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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE JOHN HATZISTERGOS AM  
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION HECTOR

Reference: Operation E19/1595

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 5 APRIL, 2023

AT 2.00PM

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This transcript has been prepared in accordance with conventions used in the Supreme Court.

THE COMMISSIONER: Yes. Thank you. Are you ready to resume? Yes, thank you. Mr Vardanega, you're subject to the same promise you made at the commencement of your evidence to say the truth. Do you understand?  
---Correct.

Thank you. Yes.

10

MS DAVIDSON: Mr Vardanega you understood at the time that you provided the PJ O'Connor methodology to Mr Cox that you were assisting him in relation to the preparation of his quotation for Macdonaldtown, did you not?---I, I wasn't, I think from looking back at how I responded, the, the way that it happened in my head was that Stewart didn't know the methodology and he didn't have a benchmark for the price. There is definitely a discussion had between me and Stewart around reviewing the methodology, which Aidan did, and also - - -

20 Right, but not asking you about your discussions between you and Stewart. I'm asking you about the reasons for providing the documentation to Mr Cox.---Yeah. And that's - - -

It wasn't just to assist Stewart, was it? It was to assist Aidan.---It was ultimately to get the project done. That's all it was.

Well, to get the project done by Aidan Cox or whoever he was associated with.---From, from when I gave it to Aidan, I did not have any reasons that Aidan needed to win the project.

30

But you knew that he had submitted a price.---I did know that he submitted a price.

Right.---Yeah, that's correct.

And you thought that he was somebody, I think you'd indicated you had a high opinion of the work that he could do as well.---Correct.

40 Right. And you thought because of the opinions you'd formed in relation to TCQ that they didn't necessarily know how to do this kind of work safely.

---Yeah, it was my advice to, to Stewart that he go out to open market and, and get a price and do it as per what's required.

Right, but you had, in sending it to Mr Cox, intended to help him get the work, yes?---Yes.

Right. It wasn't appropriate that you provide information about a competitor's tender to Mr Cox in the context of knowing that he was also somebody who had submitted a quote for that work, was it?---No.

10

Did you ever consider that at the time?---No.

Did you provide further information to Mr Cox, that is after you provided the PJ O'Connor methodology, in relation to winning the work at Macdonaldtown?---I cannot recall.

Can we have volume 13.2, I'm sorry. There may be a technical issue. I understand we can proceed, Chief Commissioner. Could we have volume 13.2, page 107 brought up on the screen. This is a quote provided from Aidan Cox to TCQ on 10 October 2019 saying, "Please see attached to be considered in conjunction with our original offer for civil containment. Hopefully this should give you the savings you need to meet Transport's budget constraints." Do you recall discussing Transport's budget constraints with Mr Cox?---No.

20

Did you provide any information that enabled RJS to meet Transport's budget constraints?---No, I, I only recall providing the price to Aidan.

Did you use the Wickr application around this time at all?---Yes.

30

And what did you use that for?---I think sending the, the price from PJ O'Connor or TCQ.

Right, so it was in relation to providing budget information - - -?---Oh, sorry.

- - - to Mr Cox?---It says here Transport's budget.

Yeah.---Not, like, Sydney Trains's budget.

40

Right.---Or there's TCQ's budget.

Okay.---I'm talking about TCQ's budget.

All right. So you did provide information in relation to TCQ's budget using Wickr - - -?---Correct, yes.

- - - to Mr Cox?---Yes.

And again, that was for the purpose of assisting him to win the work?---Yes.

10

Why were you doing that?---I, I, it was a real bad judgment call at the time obviously but I was thinking that RJS were prime to deliver the job. They were, if you're not going to go out to open market, I, I'd at least want someone that knows that they're doing, to do the job.

Right. Why did you in your capacity as a contractor care about whether RJS were prime to deliver the job?---I didn't.

20 Right. So why in that case risk discovery in relation to providing competitors' pricing information? You understood that would have had implications if it had been discovered, didn't you?---At the time, I didn't, no.

Well, you were using Wickr, which was an encrypted self-deleting application to do it. The reason you were doing that was you were concerned about being discovered, wasn't it?---Not really. Wickr was, is like WhatsApp. They're all, they're all text messaging services.

30 But you weren't suggesting that it would have been appropriate to do that through any of your Transport email addresses, for example, would it?  
---It was the request to send it over Wickr, so I sent it over Wickr.

Okay. But what did you understand to be the reason for the request to send it over Wickr?---I, I just thought that that's what they use to, to store their information.

You wouldn't have really sent it to Mr Cox from your Transport email address, would you?---No. I wouldn't have sent it from my Transport, no.

40 And that was because you realised that if it had been discovered, that would have had implications for you, right?---At the time, probably not, no.

So you said you wanted them, you thought they were prime to win the job but at the same time, you didn't really care because you were a contractor yourself?---It just wasn't my project.

It wasn't your project. Right. Did you approach Mr Cox in relation to payment for the assistance you'd given them?---I think there was a lot of talk around a payment but what did eventuate was, was a finder's fee. Correct.

10

Right. So you say there was a lot of talk around a payment. Was that initiated by you or by Aidan?---I can't remember.

What did initiate you described as a finder's fee?---Yes.

Is that on the basis of your understanding that it was you who got them the work, basically?---I just put RJS in contact with TCQ.

Right. And how much were you paid as a finder's fee?---\$25,000.

20

And how did you receive that money?---In cash.

Do you recall when you received that money?---March 2020 - - -

Okay. Was that at a golf day?---Yeah, that was the first payment.

Right. So if we could have volume 13.2, page 125 brought on the screen? Permanent Way Institution 17th Annual Rail Industry Golf Day on 6 March 2020, the Bankstown Golf Course. Did you sponsor that event?---Yeah.

30

That is, you, I should have said ProjectHQ?---Correct.

So was this the golf day where you received the first part of the payment in cash?---Correct.

How much did you receive then?---15,000.

Right. And what did you do with that money?---Stored it at home.

40 Did it remain stored at home?---Yeah, and just spent on groceries and - - -

Right. \$15,000?---Yeah.

Okay. And what was the second part of the payment?---\$10,000 in May.

\$10,000 in May?---Yeah.

2020?---Yes.

And what was the means by which you received that?---Cash, as well.

10

Okay. And how did that get given to you?---In an envelope.

Right. And what did you do with that?---I added it to the other \$15,000.

Right. So you had \$25,000 - - ?---Correct.

- - - sitting in cash at home?---Yeah.

Did you spend all of that money?---No.

20

So are you able to say how much of it you spent and what you retained?---I, well, I handed back \$15,000 to ICAC.

Okay. So you produced that to the ICAC in response to a request?---Yeah.

And the other 10, you spent. Is that right?---Correct.

THE COMMISSIONER: Sorry? What did you do with the other 10?  
---Sorry? What was that?

30

What did you with the other 10?---Just spent it.

The 10 you got after the 15. Is that the case?---I received 15 and then 10, yes.

So you gave the 15 that you had acquired to the ICAC and you spent the 10?---Yes.

40

MS DAVIDSON: To clarify, Mr Vardanega, did you combine those two - -  
-?---Yes.

- - - payments for your own purposes prior to at some time later producing the \$15,000 that was remaining to ICAC?---Yes.

What did you, prior to the search warrant being executed at your house, what did you intend to do with that \$15,000?---I had no idea.

Had you formed a view in relation to potentially providing it as a means of buying into the RJS business?---Not really. I think I did want to join the RJS business. I thought, but I wanted to work in construction but I don't think I thought I'd give that money back. I'm not sure.

Okay. Is it possible that you received more than \$25,000?---No.

Did you discuss with Aidan Cox any conversation in which he might have told somebody that he'd given you more than \$25,000?---Did I discuss with Aidan if he gave me, if he discussed with someone else about giving me more?

Yes?---I have no idea.

20

Did you have a discussion with Mr Cox after the search warrants were executed at your house?---Did I have a discussion with Aidan after the search warrant?

Yes.---Yes, the day of.

Right. Did that include discussion of the payment that he'd given to you? ---It very well could have.

30 Right. Do you remember what the nature of that was?---I think we were just trying to work out what the hell was going on, to be honest.

Okay. Did he ever tell you or ask you about the amount of money that he'd given you?---I, I don't know.

Okay. Do you remember discussing with Mr Cox adding RJS to the Sydney Trains supplier system?---Yes.

40 What was the context in which you had that discussion?---After Macdonaldtown, and there was upcoming works for me to manage at Sydney Trains.

For you to manage?---Correct.

Right.---One was at Canberra. I discussed with Aidan if he could give me a quote for Canberra and in return I'd add him to the supplier.

Okay. And when you say he, do you mean RJS or Marble Arch or you weren't sure?---RJS.

10 Right. So in return for giving you a quote, he, you'd add him to the supplier system.---Correct.

What was the reason you were so keen to secure a quote from him?---I needed a realistic quote to send, to do Sydney Trains work in Canberra, in another state, so there's no suppliers that Sydney Trains has on record that can provide services in Canberra.

They didn't have any suppliers in the ACT.---No.

20 Okay. And you said in return you'd add him to the Sydney Trains supplier system. What was the benefit to him of being added to the Sydney Trains supplier system?---Not much, to be honest, but being on the system, being on a panel - not on a panel, sorry, just being on the system.

Right. Is it necessary that someone be on the system before they can do Sydney Trains work, that is a business?---You need to be on the system to be paid for work.

Right.---Correct.

30

And RJS, so far as you were aware, hadn't done any Sydney Trains at this point?---No, they had only done the Macdonaldtown.

Which was TCQ.---Correct.

Right. Was it after you received the \$25,000, or at least the first part of the \$25,000 from Mr Cox, that you put them on the system?---I can't recall but they weren't related in my mind.

40 THE COMMISSIONER: Sorry?---I can't recall but they weren't related, like, the activities weren't related in my mind.



MS DAVIDSON: When you received the \$5,000 from Mr Gayed back in 2019 in cash, you said you'd come to the conclusion in discussion with him that that stank and you had to do something about it. Did you have any similar qualms in relation to the \$25,000 that you received from Mr Cox?  
---No.

10 Why was that?---I was of the thinking that it wasn't my project. I had no delegation authority. I was merely reviewing a methodology, which is incorrect.

Well, you'd also provided him with confidential budget information, hadn't you?---Yes, sorry.

Right. So it wasn't just reviewing the methodology.---Yeah.

Did you justify it to yourself in your mind as just reviewing a methodology, did you?---Yeah. It essentially wasn't my project to manage.

20 All right. And so it was okay to take finder's fees or kickbacks, as long as they didn't relate to your project, no matter what information you were providing. Is that the way you were thinking at the time?---Yeah.

Okay. Did you, had you by this point, that is, by the time Macdonaldtown was occurring and you were receiving payments in early 2020, do you think you'd received any further training in relation to conflicts of interest or declaring gifts or benefits from Sydney Trains?---Sorry, what's the question?

30 By this point, that is, by March 2020 when I think you said you received the first part of the payment, had you received, or do you recall receiving any further training in either conflicts of interest or declaring gifts or benefits from Sydney Trains?---Other than the tick and flick that we discussed be, that would have been the only one.

The training that you had before.---Correct.

40 Did you know that you were, as a contractor, expected to nevertheless declare gifts or benefits of the kind that you'd received from Mr Cox?---I didn't know at the time.

Right. Later in 2020 you became involved in the Wollstonecraft project. Is that right?---Yeah.

How did you first learn about that project?---It was the next round of TAP upgrades that were coming and - - -

Okay. So the next tranche of TAP projects.---Yep.

10 And had you heard about that in the context of you were working on the NIF project, I think, you'd indicated by this time.---Yep.

So how was it that you were being made aware of the next round of TAP projects?---They're always continuing so it's just you catch up with one of the guys from any of the station upgrades to see where they're going to next.

Okay. So is TAP basically an almost endless stream of continuing tranches from the perspective of those - - -?---Correct.

20 - - - working within Sydney Trains or Transport for NSW?---Transport for NSW, yeah.

Right. You signed a confidentiality agreement in respect of the Wollstonecraft project in August 2020. Do you recall doing that?---No.

All right. Could we have volume 13.2, page 159 brought up on the screen. This is a confidentiality and nondisclosure agreement between Downer and ProjectHQ.---Yep.

30 Do you recall seeing this document before?---I don't but let's go through it.

All right. Could we scroll to the next page. It's dated 10 August 2020. It appears to at last have been prepared for your signature as a formal agreement between you and Downer, and then if we scroll to page 161, you'll see there's ProjectHQ's details inserted there and it relates to work in relation to TAP 3 projects including Banksia, Birrong, Roseville and Wollstonecraft.---Yep.

40 Page 162, we see the contractor's obligations. You see the bottom there clause 2.1 in relation to, and confidential information is defined in 1.1 including basically information that's made available on behalf of Downer to you and at 2.1 you have to protect that including using at least the same

degree of precaution that Downer is and not disclosing it to anybody else. And then if we can scroll to the next page, other than effectively people who need to know for certain permitted purposes, and you're not allowed, it's a fairly standard kind of a confidentiality agreement. Do you recall reviewing or signing such an agreement on behalf of ProjectHQ?---I don't recall but I could imagine I would have.

All right. What would have been the context in which you would have been asked to sign such a document?---I honestly can't remember.

10

All right. What work was ProjectHQ doing by this point, or contemplating doing by this point, that is, by August 2020, that would have involved signing such an agreement with Downer?---I think I was trying to get resources onto the project, personnel, as in engineers and that sort of thing to help them in, in the delivery.

Right. Were you contemplating tendering for some of the packages in relation to Wollstonecraft?---Like I said at the start of today, I was always open to looking and investigating into any opportunity that I got presented.

20

Right. Which included packages potentially in relation to the Wollstonecraft project?---Yeah, but I very, very quickly learned that I couldn't manage the delivery of the package.

Okay. So is it in the context of that, do you think, that you may have been asked to sign the non-disclosure agreement?---I honestly can't remember.

Okay. Do you agree that you didn't comply with the obligations set out in relation to confidential information about the Wollstonecraft project provided by Downer to you or people at Downer to you?---In hindsight - - -

30

Well, looking at it now.--- - - - correct, yes.

At the time, were you considering any confidentiality obligations in relation to information provided by Downer to you?---I, I hadn't considered, no.

Right. What was Mr Gayed's role in relation to the Wollstonecraft project? ---He was the project manager.

Okay. How would you describe, that is, by mid-2020, mid to late 2020, how would you describe your relationship with Mr Gayed?---I would still say friends. We, like, I, I - - -

Were you close friends?---I wouldn't say close friends. We'd catch up and, and that sort of thing, but - - -

You'd see each other socially?---No.

10 Okay. But you'd catch up with each other - - -?---When you mean "socially" like catch up for a coffee and that sort of thing but, yeah, that's about it.

You weren't working with him - - -?---No.

- - - that is in your role on the NIF project - - -?---Yeah.

- - - or on anything else ProjectHQ was doing before you started to become involved in Wollstonecraft or wanted to become involved in Wollstonecraft, were you?---Correct.  
20

Okay. Were your families friendly with each other?---Didn't know each other.

Okay. Because by this point, that is by mid-2020, Mr Gayed had also done the work for you in relation to Penrith and Liverpool - - -?---Correct.

- - - and Wollongong, and you'd done the work in relation to the Glenbrook possessions?---Yeah.  
30

Had he approved that work?---The Glenbrook - - -

The Glenbrook possession work.---Yeah, he was the project manager, yes.

Right. And you'd provided a quotation in relation to that that he'd approved?---Yes.

Did you understand him to have recommended you to do those works, that is the possession supervision work?---I, I could only imagine he would have, yes, as the project manager.  
40

Right. So given the timing of that, which was in April 2019, just around the same time that you were organising for Mansion to do the works on Penrith and Liverpool and subsequently for Wollongong, would you agree there was some element of quid pro quo in respect of him giving ProjectHQ and you the possession work at Glenbrook or the supervision possession work at Glenbrook and - - -?---I think being - - -

10 - - - you giving him the Mansion work at Penrith and Liverpool?---I think being given the opportunity to provide resources on a project, which is what my business was set out to do and, similarly, what he had his business, that was - - -

Right. So there was a bit of you scratch my back, I'll scratch yours to it? ---I, I, I think that's, if that's what, like, I don't know, honestly, I, I don't think it, it, that's how it was, no.

20 Were you thinking about maximising opportunities for his business in the hope that he might maximise opportunities for ProjectHQ?---I don't believe that that's the way it went, no.

Could we have volume 10.1, page 129 brought on the screen? So 10.1. That's 10.2. Now, this is an email or the record of an email that was extracted from your phone and you will see it relates to an email that's sent to you on 15 May from Mr Gayed's Gmail address.---Yep.

And there's nothing in the body of the email but the subject line is emailing "WLS architectural DRG combined PDF." Do you see that?---Yep.

30 Could we scroll to the following page, which is 130, and you will see that what the attachment is is the Wollstonecraft North Shoreline architectural drawing index. Do you have any recollection of receiving the Wollstonecraft architectural drawings from Mr Gayed in May 2020?---Yes.

Do you recall why he was sending you the architectural drawings at that point?---Yeah. I was looking through what the station upgrade looked like to try and help out in terms of planning the project.

40 So what was your interest in helping Mr Gayed out in planning the project? Did that have anything to do with your NIF role?---No. It, it was purely just planning a, the, the delivery of a project, trying to assist.

Because he was your friend?---No. It was, it, it was, I would take it as a bit of business development in the hope that you would need a resource.

Did he have, presumably, resources at Downer that he could call upon to help him plan the project?---Yeah. He had an, he an org chart with a team, absolutely.

But he was sending them to you?---Yep.

10 Are you able to throw any more light on why he was doing that, why he thought you would be able to assist with planning the project?---At the previous station, which was Glenbrook, I basically did all of that when I worked for Downer for him.

The planning work?---Yep.

And did you know anything about which people were working for Downer with him on this Wollstonecraft project?---I had a, a good idea. I don't think it was locked in at the time but, yeah.

20

And were they people that you also worked with in relation to Glenbrook or - - -?---Correct.

- - - different people?---Different people and, and people from Glenbrook.

Did you think there was some deficiency in those people that he might be coming to you, that is lack of resources or people who were less experienced?---Yeah. Some of them, some of them only had roads experience. One of them was a junior engineer. So, yeah.

30

Did he have a conversation with you about needing some help to plan the project or did this email just come out of the blue?---Oh, I think it was, have a look at, have a look at the packages and, the drawing packages and get an understanding for the project and I just gave him some information in terms of, you know, where you could store site sheds, material laydown, all that sort of thing.

So you replied to - well, before we get to that. Did you understand these architectural drawings to be confidential information?---No.

40

Were they publicly available?---No.

So they weren't confidential but they weren't publicly available. They fell into some grey area, did they?---Yeah.

And how is that?---Oh, look, it's, it's, it's railway drawings. I was pretty used to looking at them day-in-day-out on previous projects. So it was just providing some information.

He provided these to you.---Yep.

10

If you could have accessed them anyway why did he need to provide them to you?---I'm not sure.

That tends to suggest, doesn't it, that you wouldn't otherwise have had access to them?---Oh, they, they, yeah, they weren't publicly available, no. Okay, I agree with you.

Could you have got them using the Transport for NSW intranet or something? Was there some - - -?---Oh, no.

20

So that does tend to suggest that he had some information that was confidential that you couldn't have got, doesn't it?---Oh, yes, correct.

Can we have page 128 of volume 10.1 brought up on the screen, please? So you will see that this seems to be - well, down the bottom under the ProjectHQ logo there's a reference to what Mr Gayed had written to you on 15 May 2020.---Ah hmm.

Did you notice at the time he was emailing you from his Gmail account?

30

---No.

Did you have - well, do you have any idea why he might have wanted to communicate with you using his Gmail account?---No.

You see you reply at the top there? You say you're giving him some things to get the ball rolling - - -?---Yep.

- - - on the Wollstonecraft project. There's some, and then there's the list of attachments you see there down the bottom.---Yep.

40

What was your purpose in sending those to him?---In planning a job the more information you can get on the location, the better it is that you can make informed decisions in order to successfully start the project.

Yeah. That makes sense.---Yep.

Was this information that you had access to but he didn't?---Some of them were and some of them weren't. Some of them are publicly available and some of them were, I sourced through Sydney Trains.

10

All right. So are you able to say which ones you saw through Sydney Trains?---The system diagram, which only just tells you where your power feeds are coming from, your config number 8 may potentially be but that's pretty standard. If you work in railway, you have that. And, sorry, SE27\_H5.

And what's SE27?---It's a section diagram. It lets you know when they go to switch off the power, where it comes from.

20 Right.---That's all.

And what is the config number 8 tell you?---So similar to Glenbrook which was a config 7, a config 8 extends from the City Circle all the way to along the North Shore Line to Hornsby.

Okay. So it's a wiring diagram or something, is it?---No, it's just a, it's just a map that highlights where the possession limits are. It's, if you work on rail, it's, everyone knows what a config 8 is.

30 Okay. You'll have to excuse of us who are more ignorant of that, but you forwarded that to him and said, "Call me when you want to do a site visit." ---Yep.

Had you discussed with him doing a site visit as part of planning the project?---It was just to help out in terms of, this information will help you plan what you can, where you can access track, and that sort of thing, so - - -

40 Okay. Was this also in connection with the business development, that is, this email also in connection with the business development you'd referred to in your earlier answer?---Correct.



So you're hoping that you, via ProjectHQ, might be able to come on board for the Wollstonecraft project in some capacity at this point.---Yeah.

Okay. And was that as some sort of planning resource at that stage?  
---Correct.

By this stage had you thought about tendering for packages or that was later on?---No, at this stage it was purely resources.

10 Okay. Did you subsequently receive in May 2020 some more information from Mr Gayed in relation to the budgeting for the Wollstonecraft project?  
---Yes.

What was that?---So, how their packages were, were going to be split for the project.

Right, as in how they would be divided up and what the budgets were for those projects.---Correct.

20 Sorry, for those packages.---Yep.

Could we have volume 18.26, page 68 brought on the screen there. This is Mr Gayed again from his Gmail address to you and extracted from your phone. It's a document described as the "TAP EASU Wollstonecraft BOQ breakdown". This is sent to you on 27 May and the Excel sheet is described as "BOQ continuous listing, Wollstonecraft initial issue, RC 27 5.20 split packages". Is that the document that you recall receiving from Mr Gayed in relation to the budgeting of the packages?---Yes.

30 Right. What did you do with that information at the time?---It was just to get an understanding of how they were planning on splitting the packages up for the project, so again, similar to what I'd, when I was at Downer as an SPE, how they planned on how many contracts they were going out to and that sort of thing.

Okay. Did you discuss with Mr Gayed sending you this document?---I cannot remember.

40 All right. Did you ask him to send it to you?---I cannot remember, to be honest.

All right. Is there any reason for you to think anybody other than Mr Gayed sent it to you?---Sorry, go again?

Is there any reason for you to think anybody other than Mr Gayed sent it to you?---No.

Did you send it to yourself?---No.

10 Were you aware if Mr Gayed - well, were you on the site at Wollstonecraft at around this time in any of these planning discussions?---I do not know. Like, it's, if I, if I went - did I go to Wollstonecraft at some point? Yes.

But you don't recall when you first went there?---No.

Were you aware of Mr Gayed's practices in relation to access to his laptop? ---Sorry, I'm not following.

20 Were you aware of where Mr Gayed kept his laptop when he was on the site at Wollstonecraft?---No.

Were you aware of him leaving email accounts open on his laptop?---I don't follow.

If his email account had been left open on his laptop and his laptop's location was known it would be possible for someone else to be sending an email as Mr Gayed.---Oh, right. Oh, no. Yeah, yep.

You didn't send this email to yourself?---No.

30 Do you recall after you received this document, I think you said it was helpful for planning. How was knowing the breakdown of the packages helpful to you for assisting him planning?---So when you stage out a project and you have various subcontractors working over the top of each other you can, you can work out where you've got a clash.

A clash in terms of project work being done on - - -?---At the same time.

- - - separate packages but at the same time?---Correct.

40 And that would cause a problem presumably if two sets of subcontractors needed access to the same space to work or something?---Area, correct.

Is this a document, that is the document in its attachment form here, that you later provided to Mr Cox?---Yes.

All right. We'll come back to that. Could we have volume 18.26, page 69 brought on the screen? This is another email from you - I withdraw that - from Mr Gayed's Gmail address to you, this one on 3 July 2020 and you'll see the file name is described as the "Procurement register TAP 3 WLS rev 1 ag edit." Do you recall receiving this email from Mr Gayed?---Yes.

10

What's the procurement register?---I think the procurement register and the BOQ go hand in hand with each other.

And how do they go hand in hand with each other?---If you show it to me I can probably walk you through it but I - - -

All right. Volume 10.1, page 182. Could we scroll to the following page? No, that's the provision to Mr Cox. If we go to volume 18.26, page 71. I'll have to come back to you with the page reference. Was the procurement register - we'll come back to the relationship between the two documents but was the procurement register a document that you were using yourself in relation to assisting Mr Gayed at this point, that is by July 2020?---I had no real use for the document other than understanding how they were splitting up the packages.

20

Okay. Who did you understand the procurement register would be useful to?---The Downer team.

Right.---Yep.

30

And to anybody seeking to tender for the job?---It could be. It turned out that it was, but, yeah, at that time, no.

What did you understand its use to be to the Downer team?---That's the framework that they use to deliver the, like, to deliver the project.

Right. So where you say the framework, are you able to explain what you mean?---So they split it up into packages and they say we're going to put this, we're going to put this out to tender.

40

Okay. Could we have volume 10.1, page 168. I'm grateful for the assistance. Could we have that blown up at all?---Yeah, so that, if you, top left corner you've got level, build code, task code, then package code.

Yep.---So everything that comes under the BLD is the building package.

Right.---So that just explains what scope items out of the BOQ fell into the package.

10 Right. But over the right-hand side you see you've also got the TBE budget and the PM's budget for all of those individual items?---Yep.

And that gives you more information than just the coding does, does it not? ---Yeah, absolutely, yeah, you understand what the budget is.

Yeah, right. So what's the difference between the TBE budget and the PM's budget?---I, I don't know.

20 TBE stands for total best estimate?---Yeah, correct.

And do you know what that is?---I think that's the price that Downer gives to Transport.

Right, okay. And if the project manager's budget is different to that, is that because Downer's seeking to come in underneath the budget that it's given to Transport?---I have no idea.

30 Okay. Was this procurement register also a document that you provided to Mr Cox?---I believe so, yes.

All right. If we could have volume 1.9, page 3. So this is you to Aidan on 8 July.---Yep.

Excel sheet, drawings and you're sending on the procurement register. That's the document we were just looking at now. "Friday, Club Burwood at 2pm." This is an email you're sending on a Wednesday. "Dropbox for SDR. Apparently there's a lazy title change, so not worth it. DDR coming Wednesday."---Yep.

40 What was your involvement with RJS, that is Mr Cox's, well, a company you understood Mr Cox to be involved in by this point, by July 2020.

---Yeah, so at this point I knew that there was no way that I could deliver a package of works. So I was meeting up with Aidan to see if RJS could deliver a package of works.

Well, you say there's no way that you could deliver.---I didn't have the experience to do it.

Right.---Or - - -

10 The projects were too big, was that the - the packages were too big?---No. You need to, I think you need to have - yes, they were too big. There's a variety of reasons. I didn't have resources. It just wasn't going to work for, for me to look into delivering it at all.

Okay. Did you arrive at that conclusion, that is that you couldn't do it by yourself or had you discussed that with other people?---I discussed it with - I sort of looked into people that had delivered these things before and just was doing my own investigation into it and then worked out on my own that there was no way I could do it. Too big of a risk.

20

Did you talk to Mr Cox about it?---Yeah.

Did he try to talk you out of it?---Oh, he, I don't think he tried to talk me out of it. I, I think he just was like there's no way that you could probably do this on your own.

Which was a conclusion that - - -?---I'd already reached.

30 Right. I see. So where you say "Excel sheet and drawings, Friday, Club Burwood at 2pm," what did you mean by that?---To run through the drawings and that procurement register. Yeah. To get an idea of, and an understanding of the project.

All right. So that was information you'd got from Mr Gayed - - -?---Yeah.

- - - in relation to assisting him in the planning process, on your evidence?  
---Yeah.

40 Had you talked to him about passing it on to anybody?---I said to him that even though I wouldn't be looking in to delivering myself, I would be looking to team up with RJS to deliver.

And did he say go ahead, give the information to RJS, as well?---I, I think it was more just me telling him. I, I can't recall what he said, whether he told me to go and do it or not. I was just saying we're going to look into this.

'Cause you understood what you had was confidential Downer information, project managers' budgets, budgets that they'd given to Transport. None of that was information that you were supposed to have, was it, in your ProjectHQ capacity?---No.

10

And you didn't, well, did you know whether Mr Gayed had discussed with anybody within Downer giving you that information?---I'm not sure.

It certainly wasn't information they would ordinarily have given to tenderers, was it?---No.

Right.---In my one experience of tendering with Downer, yes. No.

20 And in any rational experience of tendering, the tenderers are not going to have the project manager's budget for each individual item, are they?  
---Correct.

Right. So where you say "Friday, Club Burwood at 2.00" that was for the purpose of meeting up with Mr Cox to go through the information, to assist him in preparing a quote. Is that right?---To get an understanding of what the project looked like and, and what the budget was, yeah.

With a view to him preparing a quote?---I could, yeah. Yeah.

30 Did you subsequently meet with him at the Burwood Club at 2pm on that Friday?---I did meet with him, yes.

Okay. And did you go through the information that you'd sent to him?  
---Yes.

And what did you discuss with him at that point?---It was just working out which packages to have a, have a go at.

40 Okay. And what do you recall being the conclusion of that?---I think he was interested in, in a few packages, three or four of them.

Right. Was he interested in all of them?---You could be interested in all of them but whether you can do them is another thing.

Right. Were there four altogether. Is that right?---From my recollection, I think it's gone piling, building, civil, maybe just three?

Okay. What did you discuss with him in relation to your involvement with RJS on doing this? You were providing this information to him. Did you understand you were doing something valuable for him in providing this information?---I think the, the, the main thing was I didn't have the  
10 experience to, to run a project like that and, and deliver something like that and I was looking to gain that experience.

Right. But what you did have was your relationship with Mr Gayed - - -?  
---Correct.

- - - which was not a relationship that he had, to your understanding, was it?---Correct.

20 Do you know whether he knew Mr Gayed at all?---I don't think he did.

Right. And you also had through that relationship some budget information which was presumably very valuable to him at that point?---Yeah.

So did you talk about, at that stage, how you were going to come onboard as part of the team working on the project?---I, I don't know that conversation evolved but I definitely wanted to work on the project.

Okay. And did you express that - - -?---Yes.  
30

- - - desire at the time?---Yeah.

And do you recall a discussion about payment?---No.

Was there any understanding about you'd provided this valuable entree-type information, what they could do for you in return?---There was no discussion about payment.

Okay. Did you talk to him about splitting profit?---No.  
40

Did you at that discussion with him, that is with Mr Cox at Burwood in July, talk to him about how Mr Gayed might be able to assist you or RJS in winning the work?---I think, by being the project manager.

Right. Well, he was the project manager. By the fact of him being the project manager in you having a relationship with him, did you discuss him favouring a project that you were involved in?---I, I can't recall that but, yeah, I can't recall that.

10 All right. Do you recall whether later you discussed that subject with Mr Cox?---About having a relationship with Andrew Gayed?

Yeah.---I think it pretty self-explanatory, having a relationship with someone is going to help you, is going to be favourable for you to win a project, yeah.

Sure. Did you discuss bringing him in on, you already had confidential tendering information that enabled you or whoever you were involved with to have an advantage in the tender process. Would you agree with that?

20 ---Yep.

Did you discuss bringing him in on making sure that RJS would win the tender?---Bringing Andrew on?

Yes.---What do you mean by that?

Well, on an arrangement with you and RJS.---In terms of payment or profit share or something like that?

30 Payments or profit share.---No.

Right.---I, I saw this opportunity as a legitimate opportunity, albeit that I had that information, I pursued it as if it was an opportunity to deliver a package of works.

Okay, but the way you pursued it from the start with Mr Cox was providing information that was confidential Downer information that you acknowledge you shouldn't have had, right?---Yeah, I, I completely agree with you.

40



So you weren't pursuing it in a legitimate way in the sense of, "I'm coming to you with my skills and talents"?---Yeah.

You're saying, "I'm coming to you with confidential Downer information that will enable you to win this project."---Correct.

"Because no other tenderer is going to have it," right?---Correct.

10 Plus, "I've got this relationship with the project manager, I'm his friend and we've worked together before."---Yep. Yep.

Right. So what part of that was, "This is a legitimate business development opportunity. I'm going to win a project of works"?---I, I saw it as an opportunity, and to deliver it. That's plain and simple.

20 Right. It was a profit-making opportunity for you, right?---And an experience and to, I think there were, with the other station upgrades that were coming, it was a chance to get on with Downer, deliver the package, and then in the hope that, it was a long play, is what I'm trying to get at.

Right, but if it was RJS delivering the package, how was it you getting on with Downer?---Through RJS. So if - - -

Right.---If, then - - -

If you became part of RJS. Was that part of your thinking at this stage?---If we won, if we won a project in the future or something like that, that was my thinking.

30 Okay. You say we, but again, you weren't, you didn't own shares in RJS. You weren't - - -?---I wasn't looking, no.

Right, and you weren't an employee of RJs.---No.

Did you suggest to Mr Cox that you become an employee of RJS?---No.

40 Right. So how did Mr Gayed know, well, I think you said to him you were looking to come on board with RJS. Did you after that, after initially telling him that did you have further discussions with him about, "Yes, I have come on board. I'm helping RJS"?---Yeah, like I said originally, we, I told him that I was going to work with RJS on this, on the tender.

And did you continue to have discussions with him about working with RJS on this?---Potentially, yes.

Right. Do you recall whether Mr Cox wanted Mr Gayed in on favouring you, that is, agreeing in some way to favour RJS if it had you involved?---I'm not sure.

All right.

10

THE COMMISSIONER: How much do you know about RJS at this point? You knew Mr Cox, but what else did you know about it?---So when I started in 2012, sorry, 2011 at South West Rail Link, both Aidan and Tony were on the contractor side delivering the projects, so they were project engineers, senior project engineers and that sort of thing. So I knew that they knew what they were doing.

20

I don't think you're answering my question. How much did you know about RJS at this point, you having this discussion where - - -?---Oh, okay. Sorry, in terms of project experience I think they had some work at, in the Blue Mountains, Mount Victoria. They completed some works on the NIF projects before my time. Yeah, that's all I can recall.

And did you know how they managed to get those projects?---No.

Do you know how they delivered those projects?---No. I just knew - - -

The workforce they used or - - -?---No, I just knew that they - - -

30

You knew no details at all?---I just knew that they worked on them and delivered them.

Did you know whether they had a website or - - -?---Oh, I can't recall, yeah.

MS DAVIDSON: Could we have volume 1.9, page 89 brought up on the screen? This is 20 August so we've skipped forward a little bit in time. ---Yep.

40

This is an email from you to Mr Cox attaching a pricing schedule and schedule of rates. Is that the information, or part of the information, that Mr Gayed had provided to you back in May?---Correct.

And you say, "All three pricing schedules attached in the one sheet. Please leave the WLS TBE sheet as that is where the information is being pulled from." And then it looks like you're explaining some categories that are used in this document. Do you recall what your purpose was in sending this to Mr Cox?---I thought that when we were going to work on the tender for this project we would get the experience of doing it from first principles, so, you know, how many piles do you have, that sort of thing. This was reverse engineering it to see where you sit inside the budget so that you can assess  
10 your risk. So I was just providing that.

So had you priced it from first principles or - - -?---I don't believe so.

Because you didn't need - - -?---I definitely haven't because I, I don't have any experience in doing that. So I was looking to get that experience.

But you didn't, or RJS didn't need to price it from first principles, did they, given they had the budget information?---Yeah, but - yes. Yeah. They, they didn't need to, no.  
20

So you were trying to assist Mr Cox by figuring out how much risk was built into the budget from Downer's perspective, is that right?---Yep.

And you had all the information you needed in order to be able to do that because of what Mr Gayed has sent you back in May?---Yep.

Did you, by this stage, that is in August, had you by August had any further conversations with Mr Gayed about giving this information, that is this pricing schedule and schedule of rates to RJS?---I'm not sure.  
30

Did you understand that the tender process was still ongoing at this point? ---August, I can only assume so.

They hadn't been selected as the tenderer by that point?---No.

No. Do you recall, that is around the time that you sent this to Mr Cox, having any further discussion about this information at all with Mr Gayed? ---I don't recall, no.

40 Chief Commissioner, I'm about to play some intercepted telecommunication material. If I can provide copies of the transcript. This is a telephone call of

20 August 2020 and the session number is - I'll have the transcript brought up on the screen. It's session number 02147.

THE COMMISSIONER: Are you tendering this?

MS DAVIDSON: Yes, I tender it, Chief Commissioner.

THE COMMISSIONER: That's Exhibit 126.

10

**#EXH-126 – AUDIO AND TRANSCRIPT OF  
TELECOMMUNICATION INTERCEPT SESSION 02147 FROM  
BENJAMIN VARDANEGA TO AIDAN COX ON 20 AUGUST 2020  
EXTRACT 1 FROM 18:26:45 TO 18:29:34 AND EXTRACT 2 FROM  
18:31:23 TO 18:33:55**

MS DAVIDSON: And it's extracts 1 and 2 of the call. The timing of the call is 18.26.37 for the start of the call. If the transcript can be brought up on the screen and the extracts played. This is call between Mr Vardanega and Mr Cox.

20

**AUDIO RECORDING PLAYED**

**[3.09pm]**

MS DAVIDSON: Just pausing there while the extract's changed. Does that refresh your memory in relation to having further discussions with Mr Gayed about this information that you then provided to Mr Cox?---Yep.

30

And what do you now recall in relation to that discussion?---I still can't recall what the discussion would have been. That conversation was around trying to work out the budget and I just can't recall that, those discussions.

What would have been Mr Gayed's reason for discussing the budgeting with you by this point, by August?---Maybe if they made a change to the way they're packaging the works.

Right. But did you think he was having that discussion with you in the context of you, as a part of a potential tenderer team in some way with RJS?

40

Or you in your capacity as his friend, assisting him with planning the project? Or some other capacity?---Some other capacity.

What - - -?---I, I don't know.

What would that have been?---I'm unsure, to be honest. Like, that's, like listening to me I'm obviously, that's my voice. I, I can't recall that conversation.

10 Okay. Well, let's play the next extract.

**AUDIO RECORDING PLAYED**

**[3.14pm]**

MS DAVIDSON: All right. So if I can scroll just to the previous page of the transcript there, you say you called him - you see the bottom of that fourth page - you called him. You asked about the discrepancies and you said, "We need to show all discrepancies because when they go to ask it,"  
20 do you know what you meant by "when they go to ask it", who you were referring to there?---No, I can't recall.

Was it presumably Downer in the context of asking about an RJS quotation?---I honestly don't know.

All right. You say, "I spoke to him for like 45 minutes," and then further down you sat down with him. You made him load up his computer, the Excel spreadsheet and he went through it and explained the numbers to you seemingly.---Yeah, from the chopping and changing of the scope.  
30

Right.---Yeah.

Do you recall sitting down for 45 minutes, speaking to him for 45 minutes, going through this budget spreadsheet with him?---No.

You say on the second-last line there, "And I said, 'All right. Well, I need'" and at the end, scrolling to page 5, "He sat down and we went through it together and he goes, 'Nah, you're totally on the right track.'" Do you understand what would have been the context in which he would have said  
40 you're totally on the right track in understanding the Downer budget documents?---No. I honestly can't remember this conversation.

Okay. 'Cause it would seem in saying, "You're totally on the right track" to you, in trying to understand the budget documents, the implication would be he understood that you wanted to understand them for the purposes of tendering, correct?---I, I honestly can't remember.

All right. You didn't need to understand the budget document for any purpose of assisting him in planning the project, did you?---No, it definitely moved on to me being as a tenderer, yes.

10

Right.---I agree there.

Right. You didn't have any reason to make up a 45 minute conversation with Mr Gayed, did you, in talking to Mr Cox?---I, I, I can't call how long a conversation it would have been.

20

Okay. Sure, but at the time did you have any reason to misrepresent to Mr Cox the conversations you were having with Mr Gayed?---Potentially. I felt like the discussion, so, so Aidan was very much driving this and to get an understanding, I'm trying to help out as much as I can thinking that I'm doing the right thing. If it was a 45 minute conversation or a ten minute conversation, like, I'm just trying to do everything so that we can win the tender, at the time.

Right. So when you say thinking that you're doing the right thing, you mean thinking you're doing the right thing by RJS?---Yeah.

30

Right. So are you suggesting you were maximising or amplifying the conversations you were having with Mr Gayed to Mr Cox?---I'm just trying to cover, cover the spread in terms of doing what's required or doing what I'm being asked to do.

Okay. So Mr Cox is asking you to have conversations with Mr Gayed. Is that right?---Yeah.

And you did what you were asked to - - -?---Yeah.

- - - in the context of trying to assist RJS to the maximum extent possible?  
---Yeah.

40

And Mr Gayed understood that what you were doing at this point was assisting RJS?---Yeah.

And he was continuing to give information to you and talk you through budget information in the spreadsheets?---Yeah.

Why would he have been doing that?---I don't know.

10 Right. It would be highly unusual for a project manager who didn't have a personal relationship with somebody who was a tenderer to be providing that level of detailed assistance, wouldn't it, of how to understand the budget spreadsheets?---Look, I think the, the rival tenderers were not really much of a pick of the bunch and there was an opportunity there to have a new company work on, on these sorts of projects.

Right. Well, do you know whether Mr Gayed thought that they were not the pick of the bunch at this point?---There were some that we didn't really want to work with, from previously working together at Glenbrook.

20 Well, again "we didn't really want to work with" who are you referring to as "we"?---Me and Mr Gayed.

You and Mr Gayed?---Yeah.

Right. Now, where you say you didn't want to work with, you weren't going to be involved in the project at all unless you got onboard with RJS, were you?---Correct.

30 Right. So in what sense were you having discussions with Mr Gayed about who we didn't really want to work with?---Sorry? Go again. What's the question?

In what sense were you having discussions with Mr Gayed about who we didn't really want to work with? If you weren't going to be successful in being involved in Wollstonecraft unless RJS was successful, why were you having discussions with Mr Gayed about who we didn't want to work with?---Yeah. Fair point. I take that back.

40 THE COMMISSIONER: Were you a double agent? Is that how you viewed yourself?---What do you mean by a double agent?

Well, are you working on Mr Gayed's side and working on the proposed tenderer's side?---That's how I've ultimately fallen into this trap, definitely. I was - - -

Well, you say it's a trap - - -?--- - - - by having a relationship but, and, and previously working at Downer and then doing what is on the screen with RJS, that's my fault.

10 MS DAVIDSON: Were you puzzled by why Mr Gayed was spending his time assisting you in this way at this point?---No.

So why did you think he was doing it?---I don't know. It - - -

It doesn't make much sense, does it, unless he's standing to gain something from it?---I don't believe that he was standing to gain from anything.

20 Was he doing it as a favour to you, then?---I think it's just providing the, the outset of it all is that we had the budget. We were going to deliver the project for the budget. That's all there is to it.

But, again, we. Who's the "we" we're referring to there?---Well, at this time, RJS, as it is on the screen.

Right. So, from Mr Gayed's perspective, what's in it for him to assist RJS in this way? There were other tenderers.---Have competent people working on the project to deliver the scope.

30 Had he worked with RJS before?---No, but I was very much, been, like, Aidan knows exactly what he's doing for this.

Right. So it was the connection to you, in your understanding, was it, that was motivating Mr Gayed to assist?---Yeah. I, I think it, the, the platform scope at Wollstonecraft was very, very complicated, so having someone that knew their way around that was advantageous.

Right. The Commission's heard some evidence the platform was collapsing or at risk of collapsing. Was that your understanding at the time?---Yeah. Correct.

40 Right. Could we have, provide the transcript and tender, so the call date is 20 August, the time is 20.29.31, the session number is 02155. If I could



tender that and have the audio played and bring the transcript up on the screen. So this is the same evening but a couple of hours, yeah, a couple of hours later, and there are two extracts to be played.

**AUDIO RECORDING PLAYED**

**[3.25pm]**

10 MS DAVIDSON: Just pausing there for a moment. At the top of the page of this page of transcript you're talking about the building package and Mr Cox asks, "Is that the package he's going to give to his mate?" and you say, "Yeah." Do you recall what you meant by that?---Yeah, I think he previously used a builder at Glenbrook.

Right. Are you able to say who that builder was?---I can't remember who it is. If you say it, I'll be able to agree with it.

It's the company called Maize.---Yes.

20 And who was the mate associated with that?---I don't know.

Okay. So had Mr Gayed said something to you about using Maize in connection with Wollstonecraft?---I think he wanted to continue to use Maize. He had a decent record with them and, yeah. Which makes sense.

30 And Mr Cox says, "I know, just doesn't sit with, I don't think fucking from my experience I don't believe there's enough fucking money in that package to make it. You know, we're talking about fucking all this money we're going to split. There's not, there'll be nothing fucking left to split." Where he says "we're talking about all, fucking this money, all this money we're going to split", had you had discussions with Mr Cox by this point about splitting money?---No.

So why would he say that?---I have no idea.

Did that come as a surprise to you when he said we're talking about splitting this money?---Yep.

40 Because your reaction wouldn't suggest that, would it?---I, like, there was never any talk about splitting money on that project.

Right. But you say, "Yeah, well, if that's the case, we pull the pin."---Yep.

That's in reaction to saying, "Well, if there's nothing left to split, we pull the pin."---On the building package.

Well, if there's no profits on the job, presumably, you're saying we pull the pin.---Yeah, if there's no profits on a project, what's the point in doing the project.

10 Right, but that suggests you have an understanding with Mr Cox by this point about splitting profits out of the project, is that right?---That could just be Aidan just dangling a carrot and, and me biting on it.

Well, but you did bite at it, right?---In terms of doing the, taking on the risk and doing the actual project.

Well, in terms of at least discussing with him splitting the profits out of it. ---Yeah. But, yes, I agree, but there's, there is no, we had formal discussion around sharing any profit or anything like that.

20

So there were informal discussions of this kind floating around the idea of splitting the profit. Is that your evidence?---There, there was no discussion about any money that I would receive as a result of working on Wollstonecraft.

Well, "We are talking about all this money we are going to split" would seem to indicate you and Mr Cox talking about splitting money, yes?---It would seem to indicate but I don't agree that it, that, that, it doesn't line up with me having any profit split on that project.

30

But it lines up with, at least, discussions at that time about it, doesn't it? ---Yes, yeah.

So it may not line up with you actually being paid profit out of Wollstonecraft but it lines up within preparation for the project, you and Mr Cox having had discussions about splitting profits, yes?---Yeah. Yeah.

40

That's the only way to interpret what's being said or that's the ordinary meaning of what's being said, isn't it?---Yeah. Look, it, taking, taking a phone call and, and that sentence would allude to that but I still maintain that there was no discussion around sharing any profit of that project.

This is an aspect of a discussion you two are having, is it not?---Yes.

So when you said there's no discussion, do you mean there's nothing documented, there was no discussion that you had that was only about splitting profit?---There was no agreement, there was nothing in place.

10 No formal agreement in place.---I'm not even saying formal. I'm saying just there was - I never knew that I was going to be receiving any, any money on that project.

It was a prospect that was dangled but you weren't sure exactly what the percentage was, is that right?---Correct.

Can we play the second extract from the call?

THE COMMISSIONER: Has this been tendered?

20 MS DAVIDSON: I'm sorry?

THE COMMISSIONER: Has this been tendered?

MS DAVIDSON: Yes. I'm sorry, Chief Commissioner.

THE COMMISSIONER: 127?

MS DAVIDSON: I thought I had indicated that, thank you.

30 **#EXH-127 – AUDIO AND TRANSCRIPT OF  
TELECOMMUNICATION INTERCEPT SESSION 02155 FROM  
AIDAN COX TO BENJAMIN VARDANEGA ON 20 AUGUST 2020  
EXTRACT 1 FROM 20:41:10 TO 20:43:05**

**AUDIO RECORDING PLAYED**

**[3.32pm]**

40 MS DAVIDSON: So scrolling up the previous page, Mr Cox asks you, "If we go in with a cheap price is he going to load us up with variations?"

What did you understand him to mean by that?---It, it seems like going in light and then adding variations to it so that you win the work.

So afterwards effectively making up for going in light?---Yeah.

The kind of thing that you express later in the conversation. And then your response is, "He said that he was going to make it that, so that, you know, we're not going to be losing money on this thing." Do you recall having that discussion with Mr Gayed?---Yeah, around having the budget and  
10 being, like, if you just stick to the budget you, you should be, you shouldn't be losing money on this.

So, he was - well, was the nature of that discussion he told you if RJS came in on the budget or near the budget they shouldn't be losing money?---Yeah. So if you - yes. Yeah. Because if you, by delivering the works and you go above the budget, you can justify where you've gone above the budget to then seek a variation.

Right.---Yeah.

20

Right, but his point was, what, the budget allowed, had sufficient cream built in, to use the word that you were using - - -?---Correct.

- - - to avoid that?---Yeah.

And again, in saying, making sure that "we're not going to be losing money", what was his interest in whether you or RJS was losing money?  
---I, I don't know.

30 Okay. He didn't have a reason to care about that, did he?---I don't believe so.

It's a fairly strange thing for him to say if he didn't have an interest in RJS's success on the project.---I think it's more about you get, the opportunity is there if you're willing to take on the risk. Yeah, I believe that if you're willing to take on the risk, he'd be, like, "If you are losing money, let's talk about if you're losing money."

Right.---This is all still a pre tender - - -

40

Again, this was still before anybody had been awarded the contract, right?  
---Yep.

So if we could go to the following page of transcript. Mr Cox says, “You don’t understand what I mean,” and then asks you whether Mr Gayed was basically going to be doing fraudulent activity to put money in his or your pocket. And you say, “Well, I think he’s going to have that focus more on the building project because it sounds like it’s his mate.” Did you have any information in relation to what Mr Gayed intended in relation to the  
10 building project?---No.

Right. So what did you understand by Mr Cox asking the question about, “Is he going to be doing fraudulent activity?”---I don’t understand what that means.

Right. Do you recall being puzzled by that question?---I, well, I don’t recall, honestly. I, like, looking back and hearing these conversations, we, we had a lot of conversations around that tender phase but in my head it was, building was going to go to Maize and we had an opportunity to price  
20 up the other three packages.

Right.---So what he said here, I honestly don’t understand.

But you understood all the way through, did you, from Mr Gayed, that building was always going to go Maize?---Not all the way through. I think when we put together a price, I think Aidan and Tony wanted to go in for the building package and then it turned out that it was going to go to Maize, yeah.

30 So when you say when, after, well, you said it turned out that, this seems to be information you already had by this point, that is, by 20 August - - -?  
---Correct.

- - - about it going to Maize.---Yep.

Did you try to say, “There’s no point. It’s going to go to Maize.”---I did to them a number of times, yeah.

Right. Do you recall seeking information about a competing tenderer’s  
40 price from Mr Gayed?---Correct.

And which tenderer was that?---Brefni.

Why did you do that?---Aidan requested it.

Aidan requested it?---Yep.

10 Okay. And what did you understand him to have requested it for?---I, again, Aidan was running the lead on, on this tender activity. If you have the budget and you put in a price, that should put you in the box seat to win the job. Why would you need other tenderers' information?

Was that your thinking at the time?---Yeah.

Right. And so did you push back on that request?---I don't think, I think I followed through on the first and then he asked for other tenderers' submissions and I pushed back on that.

20 Okay. So in relation to the first, you obtained that information from Mr Gayed and passed it on to Mr Cox.---Correct.

In discussion with Mr Gayed about the request, how did you frame it to him?---I think it was just understanding what, what they were doing based on whatever information Aidan would have been looking for.

Okay. So how did Mr Gayed react to that?---He sent it, so I can't remember.

30 All right. Again, it was, in providing one competitor's information to another tenderer, it would have involved risk on Mr Gayed's part, presumably, of his position at Downer? It was information he clearly shouldn't have been providing to you, wasn't it?---Yep.

He understood you were associated with another tenderer at the time that he did it?---Yep.

So, do you understand at all the basis on which he did that?---No.

40 He didn't have the background of what Mr Cox was pushing you for, did he?---He, I think Aidan was using me as the medium to, to communicate between the two, so yeah.

So he didn't have whatever background conversation you'd had with Mr Cox, did he?---Yep. Unless I provided it to him.

Did you have more detailed discussions with Mr Gayed about other competitor's pricing as well Brefni's?---I think we received information as to what their prices were, yeah.

But did you pass that on as well?---To Aidan?

10 Yes.---Correct.

If we could have brought up on the screen, and I tender, Chief Commissioner, call session number 03274. This is a call on the 2/9/2020 commencing at 15.42.

THE COMMISSIONER: Exhibit 128.

20 **#EXH-128 – AUDIO AND TRANSCRIPT OF  
TELECOMMUNICATION INTERCEPT SESSION 03274 FROM  
AIDAN COX TO BENJAMIN VARDANEGA ON 2 SEPTEMBER  
2020 EXTRACT 1 FROM 15:42:12 TO 15:49:52 AND EXTRACT 2  
FROM 16:00:22 TO 16:04:18**

MS DAVIDSON: Thank you, Chief Commissioner. This is another call between Mr Cox and Mr Vardanega and there are three extracts to be played.

30

**AUDIO RECORDING PLAYED [3.42pm]**

MS DAVIDSON: Just pausing at the end of that extract. Do you recall having this conversation with Mr Cox?---I remember parts of that conversation, yeah.

Does it reflect a discussion you'd recently had with Mr Gayed?---Yes.

40 And does that reflect your earlier answer about having obtained further pricing information or further competitor's pricing information and passing

it onto Mr Cox?---Yeah. So what I was referring to there was information in terms of documentation, not this, yeah.

But there was both in terms of what you passed onto Mr Cox?---Yeah. I pushed back on the documentation request that Aidan had but I got this information.

And do you recall how you framed this request to Mr Gayed? That is what basis you - - -?---I, no I don't.

10

- - - gave to him for wanting this level of detail in relation to all of the other competitor's pricing?---Yeah. Just to obviously win the, win the work but I don't recall what the conversation was around with requesting it, no.

He seems to have been pretty cooperative in giving you a high level of detail.---Yep.

And indeed seemed to have given you specific figures that he was prepared to award the work to RJS for?---Yep.

20

Including in relation to combinations of the packages?---Yep.

If we could continue with the next extract.

**AUDIO RECORDING PLAYED**

**[3.51pm]**

MS DAVIDSON: So is this the context, that is - - -?---Yes.

30

- - - the second part of this call, in which you recall Mr Cox asking you for Brefni's prices?---Yeah.

And that prompted you to make a subsequent call to Mr Gayed and him to send you the information?---Yeah.

Yeah. Does hearing this prompt anything in terms of recollection about what you said to Mr Gayed about why you wanted those prices?---No.

40

All right. Just taking the transcript at page 13, scrolling back one page, you say, "Yeah, I'll see what I can get out of him then. It's, like, it's no, you



know, yeah, I think he's a bit sketchy, like, it's, just let me see what I can do." What did you mean by "I think he's a bit sketchy"?---I think requesting that information, like, given all the track record of it, that that was, yeah, not the best thing to be doing.

When you say "given all the track record of it" I mean, he'd already been providing you with extremely detailed information about competitors' prices based on the first part of the conversation, yes?---Correct.

10 So why did you think he was a bit sketchy?---That's just what I thought.

Are you able to explain what you mean by the word "sketchy"?---Hesitant to provide that information.

Right. And yet he did subsequently provide Brefni information?---Correct.

Did you go back to him at all in relation other people's prices?---I believe I pushed back and said that we couldn't get it, but I, I cannot remember.

20 You pushed back to Mr Cox?---Yeah.

Right. So it didn't get as far as Mr Gayed?---I, that's what I believe, so - - -

Right. And why was that, that you pushed back to Mr Cox?---I just don't think he needed the information.

When you say you don't think he needed the information, on what basis did you form that view?---I just didn't think that Aidan needed that information. We had so much information there to win the work, as it was. Why do you

30 need other tenderers' prices?

Well, you'd already asked Mr Gayed for Brefni's prices. What was the difference asking for more?---As I said in this thing, I don't want to stretch it too much.

Right. So did you think you'd stretched it already?---I didn't want to stretch it more.

Right. So you understood you'd stretched it?---Yeah.

40

You understood that you shouldn't have had the competitors, well, you shouldn't have had the budget information, right - - -?---Mmm.

- - - to start with, the procurement register, and the other budgeting information you'd passed on to Mr Cox? And you shouldn't have had the competitors' pricing information?---(NO AUDIBLE REPLY)

Sorry. You need to answer in to the microphone.---Sorry. Yes.

- 10 Is that true in respect of both of the questions I asked, both the budgeting information and the competitors' pricing information?---Yes. Yes. Correct.

And you also understood that you shouldn't have, once you did get the Brefni information in writing, you shouldn't have had that, either. Correct? ---Yes.

Right. So what was it that suddenly gave you compunction in relation to asking for more?---It just felt, it, that, I, that was the feeling at the time.

- 20 You had a sudden awakening in relation to not needing any more information?---Yeah.

And how did Mr Cox react to that?---I'm sure you've got some, some, some audio transcript of it, but he wasn't too happy about it.

Right. Did that change your involvement in the RJS project?---How so?

That is him being not too happy about it?---No, I think it's, I, yeah, it wasn't a big issue, yeah.

30

Right. Okay. He wasn't happy about it at the time?---Yeah.

Okay. Just going back to the question of Mr Gayed and Maize, did you have any understanding in relation to Mr Gayed receiving a benefit from Maize in return for awarding the building work to them?---No.

- 40 Could we play, and I tender - have brought up on the screen, session number 02551, the call date and time is 25 August 2020 at 16.07. Chief Commissioner, I do note the time. I anticipate being no longer than perhaps ten more minutes with this witness.

THE COMMISSIONER: Yes. All right.

MS DAVIDSON: I'm in your hands. I tender that transcript.

THE COMMISSIONER: Exhibit 129.

**#EXH-129 – AUDIO AND TRANSCRIPT OF  
TELECOMMUNICATION INTERCEPT SESSION 02551 FROM  
10 BENJAMIN VARDANEGA TO AIDAN COX ON 25 AUGUST 2020  
EXTRACT 1 FROM 16:17:11 TO 16:17:54, EXTRACT 2 FROM  
16:25:55 TO 16:27:43, EXTRACT 3 FROM 16.34.22 TO 16.35.40 AND  
EXTRACT 4 FROM 16:36:35 TO 16:40:54**

MS DAVIDSON: If that could be played and the transcript brought up on the screen. This is a call some days back from the call that we've just been hearing.---Yep.

20

**AUDIO RECORDING PLAYED [4.01pm]**

MS DAVIDSON: Just pausing there for a moment. There's a mention from you there of ProjectHQ putting in the price.---Yeah.

I think you said earlier by this point you understood that you weren't interested or - sorry, you may have been interested, you weren't capable of doing the work. Was there some discussion of you putting in a price  
30 anyway?---I don't know where that's come from.

Okay.---I'm unsure of the context of this conversation.

Right. I see. All right. If we could play the second extract.---I definitely knew that I wasn't going to put in a price. I didn't have the capability for it.

40

**AUDIO RECORDING PLAYED [4.03pm]**

MS DAVIDSON: All right. You say to Mr Cox in that extract, “Yeah, he’s hooked his mate up. He’s probably hooked himself up to be honest.” Do you know what your basis was for saying he’s probably hooked himself up?---No, I’ve got no idea.

If we could keep playing the call.

**AUDIO RECORDING PLAYED** [4.05pm]

10

MS DAVIDSON: If we could keep playing.

**AUDIO RECORDING PLAYED** [4.07pm]

20 MS DAVIDSON: So there’s a discussion towards the end of that call in relation to Mr Gayed and hooking up with another builder, and you recall you said earlier in the call that he’s probably hooked himself up there. And then on page 6 of the transcript you’re referring to, “He’s aligned with the builder and he’s letting packages to them and, like, that says enough to me.” Mr Cox says something and then you continue, “That screams at me, but if it doesn’t scream at” - it sounded like “you” although the transcript indicates unintelligible - “like, you know, you guys” and then there’s a discussion of their prices. What did it scream at you?---That there’s no point in pursuing the building package.

30 Didn’t it scream at you that he was deriving some benefit out of it?---No, not as far, I don’t know about benefit, but previous relationship and previous project was with them at Glenbrook so - - -

Well, it says, “He’s doing a bunch of stuff on the side,” just looking further up page 6 - - -?---Yep.

“And it just so happens that he’s acquainted. He’s aligned. That says enough to me, man.” That says enough to you about what?---That there’s no point in pursuing putting in a price for the building package.

Right, because the suggestion that seems to arise from that is that the relationship is not just one of having worked with him before, does it, or is it?---It is. That's my take on it.

On the following page, page 7, towards the bottom of the page, you're talking about trying to make these guys seem like they're the best in the business while you're trying to reach into their pocket. And you say, "That's the game. That's why I want to know what that number is for the station civils package because I reckon I could reach into his pocket and  
10 make him seem like he's probably the best in the business while he's doing it just from having a site presence out there. That's all." Do you recall what that related to?---I think it's just about delivering, delivering the package on the job. That, that's all it is.

Right. From you having a site presence out there?---From RJS having a site presence out there, yeah.

Right. Just going back to the question of stuff on the side, did you see Mr Gayed do any stuff on the side at Glenbrook?---No.  
20

Did you know what his stuff on the side was?---It would have been the work that I awarded him through Sydney Trains.

Right. And do - - -

THE COMMISSIONER: Sorry, for which?---At Sydney Trains.

MS DAVIDSON: Were you aware of him having other stuff on the side during the time that he was employed at Downer?---Well, he had the  
30 Mansion Building business.

Right. So were you aware of that continuing to do projects, this is now into, into late 2020?---I wasn't aware, yeah, I wasn't aware if he was continuing to do projects, no.

Okay. So when you're talking about stuff on the side, the only, is it your evidence the only ones you knew about were the ones that you'd awarded to him?---Yeah, and the reference to the fact that he had mentioned building,  
40 yeah.

Okay. On the final page of the transcript, it comes out that there's two separate price submissions, "He's definitely putting us in the room the second time around. I'll be making sure of that".---Yeah, I think that's a big ego talk. I don't really know what that is to be honest.

Do you recall what you meant by "I'll be making sure of that"?---No.

It would seem to suggest that you were ensuring that Mr Gayed was cooperating with you.---I honestly don't know.

10

That was the only means by which you could make sure that he was putting RJS in the room the second time around?---I, I honestly don't know.

Did you subsequently assist, that is RJS were successful in winning three of the packages at Wollstonecraft. Do you recall that?---Yep.

That is the packages other than the building package, which was in fact awarded to Maize?---Yep, yep.

20 Did you assist in working on the project, that is being out on the site?---Yes, yes.

What work did you do on it?---Nothing that could be relied on. I worked the possession weekends with them and I would just call Aidan or Tony to let them know if I was coming out. I, I was looking to gain onsite experience in terms of working for a delivery partner.

30 So when you say nothing that could be relied on, what do you mean by that?---I wasn't able to be there at 7am in the morning to do a pre-start brief and run the day or run the project. There was no way.

Was that because you on your NIF project responsibilities?---Correct, correct.

With Transport?---Yep.

Right. Did you discuss with Mr Cox being paid in relation to the possession weekend work?---No.

40 Did you discuss it with Mr Nguyen?---No.

Or anyone else at RJS?---No.

Had you told them you were going to work for free?---I definitely wasn't wanting to work for free but we hadn't discussed what was going to come of it yet.

You wouldn't ordinarily work for free on a project, would you?---No.

Had you on any previous project?---No.

10

And indeed Mr Gayed has paid you when you got on the tools for the projects and Liverpool and Penrith the previous year?---Correct.

Had you talked to Mr Cox - by the time that you were actually physically assisting on the project, had you revisited the discussion with Mr Cox about being paid profits for your assistance in him in winning them the work?

---We never progressed that conversation. I think it was primarily around getting through the two weekend possessions in October and then obviously the search warrants were executed in, in December so we didn't have those conversations.

20

After you got through the two weekend possessions in October were there discussions then?---No.

Commissioner, I tender and seek to play session number 16625 and then this is the last series of questions I have for this witness today. It's - - -

THE COMMISSIONER: Are we finishing today or not?

30 MS DAVIDSON: I'm sorry?

THE COMMISSIONER: Are we finishing with this witness today?

MS DAVIDSON: Yes. This is not a lengthy call.

THE COMMISSIONER: Is there any requests for cross-examination?

MS DAVIDSON: No.

40 THE COMMISSIONER: All right.

MS DAVIDSON: So this is session number 16625, the call date is 10 November two thousand and twenty - - -

THE COMMISSIONER: Exhibit 130.

10 **#EXH-130 – AUDIO AND TRANSCRIPT OF  
TELECOMMUNICATION INTERCEPT SESSION 16625 FROM  
AIDAN COX TO BENJAMIN VARDANEGA ON 10 NOVEMBER  
2020 EXTRACT 1 FROM 16:25:29 TO 16:28:34 AND EXTRACT 2  
FROM 16:29:30 TO 16:31:09**

MS DAVIDSON: If that could be played and the transcript brought up on the screen.

**AUDIO RECORDING PLAYED [4.18pm]**

20

MS DAVIDSON: So stopping there, does that call refresh your memory in relation to subsequent discussions?---That is the extent of discussions around any, any form of payment.

You would agree that that reflects you seeking a payment, albeit not in an amount that was quantified there?---I don't, I was looking to work with RJS in the future, like, I, I was playing a long game for it, so getting paid money for it was not what I was looking to get. I was being paid for other jobs, as I've said.

30

Okay. So where you say, "Fucking you guys sort it out and tell me what you think," that reflects you expecting that they would sort it out between themselves and pay you something. Correct?---It was, just, let's have a chance to actually have a discussion around this in the future, yeah.

Right. But you refer to what's fair. Presumably, did you expect some financial payment in relation to your assistance?---I didn't know what fair was in terms of you have three packages of work that's been awarded to them and - - -

40



Because of your assistance and your understanding?---Yeah. Correct. And then, but the risk envelope on that and whether the project would be delivered, how much was left in the budget, all that sort of thing. That was all a new experience to me. So I was looking for, just to have a conversation down the line about it, that's all.

All right. Could we continue to play the remainder of the second extract?

10 **AUDIO RECORDING PLAYED** **[4.21pm]**

MS DAVIDSON: Well, first, does this reflect your future hopes of being involved in the business, this second part of the call?---I, involved in the business?

In RJS's business.---In delivering, delivering works?

20 Well, being the next TCQ?---Yeah, I think it was more about being a part of RJS.

Right. So you weren't expecting ProjectHQ to be the next TCQ?---No.

Right. And Mr Cox says, "I want you to be the next Stew," and you seemed to find that funny. Do you recall what that was about?---The next Stewart Dunlop I think he's referring to there, yeah.

30 And why was that funny to you?---'Cause there was nowhere, like, I just, I don't know, be the next Stewart, Stewart, yeah, I, I don't know, I don't know why I found that funny.

All right. If I might just have a moment, Chief Commissioner? That's the examination, Chief Commissioner.

THE COMMISSIONER: Yes. What's to happen with this witness?

MS DAVIDSON: I think consistent with the approach that's been taken, he should be stood down but not released at this point.

40 THE COMMISSIONER: Mr Vardanega, I'm going to stand you down at this point. You're not released from your summons. There may be a

circumstance where you'll be required to come back to answer further questions. Should that circumstance arise, you'll be informed through your lawyers. At this point, you're not discharged. Thank you. The Commission will adjourn.

**THE WITNESS STOOD DOWN** **[4.24pm]**

10 **AT 4.24PM THE MATTER WAS ADJOURNED ACCORDINGLY**  
**[4.24pm]**