



GOVERNMENT OF BERMUDA'S RESPONSE TO COVID-19:

TRAVEL AUTHORIZATION



PUBLIC INTEREST REPORT

MARCH 2023



Office of the Auditor General

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The Honourable Dennis P. Lister, JP, MP
Speaker of the House of Assembly
Sessions House
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Honourable Speaker:

Pursuant to Section 13 of the Audit Act 1990, I have the honour to submit herewith my third Public Interest Report on a programme of work undertaken on the Government of Bermuda's Travel Authorization Initiative.

Respectfully submitted

Heather Thomas, CPA, CFE, CGMA
Auditor General

Hamilton, Bermuda
March 14, 2023

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The Office of the Auditor General of Bermuda was established by statute as an independent entity. Its roles and responsibilities include undertaking audits on behalf of Parliament to determine whether the operations or activities of the Government and its agencies are being performed effectively, economically, efficiently and in compliance with relevant laws and regulations.

This is the third and final public interest report that the Office of the Auditor General will undertake to support Parliament in its scrutiny of the Government of Bermuda (the ‘Government’) response to the coronavirus (COVID-19) pandemic. This report is a factual summary of the Government’s activities related to the travel authorization administration. The information in this report not been audited, and does not assess the value for money aspect of the Government’s initiative. As the COVID-19 landscape evolved and the world and Bermuda learn to live in this environment, the Office of the Auditor General adopted a phased reporting approach so as not to compromise the Government’s effort to normalize processes and control activities.

We undertook this work not only because of queries from the Public, but also because we recognise the importance of independent reporting to Parliament and the Public. We continue to monitor and report on the Government’s COVID-19 response in order to provide independent reporting to the Public and Parliament about how the Government is accounting for its COVID-19 initiatives and results achieved.

SECTION 1: About this examination

Pursuant to the Audit Act 1990, sections 12(1) and 12(2) (a) and (b), the Auditor General of Bermuda may, in the public interest, undertake works and review any matter of public interest. This Report presents a factual summary of the Government of Bermuda's ('the Government') activities related to the Administration of the Government Electronic Travel Authorization initiative.

The information in this Report does not assess the value-for-money of the Government initiative or the effectiveness of such activities. As part of our work, the Office of the Auditor General (OAG) held interviews with various internal and external Government stakeholders, reviewed records, applicable legislations and related regulations and amendments to support the observations presented in this Report. The Report was shared with all stakeholders for comment and to promote transparency.

This is our final point-in-time report on COVID-19. We will continue to review the financial transactions of the Government of Bermuda as a part of our regular assurance operations. The pandemic required urgent action by governments whilst balancing accountability and transparency relative to the activities undertaken. This report focuses on the Government of Bermuda action taken between March 2020 and November 2022 as it pertains to the implementation of its COVID-19 measures relating to travel to Bermuda by air, cruise or yacht and recognise the outstanding response of many public servants and those of the Ministry of Health and others contracted to support the Government's initiatives. They showed personal sacrifice, courage and resilience. They also demonstrated the government could be innovative and nimble.

SECTION 2: The underlying circumstances and the corresponding identification of need for services

The World Health Organization declared the coronavirus disease (COVID-19) a pandemic on March 11, 2020¹. In Bermuda, the *Public Health Amendment Act 2020* was passed into law on March 16, 2020², which expanded the Minister of Health's powers to take the necessary steps to protect the public from the spread of the disease.

Between March 2020 and November 2022, Government of Bermuda required quarantine measures similar to other countries around the world to restrict the spread of COVID-19.

On March 17, 2020, individuals arriving into Bermuda were required to submit contact, travel information, a negative COVID test, self-quarantine for 14 days and be subject to Public Health monitoring³. By March 20, 2020, on-island testing for COVID-19 commenced with a maximum of a 48-hour turnaround for results through partnership between Ministry of Health, Helix Laboratories and the Bermuda Hospitals Board⁴. In early April 2020, the Premier appointed a Cabinet Sub-Committee of the front-line Ministers in the pandemic – Health, Education, National Security, Tourism & Transport and Public Works⁵ and on April 19, 2020, the Government's Molecular Diagnostic Laboratory (MDL) came into existence.

Bermuda's borders were closed to scheduled commercial traffic from March 20, 2020⁶ and re-opened on July 1, 2020⁷.

¹ <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>

² <http://www.bermulaws.bm/laws/Annual%20Laws/2020/Acts/Public%20Health%20Amendment%20Act%202020.pdf>

³ <https://www.gov.bm/articles/self-quarantine-required-arriving-passengers-17-march-2020>

⁴ <https://www.gov.bm/articles/premier-david-burt-covid-19-update-20-march-2020>

⁵ <https://www.gov.bm/articles/re-opening-economy-update>

⁶ <https://www.gov.bm/articles/premier-david-burt-covid-19-update-20-march-2020>

⁷ <https://www.gov.bm/articles/11-june-covid-19-update>

As countries around the world began closing their borders to commercial travel, it was determined that a travel authorization system was needed in Bermuda to allow for large-scale public health surveillance in accordance with International Health Regulations and local public health and quarantine legislation.

On June 23, 2020, the COVID-19 Cabinet Sub-Committee approved the Traveller Entry Policy⁸ which required that any person who enters and lands in Bermuda comply with applicable requirements under the:

- Quarantine Act 2017 and regulations and orders made under the Act; and
- Public Health Act 1949, regulations, and notices made under that Act.

On June 30, 2020, the Bermuda Electronic Travel Authorization Form was launched and became available on the official Government website: www.coronavirus.gov.bm. Beginning July 1, 2020, all persons, two years and older, visiting Bermuda were required to complete the online Electronic Travel Authorization Form and pay a fee of seventy-five dollars (\$75.00) which was later reduced to forty dollars (\$40.00). The Travel Authorization Form had to be approved and the accompanying Travel Authorization Certificate issued by the Government’s Ministry of Health had to be presented at the foreign port prior to departure for Bermuda. Included in the \$75.00 fee was the cost of all COVID-19 related testing required by persons arriving in Bermuda.

The Quarantine (COVID-19) (No. 3) Order 2020 (The Order) required each person landed in Bermuda to be tested for COVID-19 on day three (3), day seven (7) and day fourteen (14) of their stay in Bermuda. Any visitor who tested positive for COVID-19 would be fitted with a quarantine-monitoring bracelet and would be isolated to their place of residence and monitored in accordance with the established Ministry of Health Protocols in an effort to protect the community and minimize the spread of the disease.

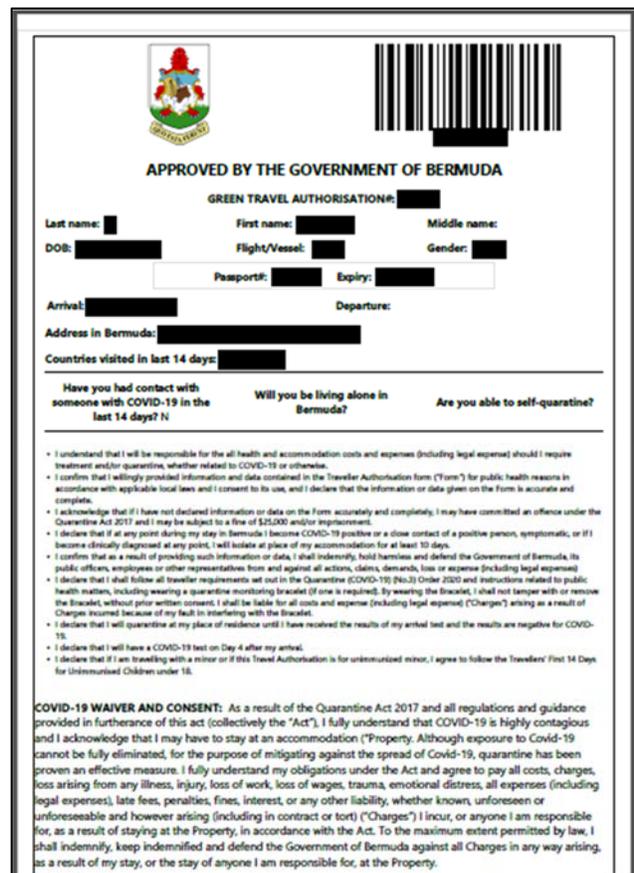


Figure 1: Sample Travel Authorization notification and certificate

⁸ Cabinet Conclusion 43(20)12

SECTION 3: Roles, responsibilities and authorities of public officers under legislations

The Government's decision to implement the Electronic Travel Authorization and institute the associated fees required compliance with the relevant legislations and regulations as the authority to make, implement and execute such decisions is imbedded in Bermuda Statute. Accordingly, Government as defined by Bermuda Statute means The Government, inclusive of public authorities. (See Appendix One for the definition of a public authority along with role of the Minister of Finance under the Bermuda Constitution Order 1968)

Listed in Table 1 below are those Accounting Officers of relevance with respect to the content of this report.

Table 1 – Accounting Officers

| Department/Office | Accounting Officer |
|--|----------------------------|
| Cabinet Office | Permanent Secretary |
| Ministry of Health | Permanent Secretary |
| Ministry of Finance | Acting Financial Secretary |
| Accountant General's Department | Accountant General |
| Information and Digital Technology Office | Chief Information Officer |
| Office of Project Management and Procurement | Director |

For more information on an Accounting Officers' main responsibilities in accordance with Financial Instructions 2.4.1; along with responsibilities of the Information and Digital Technology Office and Office of Project Management and Procurement see Appendix One:

SECTION 4: Procurement of Electronic Travel Authorization Services

The requirements and procedures for the procurement of goods or services for the Government are set out in the Government's Code of Practice for Project Management and Procurement ("Code of Practice"), which is administered by the Office of Project Management and Procurement (OPMP) as noted in Section 3 of this report.

When the government decision was made to re-open the borders, the Ministry of Health, Cabinet Office, Bermuda Hospitals Board, and the Government's Molecular Diagnostic Laboratory were all actively involved in the discussion of Bermuda's health protection protocols. On June 11, 2020, it was announced that Bermuda's airport, which was closed to regularly scheduled commercial flights on March 20, 2020 due to COVID-19, would re-open on July 1, 2020⁹.

On June 23, 2020, in anticipation of, and in preparation for, the re-opening of Bermuda's borders and airport to commercial traffic, the Cabinet Sub-Committee approved the traveller entry policy aimed at facilitating travellers into Bermuda, inclusive of a Travel Authorization Portal to accommodate an online Electronic Travel Authorization Application to be used by all persons wishing to travel to Bermuda. The Government's own Information and Digital Technology (IDT) did not have the required expertise, or travel system knowledge, to develop the application in-house, nor did the department have sufficient capacity or resources to meet the tight timelines by which the Electronic Travel Authorization Application required. As such the Government sought to engage an external application developer to develop and implement the Electronic Travel Authorization Application.

The Code of Practice provides provision for waivers and emergency procedures for the acquisition of goods and services (as outlined in Figure 3 below) these waivers and procedures were not sought with respect to the acquisition and/or implementation of the Government's Travel Authorization Portal.

Code of Practice for Project Management and Procurement (excerpts)

6.1 In exceptional circumstances, the Authorised Officer (officer authorised to engage in a procurement) may ask the Director to waive certain requirements of this Code. The Director may consult with the Accountant General or the Financial Secretary before granting any waiver. If the Director is not available, the Permanent Secretary responsible for OPMP may grant the waiver. All requests for a waiver must be made in writing on the prescribed waiver form or in such other manner as prescribed by the Director.

6.2 Waivers must not be granted retroactively except in emergency situations, as described in paragraph 6.3.

6.3 In emergency circumstances, the Permanent Secretary for the relevant Ministry may seek verbal permission from the Director or a designee to waive certain requirements of this Code. An emergency exists where there is an immediate risk to the public, public officers or property to an extent where any part of a Government service is or will be disrupted without immediate action being taken. In such cases, where oral permission has been granted, the procedure to obtain a waiver in writing must be followed within five (5) business days after verbal permission has been granted. If the Director determines that any requirements of this Code have been waived by an Accounting Officer without adhering to the procedures outlined in paragraphs 6.1, 6.2, and 6.3, then it will be considered a breach of this Code. A report will be made to the Head of the Public Service, who must decide whether disciplinary action or report to another agency may be appropriate.

24.4 Public officers may engage in single-source procurement in the following exceptional circumstances where the Director determines that: (b) owing to a catastrophic event, there is an extremely urgent need for the subject matter of the procurement and engaging in any other method of procurement would be impractical because of the time involved in using those methods.

Figure 3: Emergency procurement from the Code of Practice

Evidence reviewed by OAG indicated that the Ministry of Health performed a quick search of the market for solutions available that would satisfy Government Electronic Travel Authorization specifications and other requirements however there were only a few solutions available that adequately met the Government's needs. On June 20, 2020,

⁹ See footnote #8 in Section 1 of this report

a demonstration of the Traveler Monitoring Interim Solution was given by the vendor who is a current service provider to the Government.

Notwithstanding the fact that Government's Code of Practice for Project Management and Procurement had not been followed, it was eventually determined by the decision makers that the most efficient and quickest way to design and implement the Government's Travel Authorization Portal would be to use the same external vendor who had been contracted to build the scheduling, testing and lab portal ("Lab Portal") to support the original COVID-19 drive-through testing (see Section 5 of this report). Additionally, there was a requirement to integrate the Lab Portal and the Travel Authorization Portal, as such it was determined that a single vendor would be best positioned to deliver an integrated central data repository of travelers' health and symptom reporting, COVID-19 testing and lab result reporting.

On July 27, 2020 the Ministry of Health applied for a retroactive emergency single-source waiver pursuant to Section 24.4(b) of the Code of Practice (see Figure 3 above). The Acting Director of OPMP (now appointed the substantive Director of OPMP) responded that she did not have authority to approve the single-source waiver because Section 6.3 of the Code of Practice (see Figure 3 above) had not been adhered to or complied with. In spite of the position taken by the Acting Director of OPMP, the contract for the provision of the Government's Electronic Travel Authorization Portal was retroactively approved by Cabinet, on November 10, 2020, see Section 5 of this report (contract #2). Subsequent review, negotiation and renewal of the contract occurred during the first half of 2022. While the above events were ongoing, in September 2021, as a result of a vendor's request for diagrams of software and other system information related to the Ministry of Economy and Labour (ministry responsible for Department of Immigration) Immigration Systems, the department inadvertently became aware of an existing agreement between Cabinet Office and another vendor for a border-crossing passenger processing system that the department had no prior knowledge. The agreement, which was effective from August 24, 2020 was signed by the Premier and the system design concept for this system exactly duplicated the design of the Electronic Travel Authorization system, see next section for more information under '*other relevant contract(s)*'.

SECTION 5: Relevant contracts

The Government signed three contracts with vendor/supplier, resPartner Limited (www.resQwest.com, see Figure 1 in Section 1 of this report). ResPartner Limited is a local company that was established on December 19, 2014 and is co-owned by a consultant to the Government on Fintech related matters, and as such, as required by policy, it was noted, that the consultant had in fact submitted his conflict of interest position in a letter to the Cabinet Office.

Table 2 below shows the requirements for persons (Ministers and Public Officers) who are in positions to make or influence decisions in Government to disclose any real or perceived conflict of interest positions.

Table 2 – Requirements regarding potential conflict of interest for Ministers and Public Officers

| Ministerial Code of Conduct (November 2021) | Conditions of Employment and Code of Conduct (1 June 2021) |
|--|---|
| <p>5.1 Members of the Legislature shall disclose potential conflicts between their personal interests and the public interest and if the conflict cannot be resolved they must recuse themselves from the conflicted matter unless approved by the Committee on Register of Members’ Interest</p> <p>5.1.2 Members shall always be transparent and disclose any relevant interest, which may create a conflict in any proceeding of the Legislature or its Committees, and in communications with Ministers, Members, public officials or public office holders.</p> <p>5.1.3 Information, which Members received in confidence in the course of their legislative duties, should be used only in connection with those duties. Such information must never be used for the purpose of financial gain or any personal benefit</p> | <p>7.1.10 A conflict of interest with official duties may arise for various reasons and as an individual; you may have private interests that from time to time conflict with your public duties. However, there is reasonable public expectation that where such conflict occurs, it will be resolved in favour of the public interest rather than your own.</p> <p>Disclose potential conflicts of interest to your manager when the normal course of official duties places you in contact with relatives, close friends or business acquaintances.</p> <p>It is not possible to define all potential areas of conflicts of interest and if you are in doubt as to whether a conflict exists, raise this with the appropriate manager. In some circumstances, the appearance of a conflict of interest could itself jeopardize your public integrity. You are required to declare to the Permanent Secretary or Head of Department of any conflict of interest that arises or is likely to arise. You should recuse yourself from any decision-making process where you may be compromised.</p> |

It would have been prudent for the Cabinet Office to disclose the relationship as highlighted in Table 2 above. However, no evidence of any declarations of conflicts of interest disclosure was available for any Minister or Public Officer with respect to the decision to obtain the services of the vendor resPartner Limited noted above when the contracts were signed between the Ministry of Health and the vendor.

On May 24, 2022, the Premier and current Minister of Finance advised Cabinet that he has been falsely accused in public narrative of having an interest in the local vendor resPartner Limited and of having engineered the original contract award between the Government and the vendor. The Premier had sought to clarify that “he had in fact only effected an introduction of the Ministry of Health team to the company's principal in the midst of the pandemic, recognizing the urgent need for the IT service and the principal's skillset in this regard.” The Premier further explained that this introduction came with a recommendation for an alternative solution, which was subsequently not selected by the Ministry of Health team. The Premier stressed that the relationship with the vendor was predominantly residing with the Ministry of Health. The alternative solution the Premier was referring to was a separate contract that he had signed involving another distinct vendor. See below under ‘*other relevant contract(s).*’

A summary of the relevant contracts is provided in Table 3, followed by the individual contract information.

Table 3 – Summary of relevant contracts

| Contract | Effective Date | Agreed Compensation/Cost to the Government |
|---|-------------------------------------|--|
| Contract #1, for schedule of test, testing and lab portal. Contract between the Government of Bermuda and resPartner Ltd. | March 15, 2020 | <ul style="list-style-type: none"> ▪ \$18,300 licensing fees ▪ \$1.50 administration fee per lab appointment/test/result ▪ \$4,500 monthly minimum fee (if volume of transactions is less than 3,000) ▪ \$2.50 per client record created |
| Contract #2, travel authorization portal. Contract between the Government of Bermuda and resPartner Ltd. | June 23, 2020 | Portal fee schedule <ul style="list-style-type: none"> ▪ \$10,000 licensing fees ▪ \$5 administration fee per travel authorization issued ▪ \$30,000 monthly minimum fee, if volume of transactions is less than or equal to 6,000; monthly minimum fee plus administration fee of \$3.00 per travel authorization for volume of transactions between 6,001 to 10,000, and monthly minimum fee plus administration fee of \$2.00 per travel authorization for volume of transactions over 10,000 Credit card processing fee schedule, inclusive of bank fees <ul style="list-style-type: none"> ▪ 6% of sale, processing and management fee ▪ \$0.45 transaction fee per card processed |
| Contract #3, pandemic solution, i.e., lab portal, traveller portal, COVID-19 vaccination portal. Contract between Government of Bermuda and resPartner Ltd. | June 16, 2022 | <ul style="list-style-type: none"> ▪ \$5.00 transaction fee, volume of less than or equal to 19,000 transactions; \$3.00 transaction fee, volume of 19,001 to 29,000; \$2.00 transaction fee, volume of over 29,000 ▪ \$1.50 per lab booking ▪ \$2.50 per client record ▪ \$1.50 per first vaccination dose and per booster ▪ \$95,000 monthly minimum fee where collected fees do not exceed \$95,000 |
| Contract #4 for mobile portal application/interactive tool to remotely access and pay for Government services. Contract between Government of Bermuda and BPMS Limited. | August 24, 2020 then April 12, 2021 | <ul style="list-style-type: none"> ▪ \$10 per app use for arrival as committed transaction revenue (to the vendor) ▪ \$2.5 million debt guarantee to vendor’s parent company, after the debt guarantee is cleared: <ul style="list-style-type: none"> • Government to receive 10% of share in revenues from software use, up to 20% of share in revenues if debt guarantee increases to \$10 million |

Contract # 1

This first contract between resPartner and the Government indicate that the Software Development and Maintenance Service Agreement became effective on March 15, 2020 (although Schedule 1 of the Agreement stated contract commencement date of April 1, 2020). In accordance with the Terms and Conditions of the contract, the vendor will develop, house and maintain a Schedule, Testing and Lab Portal in a software as a service (SaaS) arrangement (“Lab Portal”). This Lab Portal system will provide Government stakeholders with ability to book appointments for COVID-19 testing and once the testing has been completed, receive the results of the test during the COVID-19 pandemic.

The Ministry of Health needed a test booking system and Cabinet Office liaised with resPartner who set up quickly and at no cost to the Government. Subsequently, when the Government lab (Molecular Diagnostic Laboratory, MDL) became operational, a need to build and maintain a more robust Scheduling, Testing and Laboratory Portal to properly

support MDL was required and this same vendor (resPartner Limited) stepped up to build the Lab Portal based on the specifications of the existing reservations system, which it had developed free of charge for the Government as described above.

The Code of Practice for Project Management and Procurement was not followed in the procurement and implementation of the Lab Portal. Cabinet approved the contract with resPartner retroactively January 19, 2021.

Contract # 2

With respect to the second contract between resPartner and the Government, the details of the contract indicate that the Software Development and Maintenance Service Agreement became effective on June 23, 2020. In accordance with the Terms and Conditions of the contract, the vendor will develop, house and maintain a Travel Authorization (TA) Portal in a software as a service (SaaS) arrangement (“TA Portal”). This TA Portal system will provide Government the ability to effectively monitor travellers to Bermuda in an effort to restrict the spread of COVID-19 related illnesses in Bermuda during the COVID-19 pandemic.

The above-referenced contract with the vendor (resPartner), did not follow the requirements of the Code of Practice for Project Management and Procurement, was approved retroactively by Cabinet November 10, 2020. As previously explained in this report, under the Terms of the contract, the vendor (resPartner Limited) provides an online application that facilitates the administration and collection of revenues (TA Fees) on behalf of the Government from persons traveling to Bermuda.

Under the contractual arrangement, the vendor collected passport information, travel details, health status, contact information and TA fees. The TA fees collected by resPartner were transferred (not in real time) to the Consolidated Fund net of administrative expenses. The terms required the vendor to transfer funds collected on behalf of the Government to the approved Government bank account, less all bank fees and commissions each Friday, along with itemized detail of each transaction to assist with proper and complete reconciliation (see Figure 4 below for the actual timeline of remittances of fees).

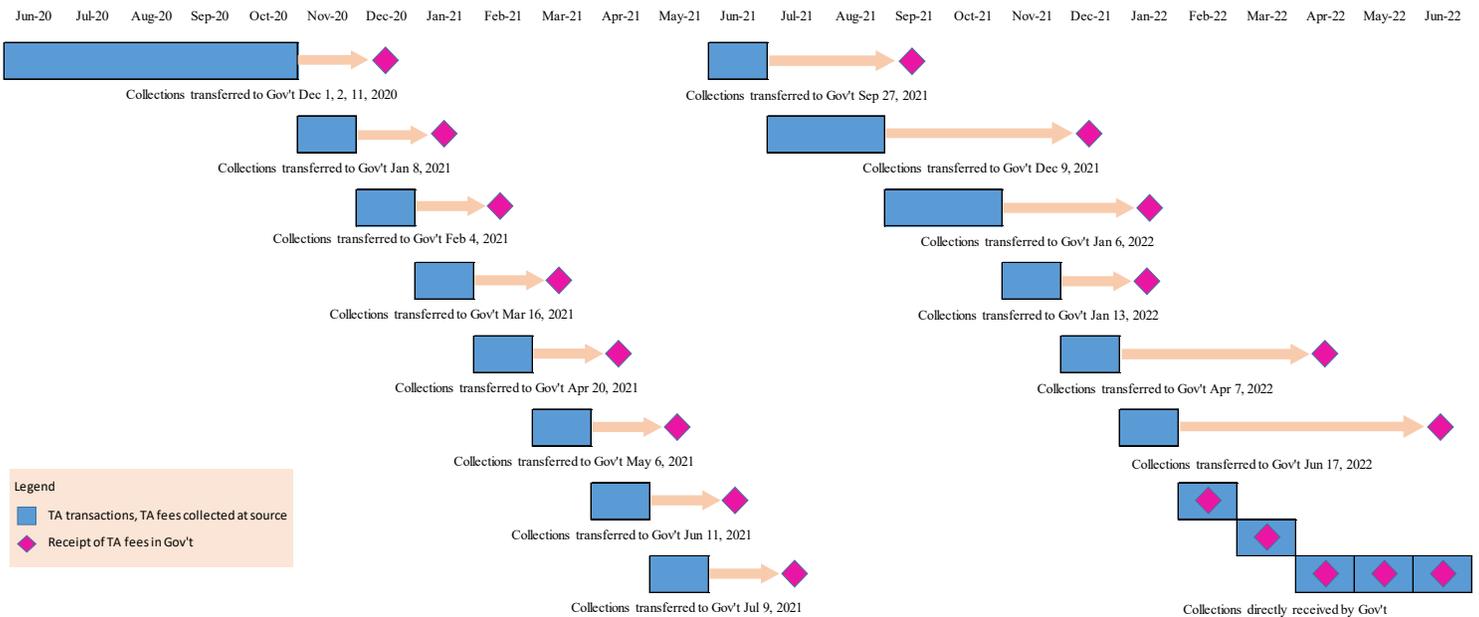


Figure 4: Timeline of TA transactions and their remittance to Government

From February 2, 2022 onwards, revenue generated from travellers' use of the Travel Authorization Portal were received directly by Government through the Government's merchant ID, linked to its bank account.

As noted in Appendix One of this report, the *Bermuda Constitution Order 1968* section 94 states that revenues or monies raised for purposes of the Government should be paid into and form part of the Consolidated Fund. Complimentary to the stated requirement of the *Bermuda Constitution Order 1968*, as indicated above, the requirements of the *Public Treasury (Administration and Payments) Act 1969* reinforces this requirement (See Figure 5 below).

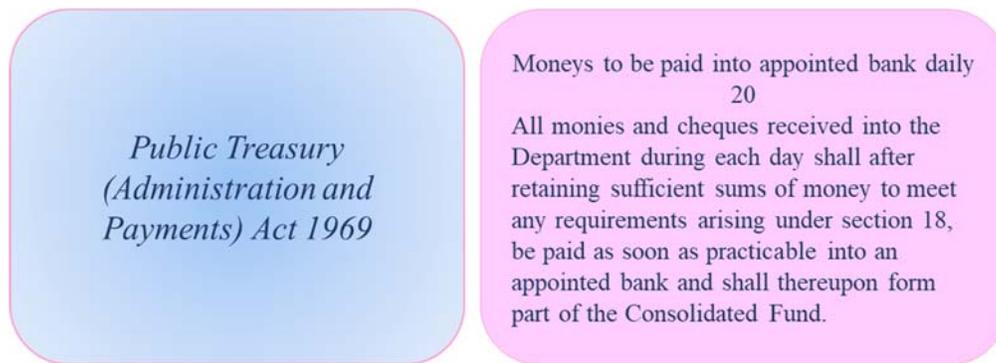


Figure 5: Section 20 of the Public Treasury (Administration and Payments) Act 1969

Contract #3

This third contract effectively combines the first two contracts described above. This Software Development and Maintenance Service Agreement became effective on June 16, 2022 (commencement date) and operates on a month-to-month basis until March 31, 2023. Early termination is allowed with Government required to pay the minimum monthly fee of \$95,000 for the remaining months if the collected fees for each month do not exceed \$95,000.

The contract called for the vendor to provide a Pandemic Solution using resQwest (proprietary software) in a software as a service (SaaS) arrangement ("System"). The System will provide the Government and its stakeholders with:

- a. Laboratory Portal to book appointments for COVID-19 testing and result submission to the Ministry of Health, residents who have been tested and their physicians.
- b. Traveller Portal to monitor individuals arriving in Bermuda in regards to public health during COVID-19 pandemic.
- c. COVID-19 Vaccination Portal to triage the scheduling of vaccinations based on priorities set by the Government and to book the vaccination appointments as required and retain relevant information for vaccination tracking.

A review of the Government's financial records indicated that total invoice payments made to the vendor from inception to October 2022 for the design, implementation and operation of the Travel Authorization Portal amounted to over \$6 million.

Revenue generated and collected for the use of the Travel Authorization by travellers to Bermuda from inception to October 2022, amounted to ~\$21 million, contributing a significant amount of revenue source to Government's Consolidated Fund account. While this appears to be a significant revenue stream for the Government, it should be noted that the contract term was due to expire on March 31, 2023.

It is worth mentioning that the Travel Authorization Portal retains travellers' personal and health information for an extended period as the Government has not yet addressed the steps that will be taken to safely store and safeguard this information that currently resides with the vendor. All residents of and travellers to Bermuda have the right to informational privacy, including the expectation that personal and health information as part of the requirements to travel to Bermuda, will be safeguarded and safely stored with access limited on an as-needed basis only to persons with legitimate reasons, or who have been given legitimate and controlled access to this information. In Bermuda, the protection of personal information is enshrined in the Personal Information Protection Act 2016 (PIPA).

Other relevant contract(s)

Other agreements reviewed that were of concern during an audit revealed that the Government, represented by the Premier, signed a service agreement with vendor/supplier, BPMS Limited, a local company that was registered on February 16, 2021. However, the service agreement under the contract is effective from August 24, 2020 (commencement date of September 1, 2020 with a contract completion date of August 31, 2025). The service agreement was later updated and signed by the Permanent Secretary, Cabinet Office, effective from April 12, 2021 (commencement date of March 8, 2021 and completion date of February 21, 2026). There was no evidence of any tendering or request for proposals process and there was no evidence of Cabinet approval.

The service to be provided by the vendor under the contract is in the form of a mobile portal application being an interactive tool that allows persons to remotely access and pay for public and private goods and services. Examples of services that users of the application are expected to have access to via the mobile when fully implemented are shown below.

- a) Port of entry – all entry paperwork
- b) Virtual permit/license – to exist on app, no paper
- c) Parking
- d) Health tracking
- e) Payments of taxes, tickets, fees

Based on information reviewed, it appears as if the vendor was to be compensated by a user fee charged to the public. The user fee involves a shared revenue arrangement with the Government, involving a pledge of debt guarantee for the benefit of vendor's parent company of \$2.5 million. After the initial guarantee is absolved, the Government will receive a 10% share of revenue generated by the public's use of the application. An additional 10% revenue share (total of 20%) if the debt guarantee is extended to \$10 million and a specified user fee is charged to the public for use of the application.

This application per the signed contract is to provide a convenient tool by which the public can access a number of Government Services. Cabinet approves procurement projects over a certain threshold, Accounting Officers have the role/responsibility to authorize ministry/portfolio expenditures and the awarding of contracts (per the Code of Practice). It should be noted that although the application has not yet been put into operation, the Government has been making payments to the vendor (\$1.7 million so far, in July 2022). The Code of Practice for Project Management and Procurement, and Financial Instructions were not complied with in relation to this project and as such, public funds have not been utilized with due care.

SECTION 6: Observations and lessons learnt

The Government, citizens and residents of Bermuda have been through a lot in the past two years and this experience will live long in the memories of those who survived this difficult period in Bermuda's history. September 14, 2022, marked the end of the COVID-19 pandemic per the World Health Organization. There remains an urgent call for the Government of Bermuda to revisit their policies and strengthen them in order to meet the changing nature of COVID-19 and future pathogens with pandemic potential¹⁰.

It is important to mention and recognise the outstanding response of many public servants and those of the Ministry of Health and others contracted to help. They showed personal sacrifice, courage and resilience. They also demonstrated the government could be innovated and nimble, as they worked across the whole of the Government of Bermuda in a way that has not been seen before. There were also many Public Officers who acted in silos; and others reluctant to act, and waiting to pass on their responsibilities to others.

There are long existing legislations, tools, policies and procedures in place to ensure transparency and accountability of Public Officers, however many of these tools and guiding principles were simply ignored.

Multiple violations of the law and the Code of Practice for Project Management and Procurement in the awarding, development, implementation and operation of the Electronic Travel Authorization Portal and the processing and collection of revenues generated by the use of this facility. No competitive bids were pursued, and other established guidelines were breached or simply ignored, resulting in private sector service providers in Bermuda being able to commence the provision of service with only verbal agreements, rather than properly executed contracts in place. Even when contracts were eventually executed, they were not executed in accordance with the Code of Practice for Project Management and Procurement, the Public Treasury (Administration and Payments) Acts 1969, or Financial Instructions.

The use of a non-Government bank account for the receipt and processing of Government's revenues, rather than these funds being paid directly into the Consolidated Fund was a direct violation of the Bermuda Constitution Order 1968.

The action of the Government and Public Officers during the COVID-19 pandemic brings to mind the SAGE Commission report (October 31, 2013)¹¹ whose key findings included (among others):

¹⁰ Source: <https://news.un.org/en/story/2022/09/1126621>

¹¹ <https://mjm.bm/wp-content/uploads/2015/09/SAGECommissionFinalReport31102013.pdf>

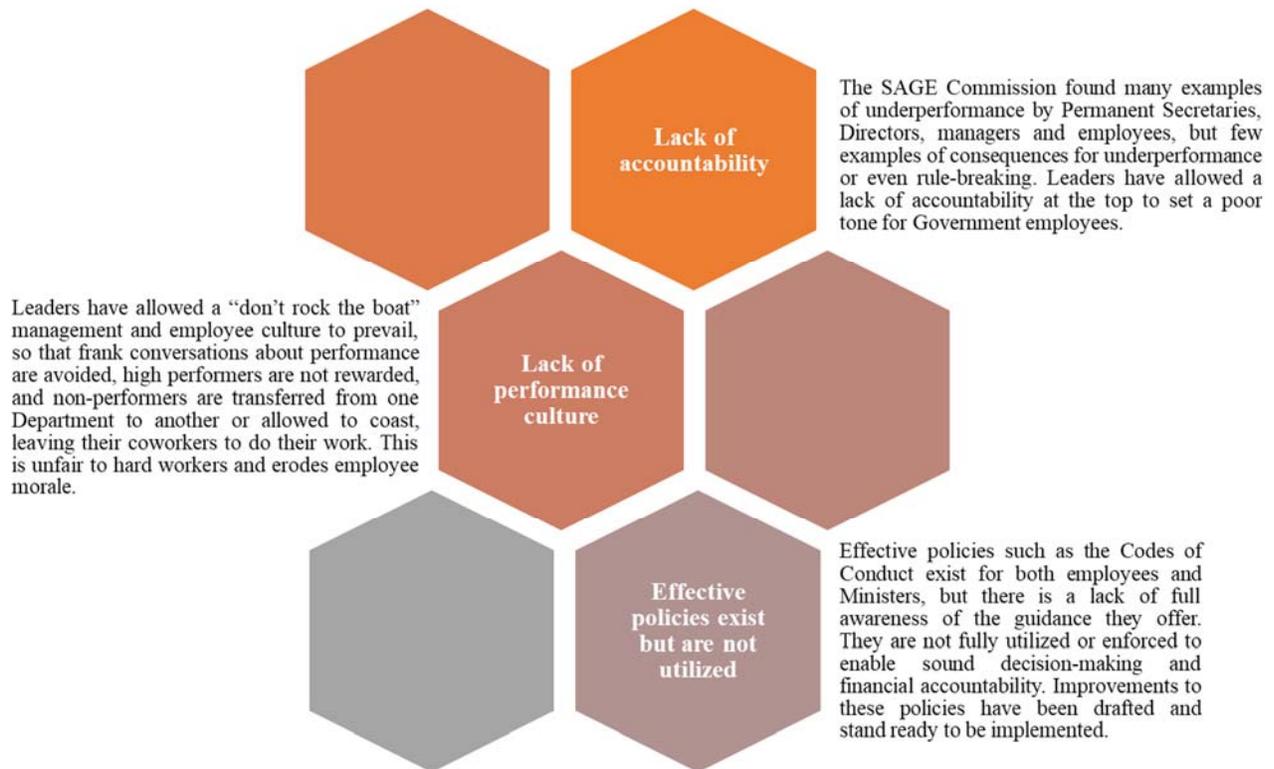


Figure 6: *Excerpt from the SAGE Commission Report’s Ten Key Findings*

The SAGE Commission report was completed in 2013 and no pandemic at the time but the observations contained in the Report still hold true today. Organization culture is what lies beneath the surface that often explains how an organization actually functions, when risks are identified and addressed.

Government can hopefully have the courage to recognize and accept these root causes in order to implement actions that work to lessen their effects, improve efficiency and effectiveness for Bermuda, create a better organization culture to attract and retain the right talent, and cultivate future public officers to provide a better public service.

And the public, to whom the Government is ultimately accountable, can find their information and funds duly protected and can seek to see tangible results due to them.

Information and observations are provided throughout this report and the public is encouraged to ask further questions to their ministers and government representatives as the Government is ultimately accountable to you:

- What steps have been taken to secure the personal information capture in the vendor application?
- After two years, what work is under way to improve readiness for future emergencies and crises?
- What steps have been taken to address the key findings from the SAGE review?

Appendix One

Roles, responsibilities and authorities of public officers under legislation

A public authority as defined under The *Interpretation Act 1951*¹² is any designated person or body of persons (whether corporate or unincorporate) required or authorized to discharge any public function under any Act; or under any Act of the Parliament of the United Kingdom which is expressed to have effect, or whose provisions are otherwise applied, in respect of Bermuda; or under any statutory instrument.

The Bermuda Constitution Order 1968 and the Public Treasury (Administration and Payments) Act 1969 both make reference to the Consolidated Fund and the role of the Minister of Finance with respect to the use and management of this fund as indicated in Figure 2^{13 14} below:

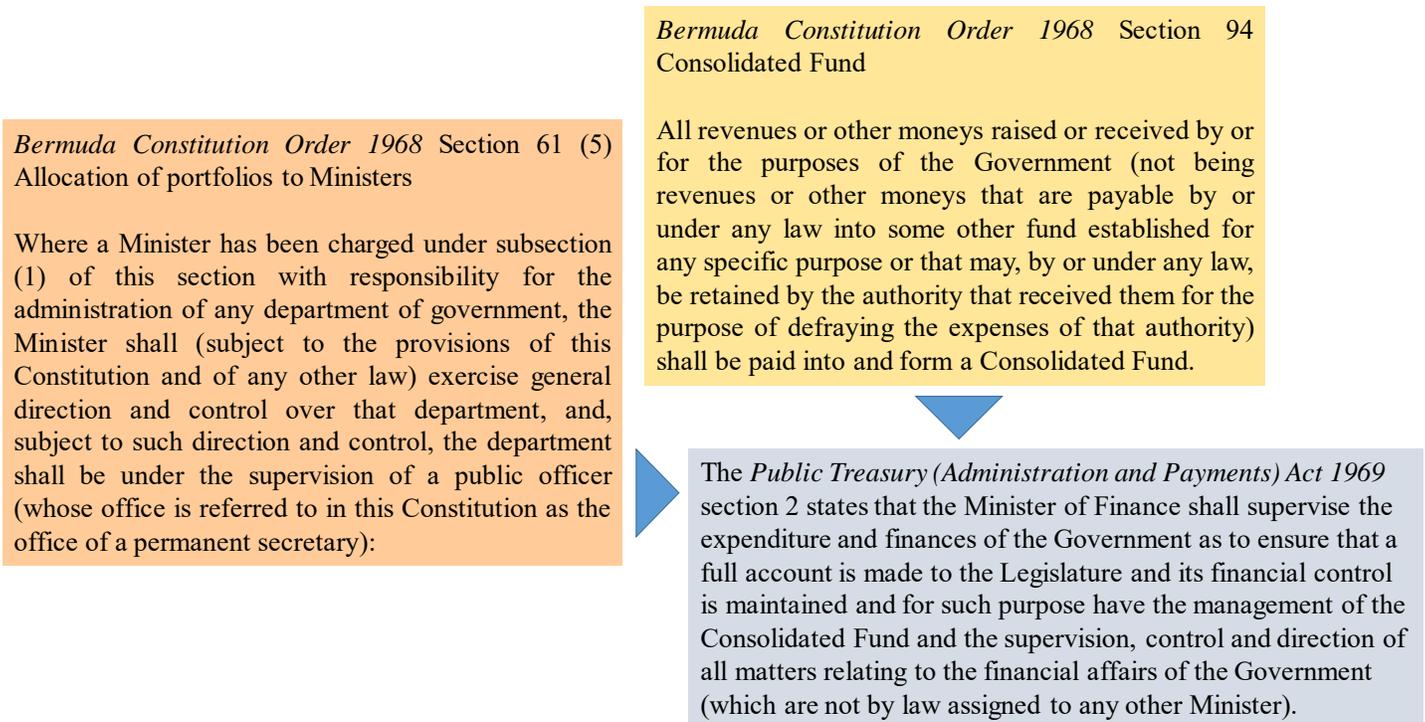


Figure 2: Role of Minister, Permanent Secretary, and the Consolidated Fund

The Government's Financial Instructions (FI) are instructions issued by the Minister of Finance in accordance with Section 3 (1) of the *Public Treasury (Administration and Payments) Act 1969*. These instructions form the minimum required standard for financial matters in Government departments, offices and Public Authorities. The FI emphasize the responsibilities of Accounting Officers who must ensure that the financial systems which they are responsible for are operating in accordance with appropriate internal controls and governance frameworks. This responsibility cannot be delegated and failure to comply will result in penalties.

Accounting Officer means the officer of a department or office whom the Minister of Finance regards as having overall responsibility for the custody and control of funds appropriated by the Legislature and for the collection of revenues due to that department or office. The Minister of Finance will appoint the Permanent Secretary, Head of Department, or Public Officer acting as such, as Accounting Officer.

¹² <http://bermudalaws.bm/laws/Consolidated%20Laws/Interpretation%20Act%201951.pdf>

¹³ <http://www.bermudalaws.bm/laws/Consolidated%20Laws/Bermuda%20Constitution%20Order%201968.pdf>

¹⁴ [http://www.bermudalaws.bm/laws/Consolidated%20Laws/Public%20Treasury%20\(Administration%20and%20Payments\)%20Act%201969.pdf](http://www.bermudalaws.bm/laws/Consolidated%20Laws/Public%20Treasury%20(Administration%20and%20Payments)%20Act%201969.pdf)

Financial Instructions define internal controls as the whole system of controls, financial and otherwise, established with the objectives of carrying on the operation of a department in an orderly manner, safeguarding its assets and securing, to the fullest extent possible, the accuracy and reliability of its records. Internal controls also include mechanisms designed to improve operational efficiency and to ensure adherence to all FI, Conditions of Employment and Code of Conduct, policies and procedures. It is the responsibility of Accounting Officers to ensure that established internal controls are adhered to.

The Accounting Officers' main responsibility per FI 2.4.1 among others are:

- Ensuring that all relevant financial considerations are taken into account and, where necessary, brought to the attention of the Accountant General where they concern the preparation and implementation of policy proposals relating to expenditure or income for which he or she is the Accounting Officer.
- Economy and efficiency in the administration of the department. This includes ensuring that there are adequate financial management systems in place to support the proper administration of the department in an economic and efficient way.
- The adequacy of arrangements within the department/office to ensure the correctness of all payments under his/her control and the prompt and efficient recovery and bringing to account of all receipts connected with the department/office, or with any Public Authority for which the department is responsible.
- Ensuring that there is a clear framework for control (including financial reporting) and accountability for public funds in bodies operating under the aegis of the department/office.

It is acknowledged in the FI that it would be impractical for Accounting Officers to authorize every financial transaction therefore financial approval is also delegated to other responsible public officers. Accounting Officers working with their Financial Comptrollers identify public officers who will approve transactions in the Government's accounting system (Oracle's JD Edwards EnterpriseOne or E1) for the department.

Public officer means the holder of any remunerated office in the public service and includes any person appointed to act in any such office.

The last three Accounting Officers in Table 1 have distinct responsibilities because their department/office plays a central role in Government:

According to the *Public Treasury (Administration and Payments) Act 1969* Section 4 (1) - the Consolidated Fund shall be administered by the Government Department called the Accountant-General's Department, and Section 4 (3), The Accountant-General shall exercise a general supervision in respect of the arrangements under which payments out of, or into, public funds are made by or to Government Departments; and the Accountant-General, subject to such general or special directions as may be given by the Minister on that behalf, may, subject as hereinafter provided, from time to time, issue such instructions to Government Departments as he thinks expedient—(a) with respect generally to the control and management of public funds by Government Departments and for carrying any provision of this Act into effect; (b) with respect to the method by which payments are to be made into or out of public funds by Government Departments, and with respect to the conditions subject to which such payments are to be made; (c) with respect to the payment of public funds into the Consolidated Fund by Government Departments; and (d) with respect to accounting for public funds by Government Departments: Provided that instructions issued as aforesaid shall not be inconsistent with any Act.

The Government's Information and Digital Technology (IDT) Department seeks to empower Ministries, Departments, and Civil Servants to improve productivity and services by providing IT consulting services and core IT infrastructure at reasonable cost, through activities, including but not limited to:

- Maintain and secure IT infrastructure that host applications used by departments
- Support IT projects underway throughout Government
- Deliver and manage IT services used by departments
- Continue development of Disaster Recovery Systems for selected Departments
- Support IT Governance process for Government
- Deliver training on IT systems to improve effectiveness and productivity
- Measure and communicate the satisfaction and usage of Government services to Departments
- Assist Departments with documenting and improving business processes
- Assist Departments with defining and developing e-technology solutions

According to the *Public Treasury (Administration and Payments) Act 1969* Section 32B (4) The Director (of the Office of Project Management and Procurement - (OPMP)) shall issue a Code of Practice for Project Management and Procurement¹⁵ to be followed by all public officers concerned with obtaining goods or services for Government. Section 32B (5) states that The Director shall take steps, as he considers necessary, to ensure that the Code of Practice for Project Management and Procurement is followed by all public officers.

¹⁵ <https://www.gov.bm/sites/default/files/CODE-OF-PRACTICE-Amended-2nd-Edition-Final--July-27-2020-2.1.pdf>