of the T&R Board which had a responsibility for scrutinising the financial implications of such schemes and in representing the views of the T&R Board at the Policy Council.

2.45 The Minister for T&R consistently highlighted concerns over a long period of time relating to:

- progressing the scheme in advance of a States' debate on capital prioritisation;
- the impact on the timing of the scheme on the local construction industry;
- awarding two major contracts to RG Falla Limited to run simultaneously; and
- the possibility of cost overruns in respect of the RG Falla Limited tender.

2.46 The risks were legitimate issues for the T&R Minister to raise at meetings of both the T&R Board and Policy Council. However, when he discussed these issues at the Policy Council meetings of 7 and 9 August 2006 certain of his statements were incorrect, inconsistent with advice from his officers, the views expressed in meetings of the T&R Board and T&R's Letter of Comment.

2.47 The minutes record that he stated in the Policy Council meeting of 7 August 2006, that; *'responsibility for the Economic Model rested with the Commerce and Employment Department. The Model appeared either to have been neglected or abandoned. The States, therefore, no longer had up-to-date information to rely on in considering the strategic implications of the project'*. The Minister advised us that he made this statement as the last time that the Model had received input from the private sector was during 2004.

2.48 As noted above, this stance is inconsistent with the content of T&R's own Letter of Comment, which stated that *'the addition of this project into the local market will consume the remaining available resources and contribute to pressure on the local construction industry in the short term'*.

2.49 Furthermore, when the Model was last updated in September 2005, it predicted a likely downturn in the construction industry during 2006. At that time both the Minister for T&R and the Deputy Chief Minister were quoted in the press respectively as stating that *'now is a good time to be planning capital projects'* and that *"it was a good time to obtain competitive prices"*.

2.50 The Policy Council minutes of 9 August note that *'the T&R Minister reminded Members [of the Policy Council] of an extant States resolution on a joint Advisory and Finance Committee and Board of Industry report that it was not best practice to have an overwhelming exposure to a single contractor.....'* The Minister for T&R has told us that he was mistaken on this point and there was no such States' resolution. However, he has reiterated to us that he understood the Board of Industry had suggested in its 2002 report on *'the Construction Industry and the States Capital Spending Programme'* that awarding substantial

States' work to a single contractor could have an adverse impact on competition. Although we acknowledge that this was a potential scenario, we have not managed to identify any specific reference to this in the above report.

- 2.51** The Policy Council minutes of 9 August also note that he stated that *'States Property Services [T&R officers] had advised that the cost of measured works were identical in the two tenders but RG Falla had submitted a lower figure in respect of preliminaries. There was a concern that this could lead to an overspend on the contract'*.
- 2.52** The Minister for T&R (although not present at the subsequent meeting of the Policy Council) requested an amendment to the last sentence of the above, to read; *'there was a greater opportunity for an overspend within the RG Falla tender'*. The other members of the Policy Council did not accept the proposed amendment.
- 2.53** This issue of potential overspends was raised at the T&R Board meeting of 20 June 2006. T&R's States Property Services (SPS) officers in attendance at the Board meeting indicated that this matter had already been considered by the external Project Managers and it was unlikely that RG Falla Limited would seek to renegotiate its tender as *'certain guarantees had been given as part of the tendering process'*. Furthermore at the T&R Board of 11 July 2006, (at which SPS officers were not present), concerns were raised regarding the price differential between RG Falla Limited and Charles Le Quesne (Guernsey) Limited. The minutes of this meeting record that all members of the Board accepted that *'the main risk would be in the demolition of the building and an overspend would be unlikely'*.
- 2.54** The T&R Letter of Comment dated 18 July 2006 did not indicate that because RG Falla Limited had submitted a lower tender, this gave rise to any significant risk. This is consistent with our discussions with the Project Manager who confirmed that whilst the low tender did give rise to a risk that additional costs could be incurred, this had been quantified as representing only a small proportion of the difference between the two tenders received and an element of this risk would have been applicable to any tenderer.
- 2.55** The Minister for T&R advised us that he was provided with a written note by a T&R officer prior to the Policy Council meeting which highlighted the risk of cost overruns in respect of the RG Falla Limited tender. He told us that he did not retain a copy of the note. The officer has confirmed that he met the Minister sometime between 31 July 2006 and 9 August 2006 in order to brief him on the Clinical Block scheme.
- 2.56** The officer cannot recall the meeting in detail but remembers allowing the Minister to take his handwritten note which he had prepared for his discussion with the Minister. The officer told us that the note was an *aide mémoire* for himself and was never intended to be used in any official capacity. The officer cannot recall the contents of the note. We find it somewhat surprising that he cannot recall the content of the note given the importance of the scheme to the States. The T&R Board minutes indicate that on those occasions when this officer was present at their meetings, he expressed no concern regarding the risk of cost overruns on the RG Falla Limited tender.
- 2.57** Furthermore, as set out in [paragraph 2.53](#), when the T&R Board considered in June 2006 the possibility that RG Falla Limited might seek to renegotiate the contract after its appointment, the officer assured the T&R Board that guarantees had been obtained by the Project Manager as part of the tender process. The officer told us that the purpose of briefing the Minister for T&R was to provide

the Minister with a balanced perspective of the issues. He told us that once the note was given to the Minister he lost control of its use, destination and interpretation.

- 2.58** On 10 August 2006, the Minister for T&R returned a telephone call from the Managing Director of RG Falla Limited. The Managing Director retained contemporaneous notes of this conversation. He has provided us with a copy of these notes.
- 2.59** Both the Minister of T&R and the Managing Director of RG Falla Limited agree that they discussed the concerns of members of the Policy Council. The Managing Director of RG Falla Limited told us, and his notes record, that the Minister for T&R stated that the main concern was the position of the Minister for Commerce and Employment. The Managing Director also stated that the Minister for T&R told him that RG Falla Limited had no realistic alternative but to withdraw the tender or to delay it until a more suitable time.
- 2.60** We have discussed this matter with the Minister for T&R. His recollection of the conversation is different. He disputes that he told the Managing Director of RG Falla Limited that the Company had no option but to withdraw or delay. He accepts that he discussed the possibility of delaying the contract but has told us that it was the Managing Director of RG Falla Limited who suggested the possibility of delaying the contract. We are unable to confirm either account.
- 2.61** The Minister for T&R has told us that this conversation should be understood in the context that it was not T&R but the HSSD which was the client for this contract and he was being contacted by the Managing Director of RG Falla Limited as “*someone who he knew understood the Island’s construction industry*”. However, in our view the T&R Minister should

not have discussed with RG Falla Limited what had been discussed at the Policy Council regarding the Clinical Block scheme without the presence of his officers. In our view, the Minister for T&R acted inappropriately and exposed the States to allegations that there had been political interference in commercial matters.

The Policy Council discussions on 7 and 9 August 2006 were confused. The Policy Council failed to provide the Chief Minister with clear guidance for his discussions with the Minister for Commerce and Employment. The various conversations on 7 and 8 August between a number of those present at the Policy Council meeting of 7 August and the Minister for Commerce and Employment were inappropriate

- 2.62** The Policy Council had an important role to play in respect of the proposals for the Clinical Block. Its remit included considering the merits of the proposal in order to advise the States whether the Policy Council supported the HSSD proposals. The Policy Council does not have decision-making powers and cannot accept tenders or award contracts. In relation to the Clinical Block, it was for the States to consider and decide whether to approve the recommendations of the HSSD as set out in the HSSD States’ Report.
- 2.63** On 7 August 2006, the Policy Council met to consider the Clinical Block proposals. Each member of the Policy Council had been provided with a copy of the HSSD’s States’ Report, the T&R Letter of Comment and a memorandum from the States’ Head of Policy and Research five days before the meeting. The Minister of

Commerce and Employment declared his interest in the Clinical Block scheme and, as was the normal practice, he left the room.

2.64 The meeting commenced with a presentation on the scheme from the HSSD supported by its professional advisors, followed by a question and answer session. The HSSD's professional advisors then left the meeting.

2.65 An extensive debate subsequently took place. Whilst the debate considered issues highlighted in the T&R Letter of Comment, much of the debate focused on the Minister for Commerce and Employment's perceived '*political exposure*' due to his business relationship with RG Falla Limited. In consequence, the debate moved away from a discussion of the proposed scheme and hence did not remain focused on the merits or demerits of the proposals presented to the Policy Council.

2.66 The minutes give no sense of there being any coherent direction to proceedings. The debate failed to distinguish between issues relating to the scheme in general, the tender of RG Falla Limited and the position and interests of the Minister for Commerce and Employment. Some Ministers have told us that they felt that parts of the discussion were a personal attack on the position of the Minister for Commerce and Employment.

2.67 Whilst it is acknowledged that the general issue of the relationship between the business and political interests of States' members is a matter which the Policy Council may legitimately debate, the discussion of 7 August 2006 was not about the general issue of interests, but was specifically about the interests of the Minister for Commerce and Employment. This was despite the fact that there was no suggestion or evidence that this Minister had not fully complied with the States' disclosure of interest requirements or any other regulations of the States.

2.68 The business interests of the Minister for Commerce and Employment were well known to all members of the Policy Council and the States at the time of his appointment to the Policy Council. As such, and in our view, discussion of this Minister's interests during a debate on a capital proposal could result in the Policy Council being open to allegations that they considered matters which were not relevant to their deliberations as to whether to support the HSSD proposal to award the contract to RG Falla Limited.

2.69 There were no arrangements in place to ensure that the debate remained focused on the Clinical Block proposals. Officers present at the meeting have told us that they felt that they could not legitimately intervene to keep the discussion on track as they regarded the debate as primarily a political one. We have been told by a number of Ministers and officers that it is not unusual for the Policy Council to have very wide-ranging discussions and that its members consider this is consistent with its remit.

2.70 Two Ministers maintain that they asked that the Minister for Commerce and Employment be called into the meeting but this was not recorded. One other member present also recalls that request. If this was the case, it indicates how far the debate had moved away from a discussion on the Clinical Block proposals, as the Minister for Commerce and Employment had already formally declared an interest in the matters ostensibly being discussed.

2.71 At the close of this agenda item the minutes record that the Chief Minister was asked by the Policy Council to meet with the Minister for Commerce and Employment; "*to discuss his political exposure on this matter*". The Policy Council indicated its '*support for the clinical wards project*' but deferred formulating its advice to the States whether or not the Policy Council supported the HSSD proposals until after the

meeting between the Chief Minister and the Minister for Commerce and Employment. It is unclear to us what effect the Policy Council considered that this meeting might have on the decision whether or not to support the proposal.

2.72 The Chief Minister told us that he considered his remit was to discuss with the Minister for Commerce and Employment all the concerns raised in the Policy Council, (albeit this is not what the minutes state he was requested to do as set out in [paragraph 2.70](#)). He told us that these concerns had been articulated primarily by five members of the Policy Council. He also told us that he prepared a briefing note for himself which summarised the issues to be raised. However, he did not retain a copy of this document.

2.73 We have interviewed all States' Deputies present at the Policy Council meeting of 7 August 2006. They have various interpretations of the purpose of the meeting between the Chief Minister and the Minister for Commerce and Employment. These include combinations of:

- ensuring the Minister was aware of potential adverse public perception;
- challenging him on the compatibility of his business and political interest;
- making the Minister aware of all the concerns raised at the Policy Council; and
- providing him with appropriate advice.

2.74 The Chief Minister told us that different members of the Policy Council had different concerns. He felt it would have been wrong not to disclose the full range of concerns raised by Ministers.

2.75 We have also discussed with those present at the Policy Council meeting of 7 August 2006 what outcomes were expected from the meeting

between the Chief Minister and the Minister for Commerce and Employment. One Minister stated that he expected the Chief Minister to raise the possibility of resignation with the Minister for Commerce and Employment. The majority of Ministers told us that they wanted assurances from the Minister for Commerce and Employment that he was in a position to rebut public concern regarding the relationship between his political and commercial interests.

2.76 In our view, the instruction from the Policy Council to the Chief Minister was unclear and inadequate. The Chief Minister has himself acknowledged to us that Ministers had varying expectations. He was therefore left in the invidious position of being expected to convey the various concerns of individual members of the Policy Council to the Minister for Commerce and Employment without clarity as to what the collective view of these concerns were and what expectations the Policy Council had.

2.77 We have been told by a number of Ministers that one of the attendees at the Policy Council of 7 August 2006 spoke to the Minister for Commerce and Employment about the meeting immediately after it ended. The Minister for Commerce and Employment has confirmed this was the case but has also told us that he held telephone conversations with a further five Ministers on the following day, in which the matters raised in the Policy Council were discussed. The Minister for Commerce and Employment had declared his interest and withdrawn from the Policy Council meeting of the 7 August 2006 and under States' convention was not eligible to receive the minutes of the meeting. Therefore, the disclosure of information discussed at the meeting of the Policy Council on 7 August 2006 undermined this practice and was therefore inappropriate.

2.78 On 9 August 2006, the Policy Council reconvened and the Chief Minister provided an account of his meeting with the Minister for Commerce and Employment. He told the Policy Council that the Minister had informed him that *'he was withdrawing his tender'*.

2.79 The minutes of this meeting again suggest a confused debate, which alternated between discussing the Minister for Commerce and Employment's position and interests and the risks associated with RG Falla Limited being awarded the contract for the Clinical Block. The meeting concluded that the external Project Managers should seek confirmation from RG Falla Limited that it had withdrawn the tender.

2.80 Some Ministers have told us indicating that they consider the minutes of the Policy Council meetings of 7 and 9 August 2006 only recorded a small fraction of the discussion that took place and/or were inaccurate and, therefore, do not fully reflect the debates which took place. Indeed, one Minister who wrote to us that the minutes *'in no way give an accurate account of what took place during discussions over the Clinical Block and several important comments made by Ministers at both those meetings are not recorded'*.

2.81 Whilst we acknowledge that the minutes are not a verbatim record of everything that is said at Policy Council meetings, they are intended to be a fair reflection of the discussions. All Ministers were given the opportunity to correct errors or omissions when agreeing the minutes, it is recorded that only the Minister for T&R asked for an amendment to be made. Therefore, Ministers accepted the minutes to be an accurate record at that time.

The Chief Minister did not effectively perform his role as Chair of the Policy Council and failed to obtain clarity from the Policy Council as to his remit when meeting the Minister for Commerce and Employment

2.82 The Chief Minister is elected by the States from amongst the States' members and his role includes chairing and providing leadership to the Policy Council and leading in the preparation and presentation of corporate policy matters to the States (Billet D'Etat 14 May 2003).

2.83 As Chair of the Policy Council, it was his responsibility to ensure that the meetings to discuss the Clinical Block proposals on 7 and 9 August were conducted effectively.

2.84 As set out in paragraphs 2.65 to 2.69, it is our view that the Policy Council meetings of the 7 and 9 August were not conducted effectively and the discussions failed to distinguish between issues relating to the scheme in general, the tender of RG Falla Limited and the Minister for Commerce and Employment's perceived *'political exposure'*. A number of the Ministers whom we have interviewed have expressed concern that these meetings and previous meetings of the Policy Council suffered from a lack of effective control from the Chair.

2.85 Moreover, when the Chief Minister accepted the request of the Policy Council to meet with the Minister of Commerce and Employment to *'discuss his political exposure on this matter'*, the confused nature of the discussion in the Policy Council prevented him from obtaining clarity from the Policy Council as to what he was expected to communicate to the Minister and what the meeting was expected to achieve. Nevertheless, the Chief Minister told us that he did feel that he

was clear on what to communicate. The only attendees at the meeting were the Chief Minister and the Minister for Commerce and Employment.

- 2.86** In his report to the Policy Council on 9 August 2006, the Chief Minister stated on several occasions that he had not asked the Minister for Commerce and Employment to resign. The Chief Minister told us that the Minister for Commerce and Employment asked him whether he was seeking his resignation, to which he replied he was not and had no power to do so. However, in his report to the Policy Council he did acknowledge that the Minister for Commerce and Employment *'might have taken what he said in that way'*, and that the Minister for Commerce and Employment told him that he would not resign.
- 2.87** It is not surprising that the Minister for Commerce and Employment interpreted the Chief Minister's approach in this way. The Chief Minister stated at the Policy Council that he had told the Minister that if he were in his place *'he would seriously consider his position as Commerce and Employment Minister'*. In our view, most people would have interpreted this as a call to resign. The Minister for Commerce and Employment has told us that he did interpret it in this way.
- 2.88** Furthermore, on 13 August 2006, the Chief Minister wrote a private letter to the Minister for Commerce and Employment in which he stated with reference to their meeting of 8 August 2006 that *'I did suggest to you that you could consider standing down from your current political position'*.
- 2.89** Ministers have told us and it is recorded in the minutes of the Policy Council of 9 August 2006 that they did not expect the Chief Minister to ask the Minister for Commerce and Employment to resign. In our view, by

suggesting to the Minister for Commerce and Employment that *'he could consider standing down from [his] present political position'*, the Chief Minister acted outside of the instruction given him by the Policy Council. The Chief Minister maintains that in his view all the matters discussed with the Minister for Commerce and Employment related either directly or indirectly to his *'political exposure'* and therefore he did not act outside the Policy Council's instruction.

- 2.90** The Chief Minister told us in interview that he considered that the Minister for Commerce and Employment's business and political interests were incompatible, namely, he had a conflict of interests which needed to be resolved. In his private letter to the Minister for Commerce and Employment the Chief Minister compliments him for seeking to address this 'conflict' through the decision to withdraw the tender, albeit acknowledging that the Minister for Commerce and Employment was *'adamant.... that [he] had done nothing wrong'*. Most of the Ministers interviewed told us that they simply wished the Chief Minister to receive assurances from the Minister for Commerce and Employment that he was aware of the potential public perception of a company in which he had a commercial interest being awarded major States' contracts.
- 2.91** Both the Chief Minister and the Minister for Commerce and Employment have told us that they considered that there were only three possible outcomes from the meeting of the 8 August:
- the Minister for Commerce and Employment resign his position;
 - the tender for the Clinical Block be withdrawn; or

■ no action, but the Policy Council would express concerns in the States' Report on the Clinical Block which would place the Minister for Commerce and Employment *'in a difficult position'*.

2.92 The Chief Minister told us that he did not suggest to the Minister for Commerce and Employment which course of action should be followed.

2.93 The Minister for Commerce and Employment has told us that the discussion with the Chief Minister influenced his view as Chairman of the Garenne Group, (the holding company of RG Falla Limited) that the Company should withdraw its tender for the Clinical Block contract.

2.94 In our view, the meeting between the Minister for Commerce and Employment and the Chief Minister on 8 August 2006, and the matters discussed was an important step leading to the withdrawal of the tender because, until this point in time, there had been no formal communication of the issues discussed in the Policy Council to either the Minister for Commerce and Employment or RG Falla Limited.

2.95 In our view, the Chief Minister was placed in an extremely difficult position in being asked to represent the views of the Policy Council to the Minister for Commerce and Employment without a clear instruction as to what those views were. The Chief Minister does not accept this was the case. One Minister wrote to us that *'the public interest would have been better served if [the Chief Minister] had been given more specific guidance on the issues to be raised and discussed'*.

We have seen no evidence to suggest that the Minister for Commerce and Employment acted inappropriately regarding the withdrawal of the tender. However, he should have provided greater clarity regarding his responsibilities for RG Falla Limited

2.96 The Minister for Commerce and Employment is a major shareholder and Chairman of the Garenne Group. The Garenne Group owns RG Falla Limited, the Company originally selected by the HSSD as the preferred supplier for the Clinical Block contract. He therefore had a clear business interest in the Clinical Block contract. This interest was declared in accordance with the States' procedures and he withdrew from meetings whenever the Clinical Block contract was discussed. The Minister had no role in the development, tendering or evaluation of the Clinical Block scheme.

2.97 Whilst the Minister is a major shareholder in the Garenne Group, he has no day-to-day responsibilities for RG Falla Limited and is not a member of the RG Falla Limited Board. However, he does retain certain strategic responsibilities for the Company. The corporate governance arrangements of the Garenne Group state that the Chairman is required to *"establish and maintain the business culture and good name of Garenne"*. The Minister has told us that this means that if the reputation of the Garenne Group is placed at risk through the activities of any of the companies within the Group, he has a responsibility to act. The Minister told us that it was in this capacity he became involved in discussions with RG Falla Limited relating to the withdrawal of its tender for the Clinical Block contract.

2.98 As set out in [paragraph 2.106](#), the Minister for Commerce and Employment received a copy of the T&R Letter of Comment as part of the

agenda papers for the Policy Council meeting of 7 August 2006, which identified a number of concerns regarding the HSSD proposals. He has told us that in his role as Chairman of the Garenne Group he felt it appropriate to discuss these concerns with the Managing Director of RG Falla Limited prior to the Policy Council meeting on 7 August. These discussions were to identify whether the Managing Director of RG Falla Limited had received any communication from the HSSD regarding these concerns over the last few months and to consider what courses of action were available to the company to address these concerns. These included the possible withdrawal of the tender. The Minister for Commerce and Employment has also told us that no decision was taken at this point and the decision itself was ultimately one for the Board of RG Falla Limited. He has told us that his meeting with the Chief Minister on 8 August 2006 significantly influenced the advice that he gave as Chair of the Garenne Group, to the Board of RG Falla Limited, namely that the tender should be withdrawn.

2.99 The Board of RG Falla Limited met on 11 August. The agenda states that the purpose of the meeting was *“to discuss the political interference into the Company’s tender for the Clinical Block”*. It resolved that to address the Policy Council’s concerns regarding the extent of work being undertaken by the Company for the States, the Company should withdraw its tender but offer to delay the project with the tender price remaining fixed. The Minister for Commerce and Employment was not present at this meeting. On 15 August 2006, the Company wrote to the Project Managers, (Gleeds), confirming that they *“hereby withdraw [their] tender for the PEH Phase V, Clinical Block”* but offering to put on hold their preferred contractor status including the tender price subject to cost of living increases only *‘until a more suitable time’*.

2.100 A number of Ministers have told us that the Minister for Commerce and Employment had previously assured them that he did not have any involvement in the operational running of RG Falla Limited. They were therefore taken aback when the Chief Minister reported that the Minister for Commerce and Employment had stated in the meeting of 8 August that *“he was withdrawing his tender”*.

2.101 As noted above, the Minister for Commerce and Employment has explained to us that his role as Chairman of the Garenne Group meant that whilst he did not have day-to-day responsibilities for the management and operations of RG Falla Limited, he continued to have influence in respect of certain strategic commercial decisions. This role was not appreciated by other members of the Policy Council as is evident by their reaction to the Chief Minister’s report of his meeting of 8 August 2006. In our view, the Minister for Commerce and Employment should have endeavoured to make his position in respect of RG Falla Limited clearer. He told us that, as he was not present at Policy Council meetings where his interests were discussed, he had limited opportunity to do this.

2.102 On 10 August 2006, the Minister for Commerce and Employment wrote to the Chief Minister and the Managing Director of RG Falla Limited. In these letters he accepted that some of the concerns raised by T&R and the Policy Council were legitimate, namely, that a single contractor undertaking two major States’ contracts concurrently exposed the States to commercial risk. These letters imply that withdrawal of the tender was to put the interests of the States before the commercial interests of RG Falla Limited.

2.103 This is in contrast to the view expressed on the agenda for the RG Falla Limited Board meeting of 11 August 2006 which stated that there had been *“political interference”*.

2.104 The Minister for Commerce and Employment told us in interview that he had hoped that by recognising the concerns of T&R and the Policy Council, the States might consider deferring the timing of the Clinical Block scheme so that the Les Nicolles School scheme and the Clinical Block scheme would not run concurrently, thereby addressing the concern regarding the States' over-exposure to a single contractor. Furthermore, he had not wished to publicly suggest that there had been political interference in the contract letting procedure.

The Secretariat to the Policy Council sent commercially sensitive agenda papers to the Minister for Commerce and Employment and did not retain the notes used to prepare the minutes of Policy Council meetings

2.105 The effectiveness of the Policy Council is dependent upon the administrative or secretariat support provided by officers. This work is crucial to effective government. We have identified two procedural weaknesses relating to the secretariat support of the Policy Council in the context of the Clinical Block scheme.

2.106 The Minister for Commerce and Employment had an interest in the Clinical Block proposals and therefore was not able to participate in the Policy Council debates on this matter. However, he was sent committee papers including the agenda relating to the Policy Council meeting of 7 August 2006 to discuss the Clinical Block scheme. There is no set procedure for the handling of minutes or agenda papers and we have been informed that there is no rule to prevent members receiving agenda papers relating to matters in which they have an interest.

2.107 The documentation sent to the Minister for Commerce and Employment included T&R's Letter of Comment which stated that it was not

prepared to support the proposals at that time. It also included sensitive financial information regarding the difference of £2.4 million between the tendered price of RG Falla Limited and the alternative tenderer. In our view, these arrangements were unsatisfactory as they led to the Minister for Commerce and Employment who was a major shareholder in RG Falla Limited receiving confidential information which informed his discussions with the Company.

2.108 This has led to speculation by a few members of the Policy Council in interview that RG Falla Limited withdrew its tender for commercial reasons on discovering that its bid was significantly lower than its competitor. No evidence has been provided to support this view.

2.109 We discussed this matter with both the Minister for Commerce and Employment and with the Managing Director of RG Falla Limited. Both have stated that the contract was not withdrawn for commercial reasons and that RG Falla Limited was prepared to honour its offer to put on hold its preferred contractor status including the tender price subject to cost of living increases only.

2.110 As noted above, some members of the Policy Council have claimed that the Policy Council minutes of the 7 and 9 August were incomplete and/or inaccurate. In order to test this contention, we requested access to the notes used to compile the minutes. We were informed that these notes are routinely destroyed once the minutes have been formally agreed by the Policy Council, a practice which was introduced in 2005.

2.111 We question the wisdom of this practice. Nevertheless, Ministers were given the opportunity to correct errors or omissions when agreeing the minutes. It is recorded that only the Minister for T&R requested an amendment to the minutes as referred to in [Paragraph 2.52](#).

Appendix 1: Sequence of Events

Proposals for the redevelopment of the Princess Elizabeth Hospital (PEH) site were considered by the States over a number of years from the mid 1990s onwards. The Clinical Block comprises the major element of the redevelopment strategy.

The work to develop the scheme was undertaken in a number of phases. In 2003, external Project Managers were appointed to develop a detailed procurement strategy and option appraisal for the site. Subsequently, in September 2003, the States approved a number of recommendations relating to the development of the site, including a budget of £5.2 million to cover the planning and consultancy costs of the site development. The former States' Advisory and Finance Committee was authorised to approve the acceptance of all tenders and appointments in connection with the planning costs. At this time, no approval was given for the actual construction of the Clinical Block.

The decision to proceed in principle with the scheme, developed in conjunction with the consultants, was made by the former Board of Health in December 2003 and over the period 2004 to 2006, the States approved expenditure on various works on the site to facilitate the main Clinical Block development. These works included the development of a new car park, the transfer of existing facilities to new sites and the redevelopment of John Henry Court as staff accommodation. The main Clinical Block development represents Phase 5 of the redevelopment of the PEH site.

A project team was formed to take forward the proposals comprising staff from the former Board of Health and external consultants including an architect, quantity surveyor and project managers. Between

September 2003 and January 2005 a detailed design for the Clinical Block was developed. It was estimated that the Clinical Block construction contract would cost the States approximately £28 million.

During this period, the States introduced its new Machinery of Government. Responsibility for the scheme transferred to the newly formed Health and Social Services Department (HSSD).

In January 2005, the HSSD placed advertisements in both the local Channel Islands press and in UK building and construction journals seeking expressions of interest for the construction of the Clinical Block. In addition, the external Project Manager contacted a number of major construction companies in both the UK and France to seek to encourage further interest in the contract.

Expressions of interest were received from six contractors, four of whom were based in the Channel Islands and two from the UK. However, for various reasons only two Channel Island contractors were short-listed, namely RG Falla Limited and Charles Le Quesne (Guernsey) Limited. RG Falla Limited had at this time submitted a tender for another large States' capital scheme, namely the construction of two new schools at Les Nicolles. The States' Minister for Commerce and Employment was a major shareholder in and Chairman of the holding company of RG Falla Limited, the Garenne Group.

In May 2005, tender documents were issued to these two contractors. However, following a presentation to Treasury and Resources (T&R) by the HSSD of the proposals, the Minister for T&R wrote to the Minister for HSSD urging the HSSD not to submit the scheme for State approval until the States had debated the

prioritisation of capital schemes. It was anticipated at this time that the debate would take place in December 2005. The HSSD reluctantly agreed to delay the scheme and the tender documentation was recovered from the two contractors.

In November 2005, the T&R Board, following a further meeting with representatives from the HSSD, approved proceeding to the tender phase of the project but stressed that this approval did not indicate T&R support of the project, or that the project would feature highly in any prioritisation scheme approved by the States. Moreover, the HSSD must ensure that tenderers were left in no doubt whatsoever that States' approval would be required before the project could proceed to the construction stage and that approval might not be forthcoming.

The States' debate on capital prioritisation did not take place as anticipated in December 2005 and, in fact, did not take place until October 2006.

Tenders were issued to the shortlisted contractors on 16 January 2006 and these were to be returned by 27 March 2006. The contractors were notified that the tenders would be evaluated on a price/quality of tender ratio of 40:60.

In May 2006, following a review and evaluation of the tenders, including obtaining further clarifications regarding certain elements of the bids, the HSSD's advisors recommended that the lower cost tenderer, namely RG Falla Limited be appointed as the preferred contractor for the Clinical Block development.

In June 2006, RG Falla Limited was awarded the construction contract for the Les Nicolles School scheme.

On 11 July 2006, representatives from the HSSD presented a States' Report to the T&R Board recommending the award of the Clinical Block contract to RG Falla Limited and seeking T&R's

support for this recommendation. The T&R Board deferred final consideration until the following meeting of the Board on 18 July 2006.

On 13 July 2006, the external Project Managers, wrote to RG Falla Limited confirming its status as the *"preferred contractor and..... subject to States approval in September 2006 will be appointed for the contract"*.

At its meeting of 18 July 2006, the T&R Board discussed a number of concerns regarding both the scheme and the risk arising from the possibility that RG Falla Limited would be undertaking two major States' projects simultaneously. Following this discussion a 'Letter of Comment' was forwarded by the T&R Board to the Policy Council stating that *"on balance the Treasury and Resources Department is not able to recommend the States to approve the Health and Social Services Department's proposals for the development of the PEH Clinical Block at this time"*. The purpose of this Letter was to inform the States' debate on the scheme and was considered by the Policy Council at its meeting on 7 August 2006.

In July 2006, the Policy Council requested T&R work on capital prioritisation in advance of a debate on the Clinical Block.

On 7 August 2006, the Policy Council met to consider the Clinical Block proposals. Each member of the Policy Council had been provided with a copy of HSSD's States' Report, the T&R Letter of Comment as referred to above, and a memorandum from the States' Head of Policy and Research.

The Minister for Commerce and Employment declared his interest in the proceedings and absented himself from the meeting. In his absence the proposals were discussed. In addition an extensive debate took place regarding Ministers' perceptions of the Minister for Commerce and Employment's 'political exposure'.

Following this debate Ministers, *'indicated support for the Clinical wards projects. However [Ministers] agreed to request the Chief Minister to meet with [the Minister for Commerce and Employment] to discuss his political exposure on this matter'*.

Following the meeting, one attendee of the Policy Council meeting had a conversation with the Minister for Commerce and Employment regarding what had been discussed at the meeting.

On 8 August 2006, the Chief Minister met with the Minister for Commerce and Employment. There was no other attendees at this meeting. On the same day the Minister for Commerce and Employment had telephone conversations with a further five attendees at the Policy Council meeting of 7 August.

On 9 August 2006 the Policy Council reconvened and the Chief Minister reported his account of his meeting with the Minister of Commerce and Employment. The Chief Minister stated that the Minister for Commerce and Employment had said, *"he was withdrawing his tender"*.

On 10 August 2006, the Minister for T&R and the Managing Director of RG Falla Limited discussed on the telephone the Clinical Block contract and the potential withdrawal of the tender.

On 10 August 2006, the Minister for Commerce and Employment wrote to both the Chief Minister and the Managing Director of RG Falla Limited in the letter to the Chief Minister he indicated that the Company *"is taking steps to withdraw from the contract so that the States is not put into a high level of commercial risk."* In the letter to the Managing Director of RG Falla Limited the Minister for Commerce and Employment acknowledged the concerns raised by Ministers relating to one contractor undertaking two large States' contracts and noted that the RG Falla Limited Board had offered to withdraw the tender for the Clinical Block.

On 11 August 2006, the Board of RG Falla Limited met *"to discuss the political interference into the Company's tender for the Clinical Block"*. It resolved that to address the Policy Council's concerns regarding the extent of work being undertaken by the Company for the States, the Company should withdraw its tender but also offer to delay the project with the tender price remaining fixed.

On 15 August 2006, the Company wrote to the Project Manager (Gleeds), confirming that it hereby withdraws [its] tender for the PEH Phase V, Clinical Block but offering to put on hold their preferred contractor status including the tender price subject to cost of living increases only.

The offer to delay was considered by the HSSD in conjunction with their professional advisors and T&R but it was decided that the offer to delay did not comply with the States' tendering procedures and had it been accepted it would have resulted in the States being at risk of legal action.

Following the withdrawal of RG Falla Limited, the HSSD amended the States' Report recommending that the States proceed with the alternative tender from Charles Le Quesne (Guernsey) Limited. This tender was £2.4 million more than that of RG Falla Limited.

The T&R Board produced a new Letter of Comment on the HSSD's States' Report dated 6 September 2006. This Letter highlighted concerns regarding the timing of the project and the impact on the local construction industry and suggested that one option to alleviate these concerns would be to delay the project. However, the Letter concludes that *"if, as a result of the debate on Capital Prioritisation, the States resolves that the Clinical Block is their key priority then, on balance, the Treasury and Resources Department recommended the States to approve the Health and Social Services Department's proposals for the development of the PEH Clinical Block"*.

The HSSD States' report and the T&R Letter of Comment were considered by the Policy Council on 18 September 2006. At this meeting, Ministers agreed to support the scheme for approval in the States.

On 25 October 2006, a meeting of the States debated a T&R report prioritising capital schemes. This report suggested that the PEH Clinical Block should be the States' key capital priority. The States approved the prioritisation report and resolved that the *"Clinical Block is the key capital expenditure priority for the States of Guernsey"*.

In addition, the States considered the HSSD States' Report on the Clinical Block and resolved to approve the scheme to award the contract to Charles Le Quesne (Guernsey) Limited and to authorise a capital budget in accordance with the amount tendered.

On 27 October 2006, HSSD wrote to Charles Le Quesne (Guernsey) Limited indicating the States' intention to contract.

The Public Accounts Committee (PAC) was made aware by the HSSD of the withdrawal of the lower tender following the Policy Council meeting of 7 August 2006. The PAC conducted an initial review of this issue and concluded that an independent review was necessary.

At its meeting of 25 October 2006, the States instructed PAC *"to cause to be carried out a full independent review of all the circumstances leading to the withdrawal of the lower tender.... and report back to the States with the findings of that investigation as soon as possible"*.

The PAC appointed the Auditor General for Wales to undertake this review.