

TILGAPUB00268
21/06/2012

TILGA
pp 00268-00308

PUBLIC
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

Reference: Operation E09/350

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY, 21 JUNE, 2012

AT 2.10PM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

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

THE COMMISSIONER: Mr Strickland, before you begin I just need to deal with some other, one other matter. Are you Mr Vincent are you?

MR VINCENT: Yes, Commissioner. I seek leave to appear for IPP Consulting Pty Limited.

10 THE COMMISSIONER: Yes.

MR VINCENT: And also Mr Christopher La Greca.

THE COMMISSIONER: Yes, you have that leave. Now I need to say something, there is, is Mr Stewart here?

MR STEWART: Yes, Commissioner.

20 THE COMMISSIONER: Yes, thank you. And the – Mr Stewart you're acting for Mr Eschbank. And who acts for Mr Grubisic? Have we got, I thought we had somebody acting for Mr Grubisic. No. All right. It would be apparent to all that allegations have surfaced from the commencement of the inquiry until now relating to IPP Consulting, Mr La Greca, ACG Mr Grubisic and Mr Eschbank. Tomorrow emails will be sent to all those parties setting out those allegations and explaining that the scope of the inquiry will be extended to investigate those. The parties involved will have the same opportunity to question the witnesses and make written
30 submissions as regards any other party. The legal representatives who are present will simply need to speak to the Commission solicitors to obtain any documents that they may not have and tomorrow morning I hope to be in a position to formally extent the scope of the inquiry to cover those allegations and a notice will be given to ACG and Mr Grubisic. Yes, Mr Strickland.

MR STRICKLAND: Mr Commissioner, I would like to tender a document which was mentioned during this mornings session, it's a bank record of cheque number 2-8-9-5 paid to Security Consultants International in the sum of \$11,000.

40 THE COMMISSIONER: Sorry, it's a bank record relating to - - -

MR STRICKLAND: Relating to a cheque 2-8-9-5 paid by Kings to Security Consultants International dated 2 February, 2007.

THE COMMISSIONER: To Security - - -

MR STRICKLAND: Consultants International.

THE COMMISSIONER: - - - Consultants. In the amount of?
MR STRICKLAND: \$11,000.

THE COMMISSIONER: And that will be Exhibit R2.

MR STRICKLAND: Attached to that is a cheque butt which I think has already been marked or tendered but perhaps they should go together.

10 THE COMMISSIONER: Yes. So the document which is the bank record relating to cheque 2-8-9-5 paid by Kings to Security Consultants in the amount of \$11,000 is it?

MR STRICKLAND: That's correct.

THE COMMISSIONER: With cheque butt attached will together be marked R2 and will form part of Exhibit 2.

20 **#EXHIBIT R2 - COPY OF BANK RECORDS AND CHEQUE BUTT FOR CHEQUE #2895 RELATING TO PAYMENT FROM KINGS TO SECURITY CONSULTANTS INTERNATIONAL IN THE AMOUNT OF \$11,000.00**

MR STRICKLAND: Mr Roche, you remember I asked you some questions this morning about an invoice from Mr - from SCI or Mr Paul in relation to \$11,000, do you recall that?---I do.

30 Do you recall if any actual work was done or presented to Kings in relation to that invoice?---I can recall a draft policy manual.

Yes?---Yes.

When you say you can recall it, you can recall reading it or seeing it?
---Seeing it.

40 Okay. And do you know if that was the manual for which that \$11,000 payment was made for it - I withdraw that question. The manual - \$11,000 represented payment for that preparation of the draft manual, is that right?
Is that your understanding?---I believe so.

Okay. And you have a recollection of that now?---I believe so, yes.

Could the witness please be shown Exhibit D43. It's an email from Charlie Diekman to yourself to which Greg Poller was copied on 5 November, 2008. Do you remember I was asking you before lunch about a spreadsheet, an equity directors' spreadsheet?---Yes.

Now, I'll just - in that email it refers to, it says, "Greg, please credit my account." Can you see that?---Yes.

And do you know what the account that Mr Diekman is referring to?---It could be one of two, either his bank account or his directors' account.

So it is the case after that 30 May email I showed you, the one with the list of the names and the - - -?---Yes.

10 - - - payments next to it, is it the account that, is it the case that a directors' account was then created by Mr Poller or someone within Kings finance department?---Oh, I can't recall the time, yeah, yeah.

Well, is it the case that at some time there was a directors' account?---Yes.

And, and can you explain what was the purpose of the directors' account?---To keep track of any expenses between us.

20 Between us being between you and Mr Diekman?---Correct.

And what kind of expenses?---Oh, anything that - if he put things on his credit card or I did, likewise to balance it out.

Was that so the company could keep check of various cash payments that were being made from the company or from - sorry, I withdraw that. Was that - was it the case that the purpose of those directors' accounts was to keep a record in the company of cash payments or payments from credit cards made by the directors which would then later be reimbursed to the directors?---I don't think reimbursed, I think just to keep track of.

30 To keep track of?---Yeah.

THE COMMISSIONER: So as to reconcile them in order to pay the appropriate amount of dividends at the end of each year?---To balance them, yes.

Yes?---Yes.

40 MR STRICKLAND: Because the 30 May email that I showed you and if you'd like me to be show, if you'd like me to show you, if you'd like me to show you again just say but the essence of that email was Mr Diekman saying look, I have paid forty seven and a half thousand dollars from my own money - - -?---Ah hmm.

- - - in relation to opportunities and I want the company to repay me?---Mmm.

Is that, is that your understanding of the essence of that email?-- Yes.

And what did you understand by the word “opportunities” in that email? What were the opportunities that Mr Diekman was referring to?---I don’t know what he, how he referred to it, you know.

Do you want to have a look at that email again?---No, I understand it, yeah.

Do you remember it?---Yes.

10 But you don’t know what he meant by that word, is that right?---No.

Okay. If I can just go to this email D43. Do I understand the system, sorry. Was this an email that was created pursuant to that system, that is Charlie saying look I’ve paid some money for my personal account, I want, I want those personal payments credited to my directors account. Is that the likely purpose of that email?---This one here?

Yes. The one dated 5 November 2008?---Look it could be, you know there again - - -

20

You’re not sure?---No.

Well what - can I ask you this, what does the - do you know what the reference to \$4000 cash to CDPR stands for?---They’re both our initials, yeah.

So is it the case that he paid you \$4000 cash?---No.

30 So do you know what that means I, I paid \$4000 cash to CDPR?---I can’t recall this, yeah.

Now he then refers to, “I paid \$10,000 cash for a consultant job”?---Mmm.

Did you ever ask Mr Diekman what that cash - what, what job he was referring to in that description?---I don’t think so.

Again is there any reason you didn’t ask him what that cash was paid for specifically?---No.

40 Now if I can just ask you some questions about Mr Paul. Did he come to Kings offices from time to time from 2007 on?---Yes, he did.

And do you know why he came?---Why he came to meetings?

Yeah. Wearing - Mr Paul wore a number of different hats didn’t he?---He did.

And what hat was he wearing when he came to Kings offices? Still in metaphorically?---Security consultant.

Yeah. But that - but he - but that was, that was his general hat wasn't it - - - ?---Yeah.

- - - security consultant?---Ah hmm.

10 But did he - when he came to Kings offices did he come because Kings had contracted him to do some particular work or for some - any other reason?
---No.

What do you mean by no?---When you say contracted?

Well let me ask - I'll ask you an open ended question?---Yeah.

20 Can you please tell the Commissioner why did he - what work did he do when he came to Kings, what jobs was he doing which required him to come to Kings offices?---Any, any multiple number of projects that he's probably been involved in.

THE COMMISSIONER: As a consultant?---As a consultant.

MR STRICKLAND: And this is you mean - after, after a contract has been awarded to Kings for which he was the consultant he would come to Kings. Is that correct?---Correct.

30 What about before a contract was awarded, did he ever come to Kings then to discuss that contract where he was the consultant?---It's probably blurred that there's ongoing projects that you know he was in our offices a month ago.

Sorry, as in last month, is that what you mean?---Yes.

Doing what?---Meeting.

In relation to what?---A project.

40 What project?---A house at Neutral Bay.

Right.---So he would meet with our project manager.

Right. So you - - -

THE COMMISSIONER: So you're, you're being asked about him coming before the tender's awarded and I think your answer was well, there, there are ongoing projects and there are ongoing tenders so when he came he, he would come at times when both there is ongoing contracts and ongoing

tenders in respect - which, which have not yet been awarded. Is that what you were saying?---Yeah, that's - yeah, that - yes.

MR STRICKLAND: Did he ever - did Mr Paul ever come to Kings to discuss a tender which Kings was tendering for but had not yet been awarded?---Not that I'm aware of, no, no.

What about – you know that Art Gallery tender?---Yes.

10 Did he ever come to Kings to discuss that tender before the tender was awarded?---I don't know whether he did or not in that period.

Would you have regarded that as unusual if he had done so, come to Kings to discuss the Art Gallery tender before it was awarded?---Any tender.

No, I'll ask again. Would you have regarded to be unusual for Mr Paul to have attended Kings Security to discuss the Art Gallery tender before that tender was awarded?---Yes.

20 Why?---It'd be unusual.

Yes, why?---Well you wouldn't discuss something that's in process.

Why not?---Well it's – you wouldn't do it, you know it's not part of the process.

But why wouldn't you do it?---It just wouldn't be right.

30 And why wouldn't it be right?---Because it's, it's in process, it's open.

THE COMMISSIONER: It would be favouring one tenderer over another? ---It could be seen as that, yes.

MR STRICKLAND: Do you recall Mr Paul ever attending Kings to discuss how to best present a tender or how to assist those who are evaluating a tender?---No, I don't, not specifically.

40 Okay. If the witness could be shown Exhibit D44. And if I can take you to the – if I can take you to the first of the emails on 13 November at 10.18am. Were you in here when this email was – when Mr Diekman was asked about this email?---Yes, I was.

And do you recall writing this email?---Yes, I do.

And did that in fact occur, that Mr Paul – you can see that above Mr Paul's reply, it's saying with pleasure, call me to arrange and time and date. Do you see that?---Yes.

And did you in fact call him to arrange a time and date?---No.

That didn't happen?---No.

Why is that?---It just didn't eventuate.

So did ---

10 THE COMMISSIONER: So Mr Paul didn't make a presentation to Kings as suggested in your email?---No, he didn't.

MR STRICKLAND: Did he ever make a presentation to Kings, if not on that date on any other date relating to the best practice or how to assist evaluated tenders, the do's and don'ts of tendering, presentation to tenders, anything like that?---I don't believe so.

THE COMMISSIONER: And he was not involved in training Kings staff in any way?---No.

20 MR STRICKLAND: Did you socialise with Mr Paul?---No. It depends what socialise is. I've seen him at an event.

You've seen him at an event did you say?---Or events, yes.

Right. And to your knowledge was Mr Diekman friendly with Mr Paul? ---Yes.

And did he socialise with him?---Yes.

30 Did Mr Diekman talk about Mr Paul in terms of – did he talk to you about Mr Paul and Mr Paul's professional role as a security consultant?---Sorry, did he?

Did he talk – did Mr Diekman talk to you about Mr Paul from time to time? ---I'm sure he was mentioned, yeah.

But did you know him to be an influential person within the industry, Mr Paul?---Mr Paul, yes.

40 Could I, I want to ask you some questions about the tender that Kings Security tender bid that Kings Security put in for the Art Gallery of New South Wales. First, could I show you a document which is entitled the Kings - oh, I beg your pardon, yes, thank you, I'm sorry before I do that, thank you, could the witness please be shown Art Gallery 1480. Thank you. I'm just showing you this for the purposes of refreshing your memory about dates. Do you see that that is an email sent from Daniel Paul to a number of people including Charlie Diekman at Kings and a number of other people relating to advising those people that the tender documents in relation to the

integrated security system for the Art Gallery is now available for collection?---Yes.

And do you notice in that email there is a reference to a mandatory site visit on Friday, 6 February, 2009?---Yes.

Do you note at the bottom of the email it provides that the, it notes, "Please provide the Art Gallery of the names of the person attending the briefing by return email to myself and Mr Tony Morris"?---Yes.

10

And who did, did you know who Tony Morris was?---At this time?

Yes?---Yes, I think I did, yeah.

What was his position?---Security manager.

For the Art Gallery?---For the Art Gallery.

Employed by the Art Gallery?---Yes.

20

Yes, I tender that, I tender that email which is a two-page email.

THE COMMISSIONER: Yes. The email from Mr Paul to a number of recipients dated 3 February, 2009 concerning the Art Gallery of New South Wales will be Exhibit R3 or it will be Exhibit, marked R3 in Exhibit 2.

30

#EXHIBIT R3 - BUNDLE OF DOCUMENTS COMMENCING WITH EMAIL FROM DANIEL PAUL TO VARIOUS RECIPIENTS WITH SUBJECT "INVITATION TO TENDER - ART GALLERY OF NSW" DATED 3 FEBRUARY 2009

MR STRICKLAND: If I could then take you to the document I was going to take you which is the tender response document which is Art Gallery 592 through to 741. Do you recognise that document as a Kings tender response for the Art Gallery contract?---I do.

40

I beg your pardon?---I do.

And it refers to the fact that it was submitted by you, that's on the very front page at 592. Did you read this document before it was submitted?

---Probably not page to, page to page, yeah.

Were you familiar with its contents though?---Yes.

If I take you first to page 641 and just the two pages, 641 to 642 headed "Management of conflicts", do you see that?---Yes.

Now that's a - is that a standard section which you provide to clients with whom you are contracting?---No.

Was that specially prepared for this Art Gallery tender?---Not sure whether for this tender or - amongst our templates.

Did you say - you've got to speak up a little bit?---Sorry.

10 Amongst your templates?---Templates, yes.

Okay. Did you write it?---No. I plagiarised it.

But it's your - whether you plagiarised it or not - - -?---Yeah.

- - - you wrote it?---Crafted it.

You crafted it. Is that right?---Correct.

20 Okay. And did you, did you train people at Kings or did you tell people at Kings to read this document and to abide by it and to comply with it?---No.

Under the heading 'Commitment' the document states that the management of Kings Security are committed to managing actual and potential conflicts of interest in its business relationships to ensure that its clients are not adversely affected by Kings policies or practices. Kings recognise the term conflict of interest refers to situations which are financial or other personal considerations may comprise or have the appearance of comprising a director or an employee's professional judgement in administration, sales, claims or other professional activities. Under the heading 'Personal conflicts' you refer to - "The activities which may give rise a conflict of interest mainly providing", I'm quoting from it, I'm paraphrasing from it, "providing or accepting gifts from direct clients - - -

30

THE COMMISSIONER: It's potential conflicts of - - -

MR STRICKLAND: I beg your pardon, sorry. Thank you. 'Potential conflicts, activities which give rise', it's actually written there, 'a conflict of interest, conflict of interest are as follows', and then you provide a number of examples. Do you - looking back at it now do you believe that Kings complied with their own conflict of interest policy?---I'm not sure we breached it.

40

You're not sure you breached it?---No.

Is it the case to your knowledge that Kings ever provided gifts - well look I won't go through it. You've - have you had a chance recently to read this? ---No.

No. Okay. I'm just going to ask you another question about this document namely go to page 721. Now it's the case that you - that in this tender you in fact offered three different alternatives, solutions, is that right, to the Art Gallery?---Yes.

And one of them was the Lenel Pelco, is that right?---Correct.

10 Pelco being the company that made the CCTV cameras that were part of the solution. Is that right?---Correct.

And Lenel which made the relevant products relating the access control path of the security solution?---Yes.

20 Now in this document under Lenel Pelco Endura Solution can you see at about the sixth or seventh line it says the Pelco Endura option for the Art Gallery of New South Wales tender is based upon the Pelco Endura version 2.0. The following are some of the added benefits of the Pelco Endura Solution. Do you see that?---Yes.

And that was certainly your understanding wasn't it that when you submitted this document the alternative solution that you were - that Kings was offering the Art Gallery, that is the Pelco, Lenel Pelco alternative solution was based upon - the Pelco part of that was based on the Endura 2.0 version. Is that right?---It would do. It wasn't my thorough understanding, yeah.

I didn't hear that?---It wasn't my thorough understanding.

30 Well was it your understanding whether it was thorough or not?---Yeah, it was all a bit technical for me.

THE COMMISSIONER: But you must have known - I mean this is something that was critical to the solution that you offered wasn't it?---Look I know at the time that we were waiting on it, yeah.

Yes, but your, your actual tender response was based on Pelco Endura version 2 wasn't it?---It's what we've written there.

40 Well what does it mean if it's written? It means that what you were quoting weren't you?---Yes.

And you knew that?---As I say I wasn't terribly technical with it.

Are you saying you didn't know that?---No, I'm not, I don't get involved in the technical side of it.

I'm just trying to find out whether you said you didn't know that - - -?---Oh well it's here, yeah.

So you knew it?---Yes, it's here.

MR STRICKLAND: Well before this – you submitted this document I take it you took – this took quite a bit of your own time marshalling your employees and doing work ready for this tender. Would that be correct?
---Yes.

10

Because this was a particularly significant tender for Kings wasn't it?---Yes.

One, it was a very large tender. Correct?---Financially it was - - -

That's what I'm talking about?---Yes.

Financially it was one of the largest tenders Kings has ever done. Correct?
---At that time.

20

At that time is that right?---Yes.

And it was also one of if not the most prestigious tender that Kings had ever done. Is that right?---Yes.

So this was no ordinary tender was it for Kings?---No.

So you took quite a bit of time and effort to make sure you got everything right. Is that right?---Yes.

30

And I take it therefore that before you submitted this document you had some knowledge that you could deliver on what you had promised to deliver in the tender document. Is that right?---(No Audible Reply)

Do you understand the question or not?---No, I don't, no.

Well let's take this Lenel Pelco alternative solution?---Yes.

40

You wouldn't have made an offer to install \$2.69 million – I'll withdraw that, to say that we will install the Lenel Pelco solution for \$2.69 million unless you were satisfied that you could in fact do the job. Correct?---Yes.

And so you must have had some discussion before you submitted it with other employees at Kings or anyone else that there was a Pelco solution that Kings could offer the Art Gallery. Is that right?---Our technical people were certainly doing that, yes.

Yes. And you kept abreast of that didn't you, because you're ultimately in charge of the tender process for Kings. Correct?---Yes.

So what I'm asking you is it's highly probably isn't it that you had some knowledge about whether this Pelco Endura version 2 was – had been released on the market or was about to be released on the market. Is that right?---I knew it was yet to be released.

So you knew that?---Yeah.

Before you submitted this document?---Yes.

10

And did you know when it was about to be released?---It was either, it was months away.

I beg your pardon?---I think it was months away.

THE COMMISSIONER: But within a reasonable time?---Yes.

So soon as to enable you to quote for the supply of it?---Yes.

20

MR STRICKLAND: Now if can take you to page 597 please. Now, this is a particularly important page, isn't it, this is, this is the schedule of pricing for the tender, correct?---Yes.

And you have signed the bottom of the page, is that right?---Yes.

And did you, did you - is it probable that you signed it on the date that it bears on that document, namely 23 February, 2009.

THE COMMISSIONER: The bottom left-hand side?---I presume so.

30

MR STRICKLAND: The date you submitted the document was 23 February, 2009 so is it likely you signed it on the same date, signed this page?---I just noticed 2008 on the front cover.

Well, you didn't submit in 2008 did you?---No, no.

Well, all I'm asking is is it likely that you submitted, that you signed this document on 23 February, 2009?---I would have, would have signed it when it was prepped and ready to be sent off.

40

Okay. And it's witnessed by Samantha Jarvey, is that right?---Correct.

So when you signed this page, and if you go to the other pages from 597 through to 604 you've also signed all those pages, is that right?---Yes.

So - and you signed those pages because you are responsible for verifying that you as the director of the company are representing that you will

provide that particular work to the Art Gallery for the prices nominated in that, in that schedule, is that right?---(No Audible Reply)

Is that correct?---Verifying?

Yeah, you're, you're - - -

THE COMMISSIONER: Just listen to the question. You're going to have to put the question again?---Yeah, yeah.

10

You weren't listening to the question?---No, sorry.

Busy reading the papers?---Yeah, sorry.

Just, just listen to the question please.

MR STRICKLAND: You signed those papers because you were verifying that they are prices you're offering the Art Gallery for those particular items and ultimately the ultimate price that you're offering the Art Gallery for the tender. Is that right?---Verifying, I'm submitting it on behalf of the company, yes.

20

If you go to 597 and you see that there's three different prices on that page, the first pricing is for Lenel/Verint and you can see there that the price there is the compliant price, do you see that, \$2.73 million?---Yes.

And what did you understand the word compliant price meant?---I think that was the first, what was specified.

30

THE COMMISSIONER: That's the price for the tender as specified by the Art Gallery?---Correct.

And that related to the solution in the specifications that was compliant, is that right?---Yes.

It was a compliant solution which is the Lenel, being the access control, and Verint being the CCTV, is that right?---Yeah, yes.

40

That was a compliant solution?---Yes.

You understood that you could also offer other solutions provided that they were later approved, is that right?---Yes.

Now, did you have a role in either calculating or checking the calculations of prices that are referred to in, in these schedules?---I can't recall if I did, I think our estimator collated all the, the data.

Who was your estimator?---I think Rod Waring did this project.

MR STRICKLAND: So Rod Waring his job as estimator - estimator is estimating prices, is that right? That's one of the things he estimates?
---Correct.

Was that the only thing he estimates?---No. When you say you're building a, you're building a price or a quote that's what he's estimating.

10 Right. But that, that was his job was it, Rod Waring, he was an estimator for Kings?---Yes, salesperson, yes, yeah.

And is it, is it the case that his principal job is to estimate prices for the inclusion in quotes or tenders, is that - was that what his job was at the time?---At the time it was part of his job.

Okay.

20 THE COMMISSIONER: And was Mr Dunphy have a similar job?---Mr Dunphy's technical so.

So he didn't do the estimating?---No.

He didn't check the prices?---No.

MR STRICKLAND: Did you - I take it that in your - as the managing director you had in your mind a project margin that you wanted Kings to make on this particular job if you were awarded the job. Is that right?
---Yes.

30 And what was your - when you signed this document what was the profit margin you had in mind?---I think it was around 30 odd per cent.

Thirty odd per cent. Okay. And I assume you communicated that to Rod Waring did you?---Oh, I can't recall at the time, you know whether we communicated but it's default in our system.

40 THE COMMISSIONER: So that really means I mean roughly speaking if you look at the compliant price of 2.7 million that something like 800 or \$900,000 was profit?---Yeah.

I beg your pardon?---Yes.

MR STRICKLAND: And when you said that was default can you just explain what that means, please? Is it about 30 per cent was default?---Our job management system has a default mark up in it, it marks everything up 65 per cent.

When you say - what do you mean every - it marks everything up by 65 per cent?---When, when we build a quote the material on labour is automatically marked up.

So just so I can understand this when you say on labour does that mean if you're, if there's a Kings employee that does some work and you work out what costs Kings to hire the income you pay your employee and then but you charge that employee out at 65 per cent more than that income. Is that right?---Correct.

10

And likewise if you've got an outside contract - sub contractor to do the work you mark up the price by 65 per cent?---Correct.

What about equipment that you buy? Does that also have a 65 per cent mark up?---As the default, yes.

That's the default. Which you can, which you can adjust upwards or downwards?---Correct.

20 THE COMMISSIONER: But, but on this, on this tender you didn't apply the default you applied 30 per cent?---That's a margin. Sorry.

So that's different from a mark up?---A 65 per cent mark up will give you a 30 per cent margin or thereabouts.

30 MR STRICKLAND: And just without being too technical explain how that is the case? How does a 65 per cent mark up get, get you a 30 per cent profit margin?---Sorry, I'm not very good at counting it but it's - if you apply a mark up to something of 65 per cent you'll end up with a 30 or 40 per cent margin at the end of the day once it's costed.

That's what your, sorry for interrupting. Go ahead?---(No audible reply)

That's what you've been advised?---Yes, yeah.

40 Okay. So you're saying you don't need advise Rod Waring of that because he already has that - he'd already have that in his system, his own system so when he does the particular calculations they are automatically marked up in your system, in your default system unless someone changes the variables. Is that right?---That's correct.

Thank you. Okay. Now I just wanted to ask you - - -

THE COMMISSIONER: Sorry, sorry, Mr Strickland, I just want to confirm. Then with the Lenel Pelco version your profit based on 30 per cent is around 800 to 900,000 as well of course?---That's, that's gross profit too.

Yes?---Yeah.

When you say gross profit what are you leaving out of it? What's still to be deducted to get to net profit?---Our whole overhead.

Your overheads?---Yeah.

MR STRICKLAND: So if we just apply – if we just go to the Lenel Pelco option at page 597, then upon a – assuming it's a 30 per cent profit margin then in dollars terms that represents \$807,000 gross profit - - -

10

THE COMMISSIONER: And then how much - - -

MR STRICKLAND: - - - excluding GST. Is that right? Well do you accept those calculations?---Yeah.

Is that right?---Yes.

Okay.

20 THE COMMISSIONER: And you would then – what's your overhead – what margin do you apply for overheads?---It probably runs at 40 per cent.

So to get to – so you would have to deduct 40 per cent from the, no I'm sorry. The cost to you is – if you take the Lenel Pelco version is \$2,690,000 less the gross profit. That's the cost to you is it?---No, it's the gross profit less the overhead, gives you the net profit.

30

No, that's the net profit. But I'm not asking you about the net profit. I'm asking you what would the job cost you to, to do without any profit? That would be the tendered price less gross profit. Is that right?---Yes, tender price less gross profit, yeah, yeah.

That represents cost?---We've still got cost in the gross profit though, yes.

Well say – I mean let's just take figures. If you've got \$2.69 million as the tender price and you deduct \$800,000, it would cost you \$1.9 million to do the job, I think, about?---Yeah, yeah.

40

So the cost to you would be \$1.9 million?---Yeah, if we built that up, yes.

Is that correct? Do I understand your evidence correctly?---I think so.

All right.

MR STRICKLAND: Now just explain one thing. If you go to the, if you go to the schedules in this document, schedule 1B, 1C, 1D, 2A and 2B? ---Ah hmm.

They itemise a number of specific items which you have provided a lump sum price for. Is that right?---Ah hmm. Yes.

Now they, by my calculations they represent some, if you add them all up they represent some 25 per cent of the total price of either options 1 or option 2, something in that quarter. In other words they don't represent the majority of the actual – of the final price that's referred to at page 597. Is that right? Do you understand the question?---Yes.

10

Is that correct?---But they're not the entire sum.

I beg your pardon?---But they don't add up to the entire sum.

That's right?---Yeah.

Do you agree with that?---Yes.

20

They add up to something like a quarter or a bit more than a quarter of the entire sum?---Right.

So and are you able to assist us as to – in relation to the Pelco part of the solution is any of that referred to in the schedule of pricing?

THE COMMISSIONER: Well, there are a number of references to Pelco in the schedule at page 601.

MR STRICKLAND: Yes.

30

THE COMMISSIONER: So what is the question, Mr Strickland?

MR STRICKLAND: Yes, my question is can you identify any parts of the Pelco solution in any of the schedules?---No.

Do you know how much the Pelco solution, how much the Pelco solution - I withdraw that. Do you remember receiving a quote for the Pelco solution or when I say you I mean Kings?---No, I don't, you know.

40

Well, when you were checking or verifying the price did you ever look at the, any quote from Pelco?---No.

You didn't?---No.

You didn't know what, what price Pelco was offering?---No.

You didn't?---No.

Did you have any idea?---No.

What about Verint? Do you have any idea what the Verint price, the price for the Verint CCTV cameras was?---No, I don't.

No, not no I don't, I mean did you when you signed it?---No, no.

So when you say you've verified - I know it was my word but these prices, what, what did you actually do?---Just signed it.

10 THE COMMISSIONER: I beg your pardon?---I just - - -

You just signed it?---Yeah.

So you didn't, you didn't do anything to verify these prices?---(No Audible Reply)

Is that, is your answer no?---No.

20 MR STRICKLAND: I'm afraid I just don't think that was heard?---Well, no, I - - -

Excuse me. Now, after you submitted this document did you communicate with anyone at Pelco in relation to the Pelco solution component part of this tender offer?---No, I did not.

Do you know if Charlie Diekman did?---Not aware.

When you say not aware - - -?---He's, well, yeah.

30 - - - is the answer is you don't know whether he did, is that what you mean by not aware?---Oh, yeah. He's liaising with suppliers all the time, yeah,.

I know but all these questions - - -?---Yeah.

- - - are just directed to this particular tender, the Art Gallery tender. Do you remember did Mr Diekman ever tell you that he had spoken to anyone from Pelco after you submitted this document?---I can't recall whether he did or not, yeah.

40 Did you have any discussions with Mr Paul after this document was submitted but before the tender was awarded to Kings?---No, I don't believe so.

Do you know if Mr Diekman did?---I can't, yeah, I can't vet for him.

Well, I'm asking you did Mr Diekman - - -

THE COMMISSIONER: Do you know whether did or not?---No, no, I don't know whether he did.

He didn't tell you, did he, that he'd ever spoken to Mr Paul about this tender for the Art Gallery before it was awarded?---Not that I'm aware of.

Now, you attended a meeting, didn't you, at the Art Gallery on 27 February, 2009, that is some four days after you submitted this, do you recall that?
---Yes.

10

I'll just show you a document, Art Gallery 2 page 32 to 41.

Yes, the tender response by Kings will be marked R4.

**#EXHIBIT R4 - TENDER RESPONSE FOR SUPPLY AND
INSTALLATION OF AN INTEGRATED CCTV NETWORK VIDEO**

20 MR SMITH: Commissioner, could I ask for a suppression order in respect of parts of that document?

THE COMMISSIONER: Yes, just a moment please. Yes, Mr Smith?

MR SMITH: The request for a suppression order for parts of schedule 1.

THE COMMISSIONER: What page is that?

MR SMITH: Page 598.

30

THE COMMISSIONER: Sorry, I can't hear you. I beg your pardon?

MR SMITH: 598.

THE COMMISSIONER: Is this being picked up? You better come forward Mr Smith.

MR SMITH: Schedule 1, 598, page 598.

40 THE COMMISSIONER: Page 598.

MR SMITH: And it's the description in the second column in respect of each of those items. And can I say at this point Commissioner, the same request applies to each of schedules 1A, B, C and D.

THE COMMISSIONER: So you're talking about pages 598 to - - -

MR SMITH: 601.

THE COMMISSIONER: - - - to 601. Yes. I'm just noting that. Is there anything else?

MR SMITH: Yes. Schedule 2 which starts at page 603, schedule 2A, it's the first column.

THE COMMISSIONER: So it's the description in the first column?

10 MR SMITH: Yes.

THE COMMISSIONER: Yes.

MR SMITH: Schedule 2B it's the second and third columns, so - - -

THE COMMISSIONER: That's 604. Yes.

MR SMITH: The second and third columns.

20 THE COMMISSIONER: Yes.

MR SMITH: Scope and quantity.

THE COMMISSIONER: Yes.

MR SMITH: The next is schedule 7 at pages 627 and 628 - - -

THE COMMISSIONER: Sorry, page, the last page I have is 604. Now you're going to 627.

30 MR SMITH: Yes.

THE COMMISSIONER: 627. 627 to, to which page?

MR SMITH: 628.

THE COMMISSIONER: Yes. And what do you want suppressed there?

40 MR SMITH: The items which in the first column are shown as number 4.11 on page 627.

THE COMMISSIONER: Yes.

MR SMITH: 4.15 - - -

THE COMMISSIONER: You mean the whole, you want the whole item suppressed?

MR SMITH: Yes, Commissioner. 4.15 on the same page.

THE COMMISSIONER: Yes.

MR SMITH: And the final column against the item on page 628 4.16, so under additional information.

THE COMMISSIONER: Yes.

10 MR SMITH: Then Commission in addendum 3 starting at page 711.

THE COMMISSIONER: Yes.

MR SMITH: Paragraphs 4 through to 15 on page 712.

THE COMMISSIONER: Well you - I don't see why 13 is - why is 13 important?

20 MR SMITH: I'll accept that, Commissioner.

THE COMMISSIONER: So it's 4 to 12 and 14 and 15?

MR SMITH: Yes.

THE COMMISSIONER: Anything else?

MR SMITH: Yes. In the next addendum which is number 4 starting at page 713.

30 THE COMMISSIONER: Yes.

MR SMITH: The entire response and questions of paragraph number 4 which goes over the page 714.

THE COMMISSIONER: So it's paragraph 4 to where?

MR SMITH: The whole that paragraph.

THE COMMISSIONER: The whole of paragraph 4?

40

MR SMITH: Yes.

THE COMMISSIONER: Yes.

MR SMITH: And six, seven and eight on page 714.

THE COMMISSIONER: Six, seven and eight.

MR SMITH: Yes. And on the next page 715 paragraphs 9 and 10.

THE COMMISSIONER: Yes.

MR SMITH: Then, Commissioner, addendum number 5 at page 718 the body of the response.

THE COMMISSIONER: All right. You want, you want the whole of the page really I suppose.

10

MR SMITH: Yes, Commissioner.

THE COMMISSIONER: Yes.

MR SMITH: And one final matter are the diagrams that appear on pages 727 through to 740.

THE COMMISSIONER: 727 to 740 the diagrams.

MR SMITH: Yes.

20

THE COMMISSIONER: All right. Just give me a tick. Are there any Pelco Endura number 2 diagrams there?

MR SMITH: We wouldn't, we wouldn't ask for a suppression order in respect of the names Pelco and Endura it's the - - -

THE COMMISSIONER: No, I understand that.

MR SMITH: - - - the layout.

30

THE COMMISSIONER: I just wanted to see whether - I know I understand that. I just wanted to know - if, if you don't know I'll understand why you don't know.

MR SMITH: Yeah, I don't know.

THE COMMISSIONER: Is that - that's the lot?

MR SMITH: That's for this document, yes.

40

THE COMMISSIONER: Yes. Mr Strickland?

MR STRICKLAND: No objections to that.

THE COMMISSIONER: Yes. All of those matters you've asked for will be the subject of a suppression order and when I say all of those matters I'm not including paragraph 13, I think it's on page 712.

MR SMITH: Yes, Commissioner.

THE COMMISSIONER: Which we are both in agreement, need not be excluded.

MR SMITH: Yes, Commissioner.

THE COMMISSIONER: Yes. Your application is granted.

10 MR STRICKLAND: I'll just ask you about this document a tender proposal interview. You can see on the bottom left-hand side it's dated - - -THE
THE COMMISSIONER: Sorry, I missed the page, I beg your pardon.

MR STRICKLAND: I'm sorry. It's page, page 32.

THE COMMISSIONER: Page 32 of the?

MR STRICKLAND: Art Gallery volume 2. It's a new document I'm showing the witness.

20

THE COMMISSIONER: I better - I'm going to tender - are you tendering this?

MR STRICKLAND: I've tendered that.

THE COMMISSIONER: No. The tender response. Hang on. I'm getting a bit lost here. The tender response was R4 wasn't it? Is R4, and that's what you're tendering.

30 MR STRICKLAND: I've tendered I think 150 page document which was -
- -

THE COMMISSIONER: It's here. Is this the tender response, the one that
- - -

MR STRICKLAND: Yes, that's right.

THE COMMISSIONER: - - - Mr Smith and I - - -

40 MR STRICKLAND: Yes, that's correct.

THE COMMISSIONER: Yes, that is - so that will be - that is R4?

MR STRICKLAND: Yes.

THE COMMISSIONER: Yes, thank you. And you've now - I have in front of me the tender proposal interview document.

MR STRICKLAND: That's right.

THE COMMISSIONER: Yes. Is that a document that you prepared?---I put together, yes.

You put together. I tender that document.

THE COMMISSIONER: So R5 is the tender proposal interview document.

10

**#EXHIBIT R5 - TENDER PROPOSAL INTERVIEW RECORD
ATTENDED BY MR ROCHE, MR DIEKMAN AND MR DUNPHY
DATED 27 FEBRUARY 2009**

MR SMITH: Commissioner, I have an application in respect of that document as well.

THE COMMISSIONER: Yes.

20

MR SMITH: I have starting at page 33 - - -

THE COMMISSIONER: Just a moment, please. Yes.

MR SMITH: You will see, Commissioner, in paragraph 1 there are several dotted paragraphs, if I could ask that the fourth and third last two starting "We will integrate" and "the only system" be suppressed.

30

THE COMMISSIONER: So the words on page 33 from "We will integrate" to " - - -

MR SMITH: Yes.

THE COMMISSIONER: - - - will be suppressed.

**THE WORDS ON PAGE 33 FROM "WE WILL INTEGRATE" TO
" _____ " WILL BE SUPPRESSED**

40

MR SMITH: Thank you, Commissioner. And on page 35, at the top of - again it's the reference to visitor management system underneath the paragraph.

THE COMMISSIONER: Yes. The sentence beginning "we only submitted on recurring licence fee" ending with the word "system" is suppressed.

THE SENTENCE BEGINNING “WE ONLY SUBMITTED ON RECURRING LICENCE FEE” ENDING WITH THE WORD “SYSTEM” IS SUPPRESSED

MR SMITH: And page 37, in effect the whole of it except not paragraph, subparagraphs numbers 4 and 5, nor the last two dot points.

10 THE COMMISSIONER: there’s no objection to that, is there, Mr Strickland?

MR STRICKLAND: No objection.

THE COMMISSIONER: Yes. The whole of page 37 is suppressed.

THE WHOLE OF PAGE 37 IS SUPPRESSED

20 MR SMITH: Thank you, Commissioner.

THE COMMISSIONER: That is all?

MR SMITH: That’s it.

THE COMMISSIONER: Yes, Mr Strickland.

30 MR STRICKLAND: Now, sorry, did you say, did you say that you had prepared this document and by this document I mean Exhibit R5?---In conjunction with others, yes.

And who are the others?---Oh, look, certainly the technical, Mr Dunphy.

Yes?---Possibly Mr Hunt, Mr Diekman, yeah, that’s probably - - -

What about Mr Waring?---Possibly, yeah.

Now, you said - yes, you did?---Yeah.

40 What, when you went into this meeting with the people from the Art Gallery there was Mr Paul in attendance wasn’t there?---Yes.

Ms Tregeagle from the Art Gallery?---Yes.

Ms Flanagan from the Art Gallery?---Yes.

Mr Morris?---Yes.

And then yourself and Mr Diekman, correct?---Yes.

And Mr Dunphy?---Yes.

Was it an hour long meeting?---Yes, yeah.

And who did most of the speaking on Kings' part - I'm sorry, I withdraw that question. Who did the speaking on Kings' part at that meeting?---I think we all did.

10

Is it the case that - is this what happened, that you made a presentation and you were asked questions and answers or was there questions and answers right from the beginning?---Oh, I can't quite recall the format as to how it -
--

What, what did you say during the hour-long discussion or interview at the Art Gallery? What was your contribution?---I think I spoke about the company, yeah, I think I talked about Kings.

20 I just didn't hear?---I, I - - -

THE COMMISSIONER: Talked about Kings?---Yeah.

MR STRICKLAND: Thank you. Did you talk, did you talk at all about the specific solution you were offering, Kings was offering the Art Gallery?---I, I may have contributed.

30 It's the case isn't it that someone from Kings told the Art Gallery at the meeting that Kings preferred solution was the Lenel Pelco solution. Is that right?---Yes.

Who said that? Who on behalf of Kings spoke about that?---Oh, I think Mr Diekman.

Okay. And did he give reasons for that?---Probably.

Because that was, that was not the preferred solution as per the specifications was it?---No, it was not specified.

40 THE COMMISSIONER: It was not the specified solution?---Solution, yes.

It was outside the specification?---Yeah, or an alternative.

Yes?---Yes.

MR STRICKLAND: And had you discussed with Mr Diekman beforehand that that's what you were going to do, you were going to present a solution to the Art Gallery which was outside the preferred solution, which was

different from the preferred solution?---I'm not sure – when you say if we prepared - - -

THE COMMISSIONER: No, did you discuss with Mr Paul, sorry, Mr Diekman is the question, that fact that you were going to promote a solution which was not specified?---I'm not sure whether we did but it was certainly - - -

10 I can't believe that the - - -?--- - - - certainly his preference.

You knew that before you went in to the meeting?---Yes, yeah.

I mean it wouldn't have been a spontaneous decision made suddenly at the meeting would it?---I think it was in the back of our head that that's what we wanted.

20 Well it might have been – surely you discussed it with Mr Diekman before you went in and your whole team?---You wanted to leave yourself open for all the solutions.

But this was your preferred solution wasn't it?---Yeah.

So you just – are you saying you can't remember whether you discussed it before the meeting or not?---No, I can't. I think we just left ourselves open to - - -

So what authority did Mr Diekman have to promote this one as the preferred solution?---We were led by him.

30 MR STRICKLAND: You said you left yourselves open – by that you mean the Kings team, you left yourselves open to what?---I suppose the interview and you know what came of it.

Yes, but you had a strategy before you went as to what you were going to present didn't you?---Did we have a strategy - - -

40 Well a plan, call it what you will, a strategy, a plan, some idea about what you were going to present at that meeting. Is that correct?---We covered it off in this particular document, but you know, from questions that they asked us - - -

Did you have a plan, a strategy or an idea about what you were going to present at that meeting before you entered the meeting? Without looking at the document, I'm just asking?---Not, not that I can recall, yeah.

Okay.

THE COMMISSIONER: I mean this was your, the big contract - - -?

---Yeah.

- - - of the existence of the company. You had decided on a strategy different from the specification. It was really important for you to get it. Are you actually saying you can't remember whether you discussed promoting this strategy before the meeting? Are you really saying that?
---Yeah, yeah.

Well what was your job at this company Mr Roche? Well what was it?
10 That's a serious question I'm asking you? You seem to have left everything to Mr Diekman. Is that right?---Not everything.

What didn't you leave for him?---He was more technical than I was. He was - - -

Yes, Mr Strickland.

MR STRICKLAND: Did you discuss before the meeting that Kings was going to offer a lower price for the Pelco Lenel solution and the overall bid
20 you were going to make?---We had reviewed our pricing before - - -

Mr Roche, I know it's late in the day and you've been here all day, I appreciate that, but you've got to just listen carefully to the question. Okay?---Yep.

Is that okay?---(No Audible Reply)
Mr Commissioner, I think – if you want a short break at any stage, ask the Commissioner. Okay?---No, I'm right.

30 Do you want to continue on?---Yeah.

This is the question, did you have a discussion with Mr Diekman about lowering the price before you went into the meeting?---Did we discuss it? He, he's an off the cuff salesman he, he, he knew his pricing and - - -

Just answer my question?---Yeah.

Did you have a discussion about lowering the price before you went into the meeting?---No.
40

So Mr Diekman mentioned a lower price at the meeting didn't he?---He did.

What was the price he mentioned?---A couple of million.

Yeah.

THE COMMISSIONER: Two million?---Correct.

MR STRICKLAND: That sum - and that was, and that was the Lenel Pelco Solution wasn't it?---Yes.

That sum close to \$700,000 lower than your original bid. Correct?---Ah
hmm.

Is that right?---Correct.

10 And you're saying that when he gave that figure of \$2 million that's the first
you heard of it?---Well he knew that was 10 per cent and - - -

No, that's not the question. Please, you've got to listen to the question - - -
?---Yeah, okay, I'm sorry.

- - - otherwise it's just going to take forever. Do you remember what the
question was?---Did we discuss it? No.

20 No. The question - see unless you know the question you can't give the
answer. Did you know before he said \$2 million that that was the price he
was going to state?---No.

So that was a surprise to you?---I didn't know he was going to blurt it out,
no.

THE COMMISSIONER: It must have been an incredible surprise?---Well -
- -

You're dropping your price by \$700,000?---Yes.

30 I mean this is - you're really doing it at cost aren't you?---Yes.

That's a serious decision for the company to take isn't it?---Yes.

But you tell us you didn't discuss it beforehand?---I didn't know he was
going to do that.

And you had no idea that Mr Diekman was going to do this?---He does
those sort of things.

40 You had no idea that he was going to do it?---No.

Did you happen to know how much the ACG had tendered?---Pardon?

Did you have any - did you know who, who had the lowest price of all the
tenderers?---Absolutely not, no.

So why did you reduce the price?---He wanted the job.

How did you know it was necessary to reduce the price to get the job?---He knew that he could do it at 10 per cent.

Mr Strickland.

MR STRICKLAND: Well did you have any discussions with anyone - did you know that you could go into this meeting and offer a different price, a lower price from the price you had specified in your original bid?---No.

10 THE COMMISSIONER: Is that a normal thing to do in a, in an open tender?---I'm not sure, not been in that situation.

Have you ever done this before?---Not this type of tender panel, yeah.

Have you ever reduced your tender price in an open tender situation after all the bids had been received?---I'm not sure whether we have, I don't - - -

Can you remember, can you tell me one instance where this occurred other than the Art Gallery?---I'd have to find out.

20

You can't remember?---No.

And you, you - all right. Yes.

MR STRICKLAND: I want to suggest to you that you must have before you went into the meeting when you presented a different solution from the one specified and at a price \$700,000 lower than your original bid, you must have discussed with Mr Diekman what you were going to do and how you were going to justify those actions to the Art Gallery, you must have. Do you agree with that?---No, not that I can recall, no.

30

Well did you have any discussion with Mr Diekman about what you were going to say to the Art Gallery about why it was that you'd reduced your price on the Lenel Pelco by some \$700,000?---No, he just said leave it with me, you know.

Leave what with you?---The meeting.

That's what he said to you?---Yeah.

40

Leave it with me. Is that correct?---I'm not sure - I just know that he wanted to see how it went.

But that's more or less what he said to you, leave it with me. Is that right? ---Not for words, I don't know, I can't recall.

THE COMMISSIONER: This is a very important part of this inquiry, Mr Roche. It's very important because it's - there are allegations that a very

serious fraud was committed on the Art Gallery in this meeting. So it's very important that you tell the truth and you tell us everything that you know. Do you understand that?---I understand.

MR STRICKLAND: This document Exhibit R5, did you read it before – and I'm not saying now, I'm just saying did you read this document before you went into the meeting?---Maybe not word for word, but, yeah.

10 Well you had the document. Is that right, before you went into the meeting?---Yes.

And did you read part of it?---I would have.

Right. But not necessarily all of it. Is that right?---Maybe not.

20 Is there any reason for such an important contract you wouldn't have read this nine page document before you went into a meeting? Were you so busy that you couldn't read – spend five minutes reading a nine page document before this important meeting, Mr Roche?---I was busy. I was always busy.

You were so busy that you couldn't read this nine page document before you attended this meeting. Is that what you're saying?---Some of it's always technical or - - -

Is that what you're saying?---Some of it is.

I can't – you're mumbling and I can't hear you?---Some of it's technical.

30 Well let's turn to – let's go through some of it. Go to page 33. Do you – was this document given to the Art Gallery Tender Evaluation Committee members?---I think we submitted it, yeah, we took copies I think. We would have.

And these – before you attended the meeting you were asked a number of questions and you needed to – part of the exercise was to answer the questions that you were asked. Is that right?---Yeah, this is the response.

That's right?---Yeah.

40 And so you see there in your own words describe the solution being offered and you've got Kings offered three solutions, Verint, Pelco and Dedicated Micros, our preferred solution is the Pelco Endura system. Do you see that?---Yes.

Who wrote that – who wrote the answer to that question, that is question 1? ---It could have been me.

So if you wrote it and you would have read it wouldn't you before you – before the meeting? Correct?---Glanced at it, yes.

Well reading it or glancing at it you would have known that Kings preferred solution as recorded was the Pelco Endura system. Correct?---Yeah, that's what we've said, yes.

10 And if you go to page 34 and item 2, question 2, you have made various representations one of them being that the whole contract would be completed by 24 August. Is that right?---That's what it says, yeah.

Do you know if you wrote that part of it?---I don't know where we got this information or why that date.

No, I'm asking do you know if you wrote it, that's what I asked?---I could have, yeah.

20 Okay. The contract in fact wasn't completed by 24 August was it?---No. I don't know when we ended up finishing out of there, but - - -

Well, it was months after wasn't it?---It could have been, yes.

But you don't know?---I don't know the date, no.

Well, forget the date, it was months after, is that correct or you don't know? ---I would assume so, yeah.

30 And why would you assume so?---I know that date probably came and went but we had some difficulties.

Now, at the meeting did you give any statements to - did you or anyone else from Kings give any statements as to why Kings was dropping your price from 2.69 million for the Pelco Lenel solution to 2 million?---Oh, I can't recall.

Let's go to page 41 and look under the heading "Our pricing". Do you see that?---Yes.

40 Who wrote that?---Oh, I probably compiled it.

I beg your pardon?---I probably compiled it.

THE COMMISSIONER: Do you remember that you wrote it or are you just working this out by trying to reconstruct what occurred?---I can't recall writing it but I probably did write it.

Who did you discuss it with once it had been completed?---Probably our tender team.

And that included Mr Diekman?---Yeah, Mr Waring.

Mr, Mr Waring, Mr Dunphy?---Yes.

Anyone else?---Not that I recall.

And they were all satisfied with this were they?---(No Audible Reply)

10 Were they?---Well - - -

You won't find the answer in the document, you don't have to look at it?
---Satisfied?

Yeah?---We would - - -

You were all, they were all happy that you'd hand over to the Art Gallery
what is stated in this document?--- (No Audible Reply)

20 You won't find the answer in the document?---No one, no one said anything
or complained about it.

MR STRICKLAND: In that - in the fifth dot point under that heading "Our
Pricing" what is recorded is "Priced using version 1, version 2 provides
significant cost savings," do you see that?---Yes.

And what Kings was representing there was that the original bid was priced
using Endura version 2 but the - - -

30 THE COMMISSIONER: One.

MR STRICKLAND: Version 1 I'm sorry, I withdraw that. What you were
representing there was that the original bid was priced using Endura version
1 but your revised \$2 million bid was based upon Endura version 2, correct?
---I, I assume so, yes.

THE COMMISSIONER: No, don't assume anything?---No.

40 That's what it says doesn't it?---Well, I assume that's what they've meant,
yes.

MR STRICKLAND: You say they but I thought you said that you had had
a hand or had actually written this?---Well, with everyone's help.

THE COMMISSIONER: With everyone's help, is that what you said?
---Yes.

MR STRICKLAND: Well, that is what that statement means doesn't it, that's all I'm asking you to either accept or reject?---Mmm, it reads that, yes.

Yes. There's no other, there is no other way of reading that is there?---No.

And indeed, I want to suggest to you that at that meeting it was represented to the Tender Evaluation Committee for the Art Gallery that Kings was presenting a new version of Pelco Endura as part of its revised bid, that is
10 the new version being version 2, that's right, isn't it?---I'm not sure.

THE COMMISSIONER: Oh, come on, Mr Roche. How can you be not sure?---Well - - -

Was it - were the Art Gallery representatives at this meeting told that you were now presenting the bid based on Pelco Endura Version 2 whereas you had originally based your bid on Pelco Endura number 1 and because you were basing it on Endura number 2 there were large cost savings so you could reduce the price. Is that what you told the Art Gallery representatives
20 at this meeting? Not you someone else from Kings?---I don't know if we communicated it like that or not, I can't recall.

You don't know?---Long time ago.

Well what explanation did you give to the Art Gallery for reducing the price?---I don't know whether we gave an explanation, I don't - - -

MR STRICKLAND: Did you just say you don't know whether you gave an explanation, is that what you said?
30

THE COMMISSIONER: To the Art Gallery.

MR STRICKLAND: Yes. To the Art Gallery?---Mmm.

Again, you have to speak up I'm afraid otherwise it can't be heard?---I can't recall whether we did or not, yeah.

Look there's no doubt that - you see this entire page or most of it is an explanation to the Art Gallery as to why you've reduced your price isn't it?
40 ---Sorry, why we reduced our price?

THE COMMISSIONER: Yes?---That's right.

The price has originally tendered and the price as put at the meeting?---Yeah.

MR STRICKLAND: Do you agree with that or not?---I, I didn't do anything with the pricing to get to the, you know, so I don't know, you know - - -

THE COMMISSIONER: That's not what you're being asked?---Whether that validates it or not, you know.

MR STRICKLAND: I, I didn't hear the answer I'm sorry?---I'm uncertain.

10 THE COMMISSIONER: No. You said - he said he had nothing to do with the pricing, words to that effect?---Ah hmm.

MR STRICKLAND: See what's - you've written there the Australian Pelco representative was in China during the tender period. Do you see those words?---Yes.

And why - what was the purpose of writing that in this document?---I don't know, I think it's something Charlie was trying to get a hold of him or something.

20

Yes. But why, why was that - why did this form part of this document? Why did that need to be - why did that bit of information need to be conveyed to the Art Gallery?---Not sure what importance it plays.

THE COMMISSIONER: But why did it have to be - why did you need to tell the Art Gallery about this, that's the question you're being asked?---I don't know why we needed to tell the Art - - -

You wrote it?---Other people giving me information.

30

But why put it in? Why would the - - -?---I don't know.

- - - Art Gallery be interested in knowing that the Pelco representative was in China during the tender period?---(No audible reply)

Why did you think the Art Gallery would be interested in that?---They probably weren't, I don't know.

So why did you put it in?---(No audible reply)

40

Well one reason jumps out at one this was an excuse for an explanation for why you tendered on Pelco Endura Number 1 Version which you told them you had and you now had heard that you could tender on Pelco Version number 2. Isn't that why you told them about the man being in China?---Uncertain (not transcribable)

MR STRICKLAND: Do you remember what Mr Paul's reaction was at the meeting when Mr Diekman said that he preferred solution for Kings was the

Pelco Endura Version 2 Solution and that you were dropping your price to \$2 million?---I can't recall what his reaction was, no.

What, can - do you recall the reaction or any questions from the tender of - other tender evaluation committee members from the Art Gallery about the news that - or the revised bid that you were presenting at that meeting?--- Don't know what they said.

10 Do you remember what their reaction was?---I think they wanted us to go away and write it, put it in writing or something.

Okay. Did anyone tell you that it was inappropriate to put in a reduced bid on a different solution?---I can't recollect whether anyone did or not.

THE COMMISSIONER: The statement in this document priced using version 1, version 2 provides significant cost savings is not true is it?---I don't know, sorry.

20 Well what's not true is that it wasn't priced using version 1 was it?---I didn't look after pricing.

It wasn't true that it was priced using version 1 was it?---I don't know what pricing we used.

Mr Strickland showed you the tender, the original tender. He showed you that it was priced on the basis of Pelco version 2, Endura 2. Do you remember that?---I saw it, yes. I know what he's referring to.

30 So what you were saying in this document which is the tender proposal interview was not true was it?---I don't know.

Yes.

MR STRICKLAND: Is it the case that Kings Security misrepresented to the Art Gallery Tender Evaluation Committee the fact that they were putting in a revised bid based on Pelco Endura version 2 and that their original bid was based upon a different version of that product?---Misrepresented?

40 Yes? Do you understand - - -

THE COMMISSIONER: We can use the word lied if you like?---I don't know what the difference is as to what, you know, we offered what we offered, an alternative product.

MR STRICKLAND: My suggestion to you is that Kings mislead the Tender Evaluation Committee as to why it was reducing its price from \$2.69 million or thereabouts to \$2 million. Do you agree with that or not?---No, I don't.

Do you accept even now that there was any misrepresentation whether deliberate or innocent of the Art Gallery about anything in relation to what was said or presented at that meeting on 27 February?---I can't recall everything that was said at that meeting.

That's not what I'm asking you. Looking at it now do you accept or do you believe that Kings made any misrepresentation or did anything misleading or lied at that meeting?---I don't believe so.

10

You don't believe so?---No.

Well can I ask you this there's no doubt is there – let's just – there's absolutely no doubt that when you presented your original bid it was based on version 2 of Endura, Endura version 2 wasn't it, because it's in the document that I showed you? Do you accept that or you don't accept that? ---Whether we're writing 2, you know, I think – that was just the offer, you know, what was it priced I don't know.

20

That's not what I'm asking. I'll move on. Can the witness please be shown - could the witness be shown AG2, AG2, pages 27, pages 27 through to 31.

THE COMMISSIONER: Mr Smith, have you seen these before?

MR SMITH: Yes, I do have an application to make in respect of them.

THE COMMISSIONER: Yes.

30

MR SMITH: It's similar in respect of Exhibit R5, that is that on page 28 through to 31 in each of the schedules the column headed "Description" be suppressed.

THE COMMISSIONER: I think -sorry, I am afraid I didn't take a note of what you said. Do you mind just repeating that please.

MR SMITH: Yes. In each of the schedules on pages 28 through to 31 I ask that the second column under the heading "Description" be suppressed and there is one other matter, schedule 1B against item 9 in the third column, do you have that, Commissioner, immediately under the price ex GST - - -

40

THE COMMISSIONER: Yes.

MR SMITH: - - - there's a reference to a system starting with .

THE COMMISSIONER: Yes. That will be suppressed.

MR SMITH: And while I'm on my feet, Commissioner, while I was making my earlier application I mentioned the name of that system.

THE COMMISSIONER: Yes. The reference to the name of the system - do you want me to mention it or, or not?

MR SMITH: If it could be identified by starting with and - - -

THE COMMISSIONER: All right. And that, that should be deleted from the transcript.

10 MR SMITH: Thank you, Commissioner.

THE COMMISSIONER: The name of the, the name of the system concerned should not appear in the transcript at all.

THE NAME OF THE SYSTEM CONCERNED SHOULD NOT APPEAR IN THE TRANSCRIPT AT ALL

20 MR SMITH: Thank you, Commissioner.

THE COMMISSIONER: And the - Mr Strickland, the first - pages 28 to 31, the second column, any objection to that?

MR STRICKLAND: No objection.

THE COMMISSIONER: No. The application is granted. There will be a suppression order sought by Mr Smith.

30

IN EACH OF THE DOCUMENT R5, THE SCHEDULES ON PAGES 28 THROUGH TO 31 THE SECOND COLUMN UNDER THE HEADING "DESCRIPTION" WILL BE SUPPRESSED

THE COMMISSIONER: Yes, Mr Strickland.

MR STRICKLAND: I've shown you what's on the top of the document, its handwriting, is the Kings Security revised schedules. Do you see that?

40 ---Yes.

And is that your signature on the bottom of pages 27 through to 31?---Yes.

I tender those pages headed Kings Security Revised Schedule.

THE COMMISSIONER: Yes. The document headed Kings Security Revised Schedules will be marked R6 and admitted as an exhibit.

**#EXHIBIT R6 - DOCUMENT ENTITLED "KINGS SECURITY
REVISED SCHEDULES" DATED 23 FEBRUARY 2009**

THE COMMISSIONER: Do you want to continue or do you think is an appropriate time?

10 MR STRICKLAND: Could I just finish with this document then I'm happy to - - -

THE COMMISSIONER: Certainly.

MR STRICKLAND: Thank you. Now, this document's also dated 23 February, 2009, do you see that?---Yes.

Is that the date that you prepared it?---It's probably the original using the original one.

20 So is - - -

THE COMMISSIONER: Is it the date you prepared it is the question? ---No. I think - - -

Mr Roche, is this the case, if you look under the heading "Pricing", can you see that?---Yes.

30 And you look - there's some figures but if you look in the, in the words under "Tender total sum price" in words it's got two million nine hundred and fifty nine thousand dollars in words?---Yeah.

And the same - and you've got the same date there. Is it the case that you simply used this schedule, made some amendments but forgot to or did not delete other matters as perhaps you should have, is that right?---It looks that way, yes, yeah.

40 Now, I know you signed this document but did you, did you have any hand in - well, I withdraw that. Can I suggest this, if you go to page 31, if you look at item 22 which is headed "Cost of failover server"?---Ah hmm.

The price there is \$10,000 and the similar item 22 in your original bit was \$144,000, will you accept that or would you like to have a look at the - - -? ---No, I, I think it's, yeah.

MR STRICKLAND: You accept that?---Yeah.

Apart from that one difference - - -?---Ah hmm.

- - - there is in the itemised schedules there is - every other price remains the same?---Right.

Does that accord with your recollection that the only - what the only item that was changed was that item 22?---I can't even recall us changing the item but it is different.

10 THE COMMISSIONER: Mr Smith, there was some reference to the parts of the paragraph that were deleted and it doesn't seem to me that you're really interested in that but in case you are I'm giving you the opportunity to have that suppressed.

MR SMITH: Thank you, Commissioner, but you're correct, no.

MR STRICKLAND: So what I wanted to ask was this at the time you signed this document you are - you have formally put in a revised price of \$2 million. Correct?---Right.

20 And that's a \$690,000 reduction from the original bid in relation - for the same solution, that is Lenel Pelco. Do you agree with that?---Yes.

Of that item 22 is the only item in the schedules reduced and that's a reduction of \$134,000?---Right.

So you've got more or less if you - leaving that aside you got a \$560,000 reduction of the price on all other matters leaving aside item 22. Do you follow?---Yes.

30 Do you know whether Pelco had offered to reduce the price from the original pricing they had given Kings?---I don't know.

You don't know. That's all I have.

THE COMMISSIONER: Yes. The Commission will adjourn until 10.00am tomorrow.

AT 3.57 THE MATTER WAS ADJOURNED ACCORDINGLY
[3.57pm]

40