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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

Reference: Operation E09/350

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 27 AUGUST, 2012

AT 10.11AM

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THE COMMISSIONER: Mr Strickland.

MS GRAYCAR: Graycar, counsel. I seek leave to appear for, instructed by McCabes for Businesslink and Mr Robert Smith.

THE COMMISSIONER: Mr Robert?

MS GRAYCAR: Smith.

10 THE COMMISSIONER: Smith.

MS GRAYCAR: Who's been summoned to appear on Thursday.

THE COMMISSIONER: Yes. Very well. You have leave.

MS GRAYCAR: Thank you.

THE COMMISSIONER: Sorry, is someone else here?

20 MR CHRYSOSOTOMOU: Commissioner, I'm Chrysosotomou, C-h-r-y-s-o-s-o-t-o-m-o-u, I seek leave to appear for Mr La Greca.

THE COMMISSIONER: Yes, you have leave.

MR STRICKLAND: Just a couple of administrative matters, Commissioner; first could I just hopefully assist those at the bar table with the witnesses we propose to call for the final three days, today and I understand we're sitting until 4.00pm today only but today we'll be calling the following witnesses hopefully in this order, Mr Byrne, Mr Guilfoyle, Mr  
30 La Greca, Mrs Newman, i.e. Mrs Diekman and Mr Hingerty. Then on Thursday and I'm not sure of the order on Thursday but we can alert people on Wednesday but the following witnesses will be on Thursday; Mr Marinucci, Ms Tregeagle, Mr Agnew, Mr Robert Smith and possibly Mr Kuipers he's AAH and then on Friday any remaining witnesses from the Thursday list together with Mr Roche and Mr Paul and I, not anticipate we will finish all those witnesses in those three days.

40 Could I clarify one other matter, the - in relation to the scope of the inquiry or could I seek clarification of it from you, Mr Commissioner, the, the scope of the inquiry involved and what might be called as the power (not transcribable) segment has been withdrawn, however the scope in relation to Kings collusive tendering for New South Wales Public Authorities is still on foot. One document in evidence relating to that document overwrites as both of those matters and that is Exhibit 1 tab 79 which is a quotation provided by Mr Diekman on Mr Hingerty's letterhead on MJH Installations letterhead, sorry MJH Security Installations letterhead to a public authority being Ageing Disability Department, in my submission that is still forms part of the collusive tendering part of the inquiry.

THE COMMISSIONER: Yes. The scope should be understood as including that, those allegations now mentioned by Mr Strickland.

MR STRICKLAND: Thank you. The first witness will be Mr Byrne. Over the break some inquiries were conducted of Mr Byrne in relation to any other relevant documents concerning the matters that he was giving evidence about and three - or a number of different documents have been provided and what I had in mind, Commissioner, was I'll tender those now and I'll ask Mr Byrne about them now. I have not spoken to Mr Byrne since he left the witness-box, I'd ask him about them now and then as I understand Mr Lloyd will continue his cross-examination of Mr Byrne.

THE COMMISSIONER: Yes. Mr Lloyd, you have no objection to that?

MR LLOYD: None at all.

MR STRICKLAND: Could I tender as one bundle a document that commences with a memorandum from Mr Byrne dated 20 May, 2008 and attached to it is a Kings tax invoice, a payment record and a security merchant's quotation. I tender that document as a single bundle.

THE COMMISSIONER: May I just have the documents please. It seems to be five documents, Mr Strickland.

MR STRICKLAND: That's, that's correct.

THE COMMISSIONER: Yes. Exhibit 216 is a bundle of five documents, the last of which is a memorandum from UWS to the purchase and Tender Board dated 20 May, 2008.

**#EXHIBIT 216 - BUNDLE OF 5 DOCUMENTS, THE FIRST OF WHICH IS A MEMORANDUM TO UWS TENDER BOARD DATED 20 MAY 2008**

THE COMMISSIONER: It's from Mr Byrne?

MR STRICKLAND: That's correct.

THE COMMISSIONER: Yes, Mr Strickland.

MR STRICKLAND: I tender as a bundle, a bundle of, a bundle of documents, the last of which is a letter from ISIS Projects to Mr Warne, W-a-r-n-e, of University of Western Sydney dated 29 November, 2007.

THE COMMISSIONER: A bundle of documents that appears to be four documents, is that right?

MR STRICKLAND: That's correct.

THE COMMISSIONER: Yes. Exhibit 217 is a bundle of four documents, the last of which is a tender by ISIS dated 29 November, 2007 addressed to Mr Warne.

10

**#EXHIBIT 217 - BUNDLE OF 4 DOCUMENTS, THE LAST OF WHICH IS A TENDER BY ISIS DATED 29 NOVEMBER 2007 ADDRESSED TO MR WARNE**

THE COMMISSIONER: Yes.

MR STRICKLAND: Can I just have one other piece of, do one other piece of housekeeping. Could I tender, there should be an addition or perhaps - I  
20 withdraw that. The document behind Exhibit 1 tab 6 is incomplete and I wish to tender a complete document in relation to that. It's an email from Mr Cunningham to Mr La Greca attaching some schedules and the new document which I wish to replace the old one contains pages 23 to 34 so if I could tender that email in substitution for the old Exhibit 1, tab 6.

THE COMMISSIONER: Well, this is a, these are two emails, are they, one having attachments?

MR STRICKLAND: That's correct.

30

THE COMMISSIONER: The bundle of documents including two emails, the last being from Mr Cunningham to Mr La Greca of 11 April, 2007, and the other email from Mr Diekman to Mr Cunningham, which seems to be undated, Mr Strickland, is it?

MR STRICKLAND: That's correct.

THE COMMISSIONER: Undated email which has attached several  
40 schedules, that bundle of documents will replace Exhibit 1, tab 6.

**#UPDATED EMAIL WITH SEVERAL ATTACHED SCHEDULES WILL REPLACE EXHIBIT 1, TAB 6**

MR STRICKLAND: Thank you.

THE COMMISSIONER: Yes, Mr Strickland?

MR STRICKLAND: Commissioner, before I call Mr Byrne, I thought it would be helpful just for a couple of minutes just to outline what was a very confusing piece of evidence. Might I do that now, because then I think it will be clear to you I hope before this witness gives evidence, Mr Byrne's not here I take it? I wonder if Mr Byrne could leave, and Mr Guilfoyle. I thought I might just do this, Mr Commissioner, because I think it will clarify something which otherwise perhaps has been confusion and may waste time. I just simply want to refer you on to some documents, that is Exhibits  
10 45, 51 and 216.

THE COMMISSIONER: Yes, Mr Strickland?

MR STRICKLAND: This is what I understand the situation to be. In, if you look at Exhibit 216, on 4 December, sorry, Exhibit 216 first page, the memorandum, the second-last paragraph of the first page of the memorandum refers to a 4 December '07 audit where it's discovered that there was insufficient hardware to commence the rollout, that's of all the access control across all the campuses, what's been described as the large  
20 contract. Then- - -

THE COMMISSIONER: Sorry, I'm not with you.

MR STRICKLAND: You're not with me?

THE COMMISSIONER: That's the document you put in today?

MR STRICKLAND: That's correct.

30 THE COMMISSIONER: Yes. Sorry, where are you reading from?

MR STRICKLAND: Page, first page, it's the memorandum from Mr Byrne to Mr Banano.

THE COMMISSIONER: Yes.

MR STRICKLAND: Second-last paragraph of page 1. The reference on 4 December to an audit. Do you have that?

40 THE COMMISSIONER: Yes, yes.

MR STRICKLAND: Then if you go to Exhibit 45 at page 728, there should be an email from Mr Byrne to Mr Paul. Do you have that?

THE COMMISSIONER: There's an email from Mr Byrne to Dan.

MR STRICKLAND: Yes, that's correct, an email from Mr Byrne to Dan.

THE COMMISSIONER: Yes.

MR STRICKLAND: And then if you look at paragraph 3 you refer, you'll see that there is a request for a full procurement list of what is recommended and the total cost to the University of the purchase of this equipment. And that's an email, if you go to page 727, it's an email from Mr, bottom of page 727, from Mr Byrne to Mr Paul of 13 December, i.e. some nine days after the audit.

10 THE COMMISSIONER: Yes.

MR STRICKLAND: And then if you go to paragraph, page 726 which is an email from Mr Paul to Mr Roche which includes the writing of both Mr Roche and Mr Paul, paragraph 3 in 726 is an answer to the question from Mr Byrne to Mr Paul relating to what's referred to as the procurement list of what's recommended, that is, that is what might be described as the additional equipment. Does your Honour see that?

20 THE COMMISSIONER: Yes.

MR STRICKLAND: And it's my understanding that what's on page 1 at 725 is the costings for that additional equipment. Then if you go to Exhibit 71, I'm sorry, Commissioner, if you go to 51 - - -

THE COMMISSIONER: 51 of what?

MR STRICKLAND: Exhibit 51.

30 THE COMMISSIONER: Yes.

MR STRICKLAND: You'll see that that is a email from Mr Paul to Mr Roche copied to others including Mr Byrne dated 19 December where Mr Byrne authorises to issue the following, I beg your pardon, Mr Paul issues the following instructions to Kings and he is authorised to do so by UWS. So then at paragraph 3 which is page 741 of Exhibit 51, there is, there is a reference to the attached additional equipment revised, do you see that?

40 THE COMMISSIONER: Yes.

MR STRICKLAND: And then if you go to the attachments you'll see there's a reference to it on page 1 where it's got from, to, cc, date, attachment, there's a reference to the additional equipment revised.

THE COMMISSIONER: Page 1 of what?

MR STRICKLAND: Exhibit 51, page 741, at the top of the email there's a reference to attachments.

THE COMMISSIONER: Yes.

MR STRICKLAND: And you'll see there's one of the listed attachments is additional equipment revised.

THE COMMISSIONER: Progress claim.

10 MR STRICKLAND: 44.71 kilobytes. And then if you go to page 746 you'll see that is the document attached to the 19 December email - - -

THE COMMISSIONER: Yes.

MR STRICKLAND: - - - which is additional security equipment requirements.

THE COMMISSIONER: Yes.

20 MR STRICKLAND: And you then, in my submission, need to match page 746 with page 725 on Exhibit 45 and that's, that's our case, that's how we put it.

THE COMMISSIONER: Well, what's the conclusion do you say?

MR STRICKLAND: Well, that, that, what is - - -

THE COMMISSIONER: They're to match.

30 MR STRICKLAND: That's right. Kings is additional equipment pursuant to the UWS's request to have additional equipment to make the system work, what has been supplied in the Kings additional equipment list is that contained on the right-hand column of Exhibit 45.

THE COMMISSIONER: Yes, and therefore?

MR STRICKLAND: And therefore that, that was proposed, that, those prices were - the prices that Kings supplied was, were the prices proposed by Mr Daniel Paul.

40 THE COMMISSIONER: Yes. Pursuant to what? Pursuant to a separate contract or part of the main contract?

MR STRICKLAND: Well, it's part, it's part of - in my submission it's part of an agreement to provide additional equipment necessary to fulfil the large contract. Whether it be, whether it's in a variation to the contract or a, or a new contract is immaterial. What is clear from the chain of documents is that UWS required additional equipment to fulfil the original contract and Kings were authorised to supply that as per Exhibit 51 and they did so in

the, at page 746 with the additional equipment and they were paid, and they were paid accordingly.

THE COMMISSIONER: And you're saying that the contract in relation to the additional equipment had nothing to do with the ISIS contract.

MR STRICKLAND: We don't know whether it had anything to do, we don't, the, all the documents, we don't have all the documents at our hand but that the equipment may or may not have included the additional 61  
10 rooms for ISIS.

THE COMMISSIONER: Twenty-one.

MR STRICKLAND: An additional 21 rooms or 20 rooms for ISIS but that's - what we do know is that pursuant to the audit there was a request for additional equipment and Kings were required to in a sense fill the order for that additional equipment and they did so. What we say is they did so having suggested a bundle of prices on the 15 December, that's Exhibit 45, they were then suggested to increase those prices by Mr Paul and they did  
20 so. That's, that's, that's how we understand it.

THE COMMISSIONER: Right.

MR STRICKLAND: I just wanted to put it in those terms now. So I call Mr Byrne.

THE COMMISSIONER: Mr Byrne, the - you previously took an oath to tell the truth didn't you?

30 MR BYRNE: Yes, Commissioner.

THE COMMISSIONER: That oath still applies so you're still under oath as you sit there and I made a section 38 order as regards to you I think.

MR BYRNE: No, sir, you didn't.

THE COMMISSIONER: No, you didn't, I didn't, that's right. Yes, Mr Strickland.

40



MR STRICKLAND: Could the witness please be shown Exhibit 216 that's the most recent document being his memorandum and Exhibit 45 and Exhibit 51?---Okay.

Mr Byrne, can I take you please to your memorandum which you wrote to Mr John, is it Banano?---Banano, sir, yes.

10

Do you recognise that as your memorandum?---Yes, I do, that is my memorandum.

And have you had a chance to look at that over the last couple of weeks? ---Yes, I have.

And are you satisfied it's accurate?---That is correct.

I just want to take you please to the first page which is headed  
20 'Background'. You refer there to the original contract being for the installation and maintenance of the Concept 4000 equipment which Kings won and you refer to their bid for 794,100 excluding GST. Is that correct? ---That's correct.

And then you refer in the next paragraph to an audit that was taken out on the 4 December 2007 by UWS and Kings. Were you part of that audit? ---No, my staff were.

Okay. And you discovered as part of that audit there was insufficient  
30 hardware to actually commence the roll out of the access control system across all campuses, is that right?---That's correct.

Okay. So you then required inventory of, of equipment to make sure that you did have sufficient hardware to roll out the system, is that correct? ---That is correct.

And when you say hardware what, what kind of, in broad terms can you describe what equipment and hardware you were requiring?---We were  
40 requiring a range of, of equipment from door controllers, to swipe card readers, to passive infrared PIRs, basically a - almost complete kits for buildings and rooms and a large amount of it.

Okay. Sir, if you go please to Exhibit 216 the very last two, the last documents which is two pages of security merchant quotations. Do you see that?---Yes, I see that.

And do they represent the - that's the equipment that was purchased in December '06 that - - -?---Sorry, just excuse me for a moment. Yes, that would be correct.

So this is the equipment that the UWS already had at the time the contract was awarded to Kings. Is that correct?---That is correct.

But you realised that that equipment was insufficient to commence the rollout. Is that right?---That is correct.

10

Okay. Okay. So can I now take you please to Exhibit 51, which is an email from, the front page of it is an email from Daniel Paul to Peter Roche, copy to you. I'm sorry, I beg your pardon, before I do that, I'm sorry, can you go to Exhibit 45, which is, the front page of which is an email from Daniel Paul to Peter Roche. Do you have that?---I do.

And then just go please to page 727?---Yes.

20

And at the bottom of that page, at the bottom of that page there's an email from yourself to Daniel Paul, copy Mr Guilfoyle, dated 13 December, '07. Is that right?---Yes.

And you ask a number of questions. Item 3 of that is "A full procurement list of what is recommended and the total cost to the University of the purchase of this equipment. This must be provided prior to approval to purchase is provided." Does that relate to this additional equipment we've been referring to?---Yes.

30

And if you look at item 1 on that email, the same email, it's got "Updated cost schedule, taking into account the extra 21 rooms at Bankstown." Do you see that?---Yes.

Is that, did the new, if we can call it the new equipment?---Ah hmm.

Did that new equipment include the 21 rooms at Bankstown, do you know? ---Sorry, just let me read it.

THE COMMISSIONER: I can't find this email. Did you say Exhibit 45?

40

MR STRICKLAND: Yes, it should, Exhibit 45 has four pages, 725 to 728.

THE COMMISSIONER: Yes.

MR STRICKLAND: Do you have that?

THE COMMISSIONER: Yes.

MR STRICKLAND: And then if you go to 727- - -

THE COMMISSIONER: Yes.

MR STRICKLAND: - - -the very bottom, right at the bottom of the page, there's an email from Adam Byrne to Daniel Paul?

THE COMMISSIONER: Yes.

10 MR STRICKLAND: Do you have that?

THE COMMISSIONER: Yes.

MR STRICKLAND: And then the body of it is at 728.

THE COMMISSIONER: Yes. So what is the question of Mr Byrne?

20 MR STRICKLAND: The question is, does the, paragraph 3 of that email refers to "A full procurement list", you want a full procurement list. Does that include the 21 rooms or is it separate from it or, or do you not recall?  
---I, I, I don't recall, but there was separate, there was a separate amount for works undertaken at Bankstown around that time.

Okay.

THE COMMISSIONER: So is the full procurement list intended to cover additional stock?---It was, sir, yes.

30 It didn't include the stock presently owned by the University?---Ah, the, the audit identified the stock that was current and then what was required so- - -

This is the additional material?---It is the additional equipment that was required, sir.

MR STRICKLAND: Okay. Thank you. Now, then if you go to Exhibit 51 you'll see that there's an email from Daniel Paul to Mr Roche but you are copied in on that email. Do you see that?---Yes, I see that.

40 And there are three, there are three attachments to that email. Do you see that?---(No Audible Reply)

Just, sorry, look at, look at the top of Exhibit 51, the top of page 741- - -?  
---Yes.

- - -under the heading Attachments?---Oh, sorry.

Do you see that?---Yes, I see that.

And it's, and the email states that three documents are attached to it?

---I see that.

Paragraph 3 of the body of the email says this, "In relation to the attached additional equipment revised, please proceed with the provision of items without delay." Do you see that?---I see that.

And it refers to a number of items?---Yes.

10 Now, are those items, I'm sorry, then go over the place, "Please supply and store as registered stock within the UWS nominated store for drawdown within the scope of the project." Do you see that?---Yes.

And that refers to the, what does that refer to?---That refers to the additional stock, from my recollection.

And, and, and that's what we referred to as the additional equipment to commence the rollout of the whole access control across all campuses?  
---That is correct, sir.

20 Okay. So if you then go to page 746 is that, do you recall receiving that document from Kings on page 746 and 747, being the inventory of items and the cost of those items being what we've referred to as the additional equipment, is that right?---Yes.

And you understood that that was the price that Kings were offering UWS?  
---That is correct.

30 Okay. Now, you said before that you, I think you said you believed that there may have been an additional cost in relation to the 21 rooms, do you see that?---Yes.

And if you go to page 743 of Exhibit 51 and just look at that matter, that's a, that's a letter from ISIS to Kings, do you see that?---Yes, I do.

And then if I ask you please to, and if you then, could I, could the witness please be shown Exhibit 217. Now, have you seen this document before - -  
-?---Yes, I have.

40 - - - or these documents?---Yes, I have.

And can you, if you just go to page 3 of those documents or before - what do you understand this document relates to, I'm talking about Exhibit 217?  
---This relates to a separate project and that is a project separate to the access control project, the main project, that was undertaken around the time that the main access project was, was underway and it related to building upgrades for common teaching rooms where we converted a number of spaces at our Bankstown campus into flat floor teaching space.

So this is, this relates, this the - I see, I understand. Is Bankstown also referred to sometimes as Milperra?---Yes, that's correct, the same, the same place, yeah.

Now, if you go to page 3 you'll see that there is a tender price break up, do you see that?---I do.

And there's a break up in relation to buildings 1, 5, 8, 10, 18, 20, 23?---I see that, yes.

10

And in relation to each of those there's a separate item for access and security services, do you see that? So for example building 1, look at item 1.7?---I see they are separate line items, yes.

And if you accept it from me that if you add up all the line items from access and security services from those buildings that I have mentioned, those, that is buildings 1, 5, 8, 10, 18, 20, 23, you arrive at the figure of \$61,800 plus GST, do you see that?---Yes, I do.

20

And then if - so if you go back to page 743 of Exhibit, if you go back to Exhibit 51 page 743 you can see that that, there's a reference to the contract sum in the letter between ISIS and Kings?---61,800 plus GST.

That's right. Are you aware of any other documents apart from Exhibit 217 and page 743 and 744 in Exhibit 51 that relate to the contractual works for the, the buildings and access control for the Bankstown campus?---No, sir, we've gone through all the documents currently in storage within capital works and facilities within the University and the original tender cannot be located.

30

So based upon those documents if you can go back to, if I can, if I can get you to put aside Exhibit 217 and look at Exhibit 216, have I got that?---Yes, I do, sir.

So the, on 18 December, '07, Kings sent the additional security equipment list. That's what I've shown you in Exhibit 51. Do you see that?---Sorry, sir, excuse me.

40

I'm just going back onto what I've asked you before, it's exhibit- - -?  
---Yes.

- - -51, pages 746, 747. Do you see that?---Yes, 18 December.

And then if you go to Exhibit 216 there's an invoice, there's a Kings invoice, it's clear it's a Kings invoice from the bottom of the page, in the top right-hand corner, can you see that?---Yes.

It's tax invoice 34023?---Yes, I have that.

And does that appear to be a Kings invoice, that's for 258,000 plus GST in relation to the equipment that's referred to as the additional security equipment?---Yes.

And then if you go over the page, it's not a very clear copy, we don't have a clearer copy, Commissioner, but can you tell us what that document is?

---That's an extract from Oracle. Now, Oracle is our financial system which logs and identifies the payment of invoices coming into the University.

10

Okay. And so does that, does that tax invoice on 8 January, I'm sorry to ask you this, that, that is a tax invoice in relation to the security equipment?

---The Oracle financials document identifies an invoice number 34023 which is the same document that you referred to a moment ago and it lists payment on 16 January, 2008 for the sum as per the earlier tax invoice from Kings.

Which itself is related to the document that they dated 18 December, '07?

---Yes, sir, the same thing.

20

Are you able to say now one way or another whether those items have any relationship to the 20 or 21 rooms?---(No Audible Reply)

Do you, do you understand that question?---Yes, I do, I do. It would appear as though they don't.

Excuse me, Commissioner. Yes, they're the additional questions I have.

THE COMMISSIONER: Yes, thank you. Mr Lloyd?

30

MR LLOYD: Thank you, Commissioner. Mr Byrne, I just want to show you a minute which the ICAC has not shown to you. You've had a chance to read that?---Oh, certainly.

And at the same time could be shown Exhibit 217?---Sorry, sir, I already have that.

You've got that. Okay?---Yes.

40

Likewise Exhibit 51?---I have that as well.

And looking at Exhibit 51, taking you to page 743, I think you've already confirmed to Counsel Assisting that the ISIS letter to Kings dated 7 December, '07, refers to works in the sum of 61,800. Correct?---Yes.

And as I understand the sequence of events, those works are reflected in Exhibit 217?---Yes, that is correct.

MR LLOYD: Particularly the items in the right-hand columns on the third and fourth pages of Exhibit 217 each for 8828?---Yes, that's correct.

They're all for access and security services?---That's correct.

We see the building numbers in each sub heading?---Yes, I see that.

And going back to page 743 of Exhibit 51 we see the same building numbers in the heading?---That's correct.

10

So we're referring to the same objects in each of these bits of correspondence?---It would appear that way, yes.

And just to finish the sequence which is why I wanted to show you this minute of the 15 January. You were present it would appear?---On the 15 January meeting, sir?

Yeah?---That's correct.

20 I just want to take you to item 5 - - -?---Ah hmm.

- - - where we see AB advised the quoted price of about 61k for the ISIS works is approved to be included as a variation under the access control contract - - -?---Ah hmm.

- - - as opposed to ISIS including it with their contract?---That's correct.

You were all agreed upon that as I understand that. Correct?---It certainly reflected in the minutes, that is the advice that I gave.

30

And that would be, appear to be reflected in the way it was costed because if we look at back at Exhibit 217 it appears to be document C in that series, it's a ISIS letterhead invoice. Are you with me?---Yes, sir.

Where on the second page of that item near the very end it would appear as though the actual price of 61,796 it's the very last entry is reversed?---That's correct.

40 Reflecting that the cost has gone over to the head contract. Correct?  
---Certainly reflected that it's no longer part of the project cost.

Sure. Indeed.

THE COMMISSIONER: The project costing which project?---Sorry, Commissioner, the project cost being the ISIS project cost.

That's the 21 Building?---That's correct, sir.

MR LLOYD: I tender those minutes.

THE COMMISSIONER: Yes. The minutes of the meeting of 15 January 2008 will be exhibit 218.

**#EXHIBIT 218 - THE MINUTES OF MEETING DATED 15  
JANUARY 2008**

10

MR LLOYD: Taking you back to your witness statement, do you have that with you or could it be with you - - -?---No, no, sorry I don't.

That was Exhibit 198 I think. I wanted to take you to one heading in your statement that's at paragraph 23 on page 8 of the document. Where you talk about prior poor workmanship of Kings Security.

THE COMMISSIONER: Sorry. Paragraph 23?

20

MR LLOYD: Paragraph 23. Under the heading 'Prior poor workmanship'?---Yes, sir, I have that.

As I understand it that was in relation to Kings earlier work installing Concept 4000 at those areas mentioned in these paragraphs?---It was an earlier project that was undertaken, yes.

Yes. Concerning Concept 4000?---Concerning Concept 4000.

30

So that was the product?---That was?

The product?---Yes, that's correct, sorry, yes.

The Concept 4000?---That was what was being installed.

Thank you. So any conversations you had with Mr Johnson for example in your paragraph 27, which is over on the next page, I then spoke with Leo Johnson about the matter?---Yes, I see that.

40

Clearly you were talking to Mr Johnson about the Concept 4000?---Yes.

I'm not trying to trick you?---No, no.

Fine, thank you. And over on the next page, 28, prior to awarding the contract to Kings Security UWS called Kings Security into a meeting to discuss the issue of their poor workmanship and Daniel Paul and Leo Johnson were present?---Ah hmm.



You outline what you can remember of the discussions of 29?---That's correct.

Then you talk about three items, just paraphrasing, (i) new people?---Yes.

(ii) inexperienced personnel?---That's correct.

And the third (iii) as it was a small job they didn't pay attention to it as they should have?---That's correct.

10

And then your conclusion that all the works were rectified to your satisfaction?---That is correct.

Okay. So as I understand it the issue was one of bad workmanship, that is personnel not product?---That is correct.

Thank you. I have nothing further.

20 THE COMMISSIONER: Yes, thanks. Any other questions for Mr Byrne? Mr Maher.

MR MAHER: Yes, Commissioner, I have a couple of questions (not transcribable)

Mr Byrne, my name is Maher and I represent Mr Roche?---Yes.

Do you still have your statement?---Yes, I do.

30 Can I ask you to turn to paragraph 55 which is on page 19 of your statement which relates to the (not transcribable)?---That's correct.

Do you recall when in the final week of October 2011 (not transcribable)?  
---Oh, I have no recollection at all.

Did you take a note of the conversation?---No.

If I suggest to you that the Melbourne Cup was on the Tuesday, 1 November?---That's, that's generally when it, when it occurs, yeah.

40 The first, the first Tuesday in November?---Yeah, I accept that.

Are you sure you were offered to fly up to Melbourne as part of this invitation?---As best as I can recall I was, yes, absolutely, it was, we're going down to the Melbourne Cup, would you like to come down with us.

Are you sure you weren't invited to Randwick Racecourse in Sydney and not to Flemington?---No, my understanding of the conversation was it was Melbourne.

How strong is your recollection of that?---Reasonable. It was surprising the invite was made because I was aware - reasonably strong because I was, I had some awareness that this investigation was underway, the industry was a chatter at the time in relation to this and I was surprised that it was made given that this investigation was, was underway.

10 Thank you. Mr Byrne, could I show you this document, I'll give a copy to Mr Strickland. This is an email, I'm sorry, do you have that document? It's an email from James Martin cc'd to David McMicking but the people it actually was sent to aren't nominated on it because we believe it's blind copied to them, is that a document that you've seen before?---No, sir, I've never seen that before.

Thank you. You see that it relates to an invitation to Randwick Racecourse?---Ah hmm.

And it was sent on Thursday, 27 October at 6.17pm?---Ah hmm, yeah.

20 Perhaps that document can be marked, Commissioner.

THE COMMISSIONER: Yes. The email from James Martin to - I'm not sure to whom, to whom, Mr Maher?

MR MAHER: That's so, Commissioner, it doesn't have the recipients. I presume they were blind copied CC.

30 THE COMMISSIONER: A letter from James Martin to unknown recipients CC to David McMicking of 27 October, 2011, is MFI 12.

**#MFI 12 - EMAIL INVITATION SENT TO ATTEND RANDWICK FOR THE MELBOURNE CUP SENT O 27 OCTOBER 2011**

40 MR MAHER: Thank you, Commissioner. I need to formally put to you, Mr Byrne, that you were in fact invited to Randwick Racecourse where you were to be taken to the function that's referred to in that email and you were going to have drink beverages paid for but no flight to Melbourne to see the Melbourne Cup?---As I, as I can say to you, sir, the recollection of the phone call was that it involved a trip to Melbourne.

Thank you?---That's the best I can put to you.

I'll move to another topic, Commissioner. You gave some evidence on 16 August in answer to questions, some questions from Mr Lloyd on behalf of Mr Daniel Paul that you, that Mr Paul was to be a go-between between Kings and UWS. Do you remember- -?---That's correct.

- - -using that expression- - -?---That's correct.

- - -or at least that expression being put to you. Another expression was interface. Do you recall that?---Yes.

Mr Paul was to be an interface between- - -?---Yes.

10 - - -Kings and UWS. Thank you. And could you go, please, to the minutes of the meeting of 19 November, 2007, which start at page 209 of the attachment to your statement, Exhibit 198.

THE COMMISSIONER: What page, I'm sorry, Mr Maher, I didn't get that. Page 198?

MR MAHER: No, it's Exhibit 198, Commissioner, it's page 209 the minutes start.

20 THE COMMISSIONER: Thank you.

THE WITNESS: I have that.

MR MAHER: Thank you. And if I could take it that that's a meeting that you attended?---Yes.

And on page 211 at item 35 it's an item that says, "Kings are instructed to ensure all", all is in capitals, "correspondence is copied to DP", which means Daniel Paul. Do you see that?---I do.

30 Can I take you to your statement again, this time to paragraph 34. Do you have that, Mr Byrne?---I do.

And do you see the sentence, "From the outset Kings Security was instructed to ensure that all", all is in capitals, "correspondence regarding the contracted works was copied to Daniel Paul, Peter Guilfoyle and I?" ---Yes, I see that.

Do you see that in your statement?---I see that.

40 Mr Byrne, do you think you're mistaken about the, that part of your statement that refers to Peter Guilfoyle and yourself having regard to the minute and the evidence that you gave in answer to Mr Lloyd's questions? ---No. When we started there was a discussion in relation to that and we asked that all correspondence be included, sorry, that we be included in all correspondence.

So do you say that the minute's incorrect in that regard?---(No Audible Reply)

MR STRICKLAND: Commissioner, I'm sorry, maybe I'm slow, I just don't, with the exception of the reference to SK in the minutes I just can't see the inconsistency. I mean- - -

THE COMMISSIONER: Well, Mr, I understand that, I mean I also don't, don't see how it's necessarily inconstant, so we're both, only Mr Byrne can answer the question. Mr Byrne? What is, could you just put the question again, Mr Maher?

10 MR MAHER: The question, Commissioner, is whether the minutes are incorrect in respect, insofar as they say that all correspondence is to be copied to Daniel Paul, there's no reference, all correspondence from Kings is to be copied to Daniel Paul.

THE COMMISSIONER: Can you explain what that, that minute refers only to correspondence be going to Daniel Paul and not to you and Mr Guilfoyle?---No, I can't, sir. I didn't make the minutes, I can't.

MR MAHER: Thank you, Commissioner. Just one last question. Kings  
20 performed the project to UWS's satisfaction such that they're still the system integrator five years on?---That's correct.

Thank you, Commissioner.

THE COMMISSIONER: So any other questions for Mr Byrne? Mr Strickland?

MR STRICKLAND: I have one matter. Do you have, still have Exhibit  
30 ---Yes, I have that here.

So you were taken to a third document which is the ISIS projects quotation or submission of prices. Do you have that?---Yes, I do.

Which is stamped 23 May 2008 by Capital Works?---Yes, yes, that's annexure C.

And I think you'll see that there's a - you were asked about on page 2 of that, thank you, annexure C to the security cost matter being 61,796. Do  
40 you see that?---That's correct.

And if you go to annexure D there is a payment by, sorry there's a tax invoice by Kings to UWS. Do you see that?---That's correct. Invoice number - - -

It's almost the same amount for 61,800 not 61,796?---Yes.

For the supply installation and commissioning of the Concept 4000 within the new common teaching rooms at Bankstown?---That's correct.

Is it your understanding that UWS directly paid Kings for that work?---Yes.

Thank you. Thank you, Commissioner. This witness could be excused.

10 THE COMMISSIONER: Yes. Thank you, Mr Byrne. Thank you for your testimony. You're discharged from the summons, you're free to go?

MR BYRNE: Thank you, Commissioner.

**THE WITNESS EXCUSED**

**[11.06am]**

THE COMMISSIONER: Mr Strickland.

20 MS LONERGAN: Commissioner, I call Peter Francis Guilfoyle.

THE COMMISSIONER: Mr Guilfoyle, you're not legally represented?  
---No.

MR GUILFOYLE: No.

THE COMMISSIONER: Have you been in this hearing room on other occasions?

30 MR GUILFOYLE: Yeah, two weeks ago (not transcribable)

THE COMMISSIONER: You, you've heard me explain to witnesses what their rights are?

MR GUILFOYLE: Ah hmm.

THE COMMISSIONER: Do I need to explain it to you?

MR GUILFOYLE: No.

40 THE COMMISSIONER: You know that I ask whether witnesses want me to make an order protecting them to the extent of their evidence can't be used in criminal or civil or disciplinary proceedings. Do you want me to make such an order as regards you?

MR GUILFOYLE: No.

THE COMMISSIONER: No. Right. Do you wish to give your evidence under oath or do you wish to affirm the truth of your evidence?

MR GUILFOYLE: I'll give it under oath.

THE COMMISSIONER: Can you swear Mr Guilfoyle in.

THE COMMISSIONER: Ms Lonergan.

MS LONERGAN: Could you please state your full name?---Peter Francis Guilfoyle.

10 And these microphones don't amplify, Mr Guilfoyle, so if you could keep your voice up?---Yes, sorry.

And everything you say is being transcribed?---Okay.

Mr Guilfoyle, you're employed as a contract officer at UWS?---Correct.

And you're still in that position now?---Correct.

20 And when did you start working at UWS in that role?---The 19 September 2007.

Thank you. And you have background in procurement, is that correct? ---Yeah, that's correct. I, I did six and a half years in the State Procurement.

Would you mind keeping your voice up? You speak very softly?---Sorry. That's all right. I don't have very good hearing. And in that role at State Procurement did you become familiar with processes that needed to be followed for Government tenders?---Yes, that's correct.

30 Was, did that have anything to do with your commencing your employment at UWS?---Yes, it did.

Right. And your role at UWS was at contract officer?---Yes, that's correct.

Do you recall commencing a role in relation to the large access control tender at UWS?---Yes, yes, I do.

And the stage at which you became involved in that process had the tender already been completed?---Yes, it had.

40 And were you appointed to a steering committee?---Yes, I was.

Who else was in that committee?---Adam Byrne, Daniel Paul, Peter Roche and Steve Kuryj I think his name was, Steve Kuryj.

Steve Khoury was from Kings?---Kings, yes, and Peter Roche from Kings.

And who was the manager of the steering committee if there was one?

---Well it was my understanding it was Daniel Paul he, he was the main person.

And who took the minutes of the meeting?---Daniel Paul did.

Now, do you recall whether a certain amount of equipment had already been purchased for the rollout of this particular contract prior to the first meeting that was held?---Yeah, that's correct, there was equipment purchased sometime before.

10

And do you recall at some point it became evident that the equipment was lacking in some respects?---Yes, that's correct.

And do you have any recollection now as to who was appointed, if anyone in particular, from the steering committee to manage how that further equipment would be acquired?---I remember it being discussed but I can't recall exactly what the, who was appointed and so on.

20

Thank you. Could the witness be shown Exhibits 43 and 45, please. Now, Mr Guilfoyle, you see that Exhibit 43 is an email from Daniel Paul to you, amongst other people at UWS?---Yes, yes.

And it's dated 19 November, '07. Do you see that?---

THE COMMISSIONER: 21, 21 that is.

THE WITNESS: It says 21 November.

30

MS LONERGAN: I'm sorry, 21 November, 2007?---Yeah.

And it attaches the minutes of a meeting on 19 November, '07?---That's correct.

And if you could turn to page 709 of the bundle, it's paginated in the top right-hand corner?---Yes, yes.

And, and you see item 35 on that page?---Yes.

40

You see Kings were instructed to ensure all correspondence was copied to DP, and it's the next part I want to ask you a question about, and conversely, all correspondence generated by DP/SCI will be copied to AB, PG, PR and SK?---That's correct.

Right. Now, PG, that's you in, in that context?---That's correct.

And what was the purpose of that requirement being minuted on your understanding?---Well, so that we all knew exactly what was going on.



Going on between Mr Paul and the contractor?---Yeah, effectively the three parties, Kings, UWS and Daniel Paul, yes, that's correct.

Were you aware that Mr Paul had ongoing, an ongoing friendship with Mr Diekman from Kings at the time you became involved in this contract rollout?---No, I wasn't.

10 And if you could turn to Exhibit 45, Mr Guilfoyle, you'll see that's, that's an email titled UWS Clarifications from Daniel Paul to Peter Roche. Do you see that?---Yes.

And you see it's dated December 2007?---Yes.

And you'll see a typescript at the top, "Peter, your quantity and price on the left, my suggested on the right." Do you see that?---Right.

"Also see your email below with comments in bold adjacent", I'm sorry, "With my comments in bold adjacent." Do you see that?---Right.

20 Now, have you been shown this email before?---Well- - -

Before, before you had contact with ICAC investigators or legal representatives?---No, no, I've never seen it.

All right. And can you turn to the second page of the email and you see that there's various strikings out of text and additional comments in bold?---Yes.

30 Do you see that? And how does that appear to you in terms of activity by Mr Paul in relation to Mr Roche's content?---Well, very unusual.

And when you say very unusual, what do you mean by that?---Well, the prices are going up.

Yes?---That's, that's, well, like, I never saw this so I had no idea that this sort of thing had gone on.

Were you shocked when you saw this email?---Yeah, I certainly was, yes.

40 And in terms of the price going up, what are you referring to there?  
---Well, it looks, it looks like the, the suggested price go up by about 20-odd thousand over what Kings were intending to charge us.

Right. And were you aware that Mr Paul was emailing Kings direct about pricing of this further equipment without copying in yourself or the other steering committee members?---No, I wasn't aware of that.

Was it your understanding that that emailing privately to Kings by Mr Paul was allowed?---Well, it, it, no, no.

No?---No.

I want to put you a number of things that Mr Paul said in his evidence at this public inquiry in relation to the reasons why Exhibit 45 exists, that is, that he had this email exchange with Kings about those, those items of equipment and the pricing of them and I'm going to ask you whether what Mr Paul said in his evidence is correct or accords with your recollection or not?---Right.

10

First of all, Mr Paul said at page 1021 of the transcript at point 10, "As a consultant sometimes my client instructs me to do things outside the rule" and there he's referring to the rule that the tender, the steering committee should be copied into correspondence. Mr Paul says, "As a consultant sometimes my client will instruct me to do things outside of that rule, to do whatever we need to do to make the project flow smoothly." Now, did you ever instruct Mr Paul to engage in this email correspondence with Kings? ---No, never.

20

Were you present at any discussion where Mr Guilfoyle and/or Mr Byrne were present - I'm sorry, where Mr Johnson or Mr Byrne were present where either of those gentlemen instructed Mr Paul to have this private correspondence with Kings about the new equipment?---No, never.

Are you aware of any reason why increasing the price in the way set out in this email, Exhibit 45, would be more likely to bring a product under warranty?---No.

30

Are you aware of any reason why prices of this nature would need to be increased because of drawings, schematic drawings, user manuals or as built drawings?---No, I'm not.

Excuse me, Commissioner. Were you at any time instructed - I'm sorry, did you at any time instruct Mr Paul to negotiate price for the equipment with Kings?---No.

40

Did you have any discussion with Mr Paul regarding whether the equipment in question should have been purchased direct from the wholesalers and not from Kings?---No, I've got no recollection of that.

Commissioner, is a convenient time? I need to discuss with Mr Strickland another matter?

THE COMMISSIONER: Yes, very well. We'll adjourn for five minutes.

**SHORT ADJOURNMENT**

**[11.18am]**

MS LONERGAN: Thank you, Commissioner. Just one more matter, Mr Guilfoyle. Could Mr Guilfoyle please be shown Exhibit 57.

Now, Mr Guilfoyle, this is a series of emails, it's not copied into you at any stage but I want to ask you some questions about the content of it and some questions about the circumstances. If you could have a look at page 813 which is the second page of the series and you see there's an email from Gary Meyers to Daniel Paul. Do you see that?---Yes.

10

Do you know Gary Meyers?---No, I never heard of him.

All right. And then you see Daniel Paul sends a reply to Gary Meyers and he copies in Paul Riordian, Charlie Diekman and Adam Byrne?---Yes.

See that?---Yes, I see that.

And he in that email sets out various matters including that he's been asked to source the purchase price for additional stock to complete the project. Do you see that?---Yes.

20

Do you recall being involved in any discussions with Mr Paul about - in which he was instructed to deal with Security Merchants to obtain some further equipment?---No, I don't.

Right. Then if you can go to the email above that one, it's from Daniel Paul to Gary Meyers and Charlie Diekman's copied in as well as Mr Riordian. See that?---Right, right.

30 Now is Paul Riordian a member of the UWS staff to your knowledge?---No, no, I don't know anyone by that name.

All right. And see Mr Paul's instructing Mr Meyers to please speak with Charlie prior to responding. Do you see that?---Yes, I see that.

40

And what I've - the question I want to ask you is did you instruct Mr Paul to have correspondence with Charlie Diekman and Mr Meyers to privately negotiate prices for the further equipment that's been discussed in this series of emails?---No, I did not.

Were you present when any of the others in the UWS steering committee gave instructions of that nature to Mr Paul?---No, I, no.

Thank you. Those are my questions, Commissioner.

THE COMMISSIONER: Mr Lloyd, do you want to ask him any questions?

MR LLOYD: Yes, Commissioner.

Mr Guilfoyle, the events that you've been talking about took place many years ago now?---Yes.

Is it fair to say your memory of conversations is incomplete?---I'd have to agree with that.

I take it you didn't make any notes of any of the conversations in these meetings at the time?---No.

10

As I understand it the situation was the only time you met Daniel were at these meetings of the steering committee?---That's correct.

And meetings were kept by Daniel Paul of what took place at the steering committee?---That's correct.

You were sent those minutes for correction?---That's, that's correct.

20

And as a person who had been involved in Government tendering for some years you read the draft of the minutes that were sent to you?---Yeah, that's correct.

And if anything was incorrect you would have made amendments?---That's correct.

And I just want to show you one as an example. Could you be shown Exhibit 43. There are several sets of minutes that comprise - - -

30

THE COMMISSIONER: It's better to mention the page, Mr Lloyd.

MR LLOYD: - - - this exhibit but I'll take you to the first one.

THE COMMISSIONER: Page 707? Page 707?

MR LLOYD: Page 705 is an attached email, do you see page 705, they're numbered, Mr Guilfoyle, in the top right-hand corner?---Right.

It's the first page of the series?---Yes, yes.

40

And it's an email from Daniel Paul to many including yourself on Wednesday, 21 November?---Right.

And it annexes, you can see after "Dear all" on this coversheet, "Further to our meeting on Monday, I'm pleased to issue the first set of what I'm sure will be many sets of minutes"?---Yes.

And then it refers, just before "Warm regards, Dan" at the bottom there's a note, "The scheduled meeting nominated for the third is in addition to the

need to get together prior. We are expecting to receive the programme, I'm happy to sit with Kings and offer guidance or answer questions if required"?  
---Right.

Do you see that?---Yes, I see that.

And that was Daniel Paul that was going to be sitting with Kings and answer questions, correct?---That's the way I'd read it, yes.

10 It wasn't going to be you, was it?---No.

And if Daniel Paul had sat with Kings and discussed things with them you would haven't have necessarily expected him to get back to you on every conversation he had with Kings would you?---No.

The minutes are annexed, they start at 707?---Right.

You read them?---I would have, at the time, yes, I would have read them, yes.

20

And if there was any correction we would have probably seen an email from you?---Either an email or, or it'd be corrected at the, the next meeting.

The meeting, the next - - -?---The meeting would be more likely.

Okay. In the same exhibit if you go a bit further on to page 718?---I finish at 709.

Do they?---Thank you.

30

There are minutes annexed to a email of 3 December?---Right.

Do you see that?---Yes, I see that.

And there to Mr Roche, Mr Byrne and yourself?---Right.

Attaching emails of the minutes of that meeting?---Correct.

40 And again, if you'd had anything to correct you would have corrected it by return email or at the meeting immediately thereafter?---Yeah, yes.

Correct?---Yeah, it was correct.

I just want to take you to the last item on those items, it's item 36?---Yes.

Can you just read that to yourself?---Yes, I've read it.

And just looking at it Kings were advised that “they can feel to utilise DP”, that’s Daniel Paul?---That’s correct.

“Contact DP and communicate with DP at any time, the objective is to ensure complete customer satisfaction”, correct?---That’s correct.

That’s your recollection of the width of communications that are allowed between Kings and Daniel Paul?---Well, I don’t, I don’t recall this item 36, but I, I would have read it at the time.

10

Well, you’re not doubting it’s accurate now, are you?---No, I’m not doubting the accuracy of it, no.

And I suggest to you that you weren’t expecting that every communication Daniel Paul had with Kings was going to be emailed to you. Is that fair? ---Well, it is, I ah, it, it, it, it is in, in, in some respects a conflict with the earliest advice about copying everybody else in.

20

It is. There’s a, there’s a conflict, isn’t there?---Yeah, mmm, yes.

This, this tends to give free rein and earlier it says, well, we’d better have every bit of correspondence. Fair?---Yes, it does, but it refers to customer satisfaction.

And the customer’s UWS?---That’s correct.

THE COMMISSIONER: But the email, that item says nothing about copying everybody in at all?---No.

30

So why is it in conflict?

MR LLOYD: One says copy him by email and the other says don’t.

THE COMMISSIONER: It’s a matter for argument, Mr Lloyd.

MR LLOYD: Just one aspect of your evidence, at the end there you were being referred to a diary communication between Daniel Paul and the wholesaler, that is the manufacturer of the product?---Right.

40

This wasn’t in, you weren’t taken to minutes about this. I want to show you as part of Exhibit 49 there are minutes of 17 December at page 730?---Right.

Again just for the record, these are minutes that were sent to you- - ? ---Correct.

- - -by covering email?---Yeah, correct.

You didn't correct anything?---Oh, I don't know, I don't know whether I would have corrected anything or not. I mean if there was something wrong or- - -

You would have?---I would have.

Okay?---But ah, but I've got no recollection of, of that.

10 And we see that at item 3 Kings are to provide a response to UWS questions relating to the Bankstown extra readers and schedule of rates.

THE COMMISSIONER: Not to provide, provided.

MR LLOYD: Provided, indeed, thank you, Commissioner. For SCI, that was Daniel Paul's company, correct?---Yes, that's correct.

20 Would coordinate the exchange trade back of single and two-door unintelligent controllers for intelligent four-door controllers. SCI to perform pricing exercise prior to processing. Also SCI to seek UWS approvals prior to processing. Are you with me?---Yes.

Well, SCI in performing the pricing exercise to your understanding would be approaching the wholesaler. Is that fair?---Yes.

Because you couldn't perform a pricing exercise without speaking to the wholesaler?---Yes, that's correct.

30 Likewise, do you know whether on this project extended warranties were provided by the wholesalers of products?---No, I can't recall that.

And do you know from your -- do you have tendering expertise or- - -? ---I've been involved in it for some time.

For a long time?---Yes.

40 And I think you'd agree with this, that often when one takes into account servicing costs it's going to be cheaper for an integrator or an end user like yourself, the University, to buy a piece of hardware through an integrator and not direct from a wholesaler because the integrator is going to have to bear the cost of servicing the item. Is that fair?---I- - -

Or you don't know?---I really couldn't comment on that.

Okay. I have nothing further.

THE COMMISSIONER: Yes, thank you. Does anyone else wish to question Mr Guilfoyle? Ms Lonergan.

MS LONERGAN: Mr Guilfoyle, do you still have Exhibits 43 and 45 with you in the witness-box?---I do, yes.

And you were taken by Mr Lloyd to Exhibit 43?---Thanks.

And it was a set of minutes of a meeting held on the 17 September. So if you can turn to page 722 of that Exhibit 43?---722. I'm finished seeing the both, sorry. What page is it 723?

10 722 Exhibit 43?---I only go up to 709. Here we are, 77, 772. 723.

722, yeah?---722, right.

Yes, 22?---Okay, that's fine. And Mr Lloyd took you to items 35 and 36 of those minutes?---Yes, that's correct.

And you see item 35. First of all I take you to item 36 that's where it is minuted that Kings can communicate with Daniel at any time. You see that?---Yes, I see that.

20

And did Daniel Paul perform the role of contract superintendent?---Yeah, that was my understanding, yes.

Yes. And so you would expect would you that for smooth completion of the project there are occasions where Kings would need to contact the project superintendent Mr Paul without needing to contact all of you?---Yeah, that's correct.

Is that right?---Yes.

30

Now look at item 35 and you see that is the reference to correspondence generated by DP. Do you see that?---That's correct.

Would you agree with that there's a distinction between communication and correspondence?---Yes, there is.

And in relation to the question of what constitutes correspondence could you have a look at Exhibit 45 which is the email from Mr Paul to Mr Roche?---Yes, yes, I wrote that.

40

Is that the type of correspondence that you would expect would be copied into you?---Most definitely.

Those are my questions.

THE COMMISSIONER: Yes, thank you, Mr Guilfoyle. That concludes your evidence and you're free to go?---Thank you.



MR STRICKLAND: I call Mr La Greca.

THE COMMISSIONER: Mr Chrysosotomou, do you wish me to make a section 38 order?

10 CHRYOSOTOMOU: Yes, thank you, Commissioner.

THE COMMISSIONER: Have you explained that to Mr La Greca?

CHRYOSOTOMOU: Yes, I have.

THE COMMISSIONER: Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by Mr La Greca and all documents and things produced by him during the course of his evidence at this compulsory examination are to be regarded as having  
20 been given or produced on objection and accordingly there is no need for him to objection in respect of any particular answer given or document produced.

As it's explained to you, Mr La Greca, that order protects you against the evidence you give today from being used against you in any criminal or civil or disciplinary proceedings but it does not protect you against false evidence and if you are prosecuted or convicted for giving false evidence at this inquiry you can receive a (not transcribable) of imprisonment of not  
30 more than five years. So I mention that simply to explain that this is a serious and important occasion.

MR LA GRECA: Thank you.

THE COMMISSIONER: Do you wish to give your evidence under oath or do you wish to affirm the truth of your evidence?

MR LA GRECA: Oath, thank you.

THE COMMISSIONER: Would you swear Mr La Greca in.  
40

THE COMMISSIONER: Mr Strickland.

MR STRICKLAND: Commissioner, this witness primarily concerns the Department of Housing segment and I wish to tender a number of documents relating to that segment that touch upon this witness's evidence. First, could I tender a bundle of documents which simply might be described as Department of Housing documents. I tender it as a single bundle and I can inform there is an index at the beginning of the bundle and it is paginated, there are 74 pages to the bundle.

THE COMMISSIONER: How many pages? A bundle of 74 pages relating to the Department of Housing is Exhibit 219.

**#EXHIBIT 219 - BUNDLE OF DOCUMENTS (74 PAGES)  
DESCRIBED AS DEPARTMENT OF HOUSING**

MR STRICKLAND: I tender a statement of Robert Smith and annexed to that statement is a statement dated 28 May, 2012.

THE COMMISSIONER: Well, it's a statement of Robert Smith with annexures I take it?

MR STRICKLAND: That's correct.

THE COMMISSIONER: How many annexures?

MR STRICKLAND: Ah - - -

THE COMMISSIONER: Well, I better just see the document.

MR STRICKLAND: Yes. There is some, there is some duplication, Commissioner. Some of the annexures have already been exhibited, I would say the majority of them have already been exhibited.

THE COMMISSIONER: That's all right. You say this has got a statement attached?

MR STRICKLAND: No. This is a statement of Mr Smith dated 28 May, there are some attached, there are some documents attached to it.

THE COMMISSIONER: The statement of Robert Smith dated 28 May, 2012 with attachments is Exhibit 220.

**#EXHIBIT 220 – STATEMENT OF MR ROBERT SMITH AND ANNEXURES DATED 28 MAY 2012**

MR STRICKLAND: I understand there's a suppression order sought by - -  
-

10 MR VINCENT: Yes, counsel for IPP, Commissioner. Just in relation to two aspects, one is in relation to a prior document which was Exhibit 1, tab 9. There's an attachment to that email which is the specification for the security requirements and standards of the DOH, we would seek a suppression in respect of that for obvious reasons regarding the security at DOH's offices.

THE COMMISSIONER: Are you talking about Exhibit 1?

20 MR VINCENT: Yes, Exhibit 1, tab 9, Commissioner. The attachment. It's pages 59 to 81.

THE COMMISSIONER: Well, is the attitude - - -

MS LONERGAN: Commissioner, there's no problem with that suppression order, it is appropriate.

THE COMMISSIONER: All right. There will be a suppression order in relation to the annexure to the email which is under tab 9 of Exhibit 1.

30 **#THERE WILL BE A SUPPRESSION ORDER IN RELATION TO THE ANNEXURE TO THE EMAIL WHICH IS UNDER TAB 9 OF EXHIBIT 1.**

MR VINCENT: Yes. And Commissioner, just in relation to page 8 of the document bundle handed and it's also replicated at page 10 of the statement of Mr Smith. Could we get a suppression order in relation to the mobile phone number given on that page?

40 THE COMMISSIONER: Do you mind just repeating the passages where this is?

MR VINCENT: Sorry, I couldn't heard that.

THE COMMISSIONER: Can you please repeat where - - -

MR VINCENT: Sorry, it's at page 8 of the tender bundle just handed up now which number I didn't record unfortunately. It's the Department of

Housing tender bundle Mr Strickland just handed up which page, also appears at page 10 of the statement of Mr Smith.

THE COMMISSIONER: I'm afraid I just have no idea where this is. The statement runs to page 9 I think.

MR VINCENT: Oh, sorry, it's the document which is (not transcribable) if it's not annexed then it's not annexed but in any event it's then on page 8.

10 THE COMMISSIONER: Sorry, page 8 where?

MR VINCENT: Of the bundle that was just handed up of the 219, Exhibit 219.

THE COMMISSIONER: Yes. The mobile number at page 8 of Exhibit 219 is suppressed.

20 **#THE MOBILE NUMBER AT PAGE 8 OF EXHIBIT 219 IS SUPPRESSED.**

THE COMMISSIONER: Now, Mr La Greca, do you wish to give your evidence under oath or do you wish to affirm the truth of your evidence? ---I've just done that, Commissioner.

You've done that, have you?---Yeah.

30 MR STRICKLAND: There are three other statement. The first is the statement of Greg Prerau, P-r-e-r-a-u, of 24 May, 2012.

THE COMMISSIONER: The statement of Greg Prerau of 24 May, 2012, will be Exhibit 221.

**#EXHIBIT 221 - STATEMENT OF MR GREG PRERAU DATED 24 MAY 2012**

40 MR STRICKLAND: Thank you. I also tender a statement of Kurt Ridgway dated 30 May, 2012.

THE COMMISSIONER: The statement of Kurt Ridgway of 30 May, 2012, will be Exhibit 222.

**#EXHIBIT 222 - STATEMENT OF MR KURT RIDGWAY DATED 30 MAY 2012**

MR STRICKLAND: Could I tender a statement of Steven Kuryj, K-u-r-y-j.

THE COMMISSIONER: What date?

MR STRICKLAND: Sorry, 26 March, 2012.

10

THE COMMISSIONER: Statement of Steve Kuryj of 26 May, 26 March, 2012 will be Exhibit 223.

**#EXHIBIT 223 - STATEMENT OF MR STEVEN KURYJ DATED 26 MARCH 2012**

MR STRICKLAND: Thank you. So they're the documents that complete the Department of Housing segment.

20

THE COMMISSIONER: Yes.

MR STRICKLAND: Mr La Greca, what are your qualifications and experience in the security industry?---I've been in the security industry for 24 years now, I have an electronics background and for the last 11 years I've been in consulting.

30

And what's your role in the company IPP?---At the moment?

That's correct?---Operations manager.

And what was it back in 2006/2007?---Project manager.

During that time in the industry have you ever been aware of the practice of collusive tendering?---No.

40

And what do you understand that concept to mean?---I believe it means when people try and mislead others and win jobs.

THE COMMISSIONER: What get, get together with, get together and put in tenders that are carefully worked out so that one gets the job and the other doesn't?---Okay.

Do you know any practice like that?---I don't know the real meaning of it, no, I don't know.

Well, I'm not asking you the real meaning of it, I'm asking you have you, do you know of any practice of that kind?---No, I don't.

You've never participated in it?---No, never.

MR STRICKLAND: Are you aware within the industry of a practice of kickbacks or bribes whereby consultants or employees of government departments or government instrumentalities get paid money to favour one tenderer rather than another?---There's always talk about it but I've never  
10 witnessed it or seen it happen, no.

And you've never been a party to it. Is that right?---No, never.

I'm going to ask you about IPP's involvement in some Department of Housing contracts in 2006 and 2007?---Yes.

Do you recall the Department of Housing retained Businesslink to project manage the refurbishment of its offices across- -?---Yes.

20 - - -the greater western Sydney?---Yes.

And Robert Smith was Businesslink's representative?---Yes.

And is it the case that part of that refurbishment involved the Department of Housing wanting to install a new integrated security system in all those offices?---Yes.

30 And they wanted to do so so that the staff could access security – sorry, that staff could access access cards across all the different offices?---Correct.

And the Department, I'll just refer to them as the Department and I'm talking about the Department of Housing, the Department engaged you to develop a standard, a standard security specification document, is that right?---That's right.

And they also retain you to assist in the evaluation of tenders or to assist in the evaluation of companies who are invited for tender?---That's a different project altogether.

40 It's an entirely different project is it?---Yes.

So what was the security specification document concerning?---The security specification document was for any Department of Housing site.

Okay. Whereas the - what you - the tender evaluation was in relation to particular offices, is that right?---Exactly.

Okay. But in - so there were two separate contracts for the separate offices; I think the first was for two offices and then there was a second one for three offices. Is that right?---Correct.

And in relation to both of those contracts IPP was retained to assist in the evaluation of tenderers, is that right?---Yes.

And to evaluate them?---Yes.

10 And to provide a recommendation to the Department?---Yes.

Okay. And do you remember in that capacity working together with Mr Moody from the Department?---Yes.

And also some offices from a firm called Custance, C-u-s-t-a-n-c-e, is that right?---Yes.

20 And were they were Mr Prerau and Mr Ridgway?---Mostly Mr Ridgway, Mr Prerau was sort of came to one meeting and then nothing much after that.

So what was Mr Ridgway's role?---He was the architect for the jobs.

And by the jobs you're referring to these individual office sites, is that right?---That's right, yes.

Now is it correct that more or less each - there was a budget to your knowledge for each office site of approximately \$60,000?---Yes, there was.

30 And ultimately Kings were awarded both those separate contracts for the two offices - - -?---Correct.

- - - and then the three. Is that right? Now was it your - in relation to both those separate contracts there were, there were two tenderers, is that right? ---That's right, yes.

One of them was Kings and one of them was ACG?---Correct.

40 And who was responsible for - I withdraw that. And it was a close tender wasn't it, they were just two invited parties, is that right?---There was never any suggestion of a closed tender if you like.

Okay. What do you understand by close tender?---That no-one else would ever be allowed to price on those two jobs.

And what do you understand by an open tender?---That others could price on it.

THE COMMISSIONER: What do you call a situation where only a few people are invited to tender?---A few people being more than two?

Well say two or more?---A tender process.

But is it an open tender or a close tender or is it simply an invited tender?---  
An invited tender.

10 MR STRICKLAND: Was it your decision - so on your definition in relation to both contracts for the two offices and the three - - -?---Yes.

- - - was an invited tender process was it?---No, I don't think it was just solely my decision if you like, no.

I did not say that. I said it was an invited tender process?---Yes, it was.

Only, only companies that were invited tendered, is that right?---Yes, that's correct, yes.

20 And was that your decision or was it someone else's decision?---It was a decision that was spoken about.

Was it your, was it your decision to have an invited tender process or was it someone else's decision?---I don't recall.

Was it your decision or someone else's decision that there would only be two companies invited to tender?---Is that the same question as you just asked me or - - -

30 No. It's a different one?---No, I don't recall.

THE COMMISSIONER: Who else had the expertise in this transaction to make decisions of this kind other than yourself?---The expertise on how many people should be on a tender list?

Yeah?---I was dealing with another two Government departments surely they had the expertise.

40 I'm not - well you tell me the names of the people of whom you - - -?---I would say Mr Moody and Mr Smith.

Excuse me. May I, may I just finish the question?---Sure.

Can you please identify the names of the people with whom you were dealing who you think have the experience and the expertise to be able to decide whether it is - should be an invited tender or an open tender?---Mr Moody and Mr Smith.



MR STRICKLAND: I should just inform you, Mr Commissioner, Mr Moody is deceased so that is, he's not a witness. So – well if I can – let's just talk about the – let me ask you about the first tender in relation to the two offices?---Yes.

Did you invite Kings to tender for that?---Yes, I did.

And did you invite ACG to tender?---Yes, I did.

10 Did you invite any third party to tender?---No, I didn't.

Is there any reason you didn't invite a third party?---There was discussions with both Mr Moody and Mr Smith on who should be on the list and Kings came up straightaway 'cause they already had been doing work for Housing and Mr Smith said, "Oh, that would be good for uniformity", if you like, "Now that we're going to standardised system, they would know the system quite well." I suggested ACG because they were a company roughly the same size of Kings and a good fit for the project and I knew that if ACG did get the work they could do the job properly for Department of Housing.

20

Yeah, but my question is – so you've given evidence as to why you invited – sorry, as to why Kings was invited, because Mr Smith suggested so, and you've given evidence as to why ACG was invited. My question is, why did you not invite any other company apart from those two?---Okay. In these discussions I had with both Mr Smith and Mr Moody when I bought up, I said, "At the moment I have two people on the list", and the comments back to me was, "Oh, that's okay, you know, we're moving forward with the projects, we really don't need to go for any more than two."

30 A statement has been tendered from Mr Smith- - -?---Ah hmm.

- - -stating that in circumstances where there was a budget of \$60,000 per office then he would have expected at least three quotes would have been sought from security contractors and that at no time did you raise the idea that more than two quotes should be obtained for the project. Do you agree with that evidence given by way of statement or not?---No, I don't agree with that.

40 You've, your evidence as I understand it in effect is that it was, it was on his say so that only two companies were invited to tender?---Not only on his, on also Mr Moody, there was general discussion and they said, "Look, there's really no need to go for any more."

And when you say there was a general discussion, at a particular meeting?  
---There was a couple of different meetings, yes.

All right. And this is before, before the awarding of the first contract for the two offices?---Exactly.

I see. And where did that meeting take place, or those meetings, I'm sorry?  
---I went to a couple of meetings, one was at Parramatta and one was at  
Liverpool and then there was also a few meetings onsite there at Penrith and  
Mount Drutt.

And at which, do you recall specifically where this discussion about the  
number of tenderers took place?---I don't recall exactly which site it was,  
no, I don't, no.

10

Did you ever raise with Mr Ridgway the question of whether there should  
be more than two or three, I'm sorry, whether there should be more than two  
quotes obtained?---I remember speaking to Mr Ridgway about who was  
currently on the list but I never suggested that there should be more or less  
or anything like that, no.

So there was no discussion to your knowledge about that subject?---No. I  
already had spoken to Mr Smith and Mr Moody about it so it was just  
general, general discussion.

20

Now, could the witness please be shown Exhibit 1, tab 6.

THE COMMISSIONER: Thank you.

MR STRICKLAND: Now, do you recall - just if you go to the email from  
Mr Cunningham to you on 10 April, '07, do you recall receiving the quotes  
from Mr King, from Kings and they're attached to this email shown?---Yes.

30

Do you see that? And then if I ask you please to go to Exhibit 219 please.  
And you should see if you go to - these related to the Penrith and Mount  
Drutt offices, is that correct?

THE COMMISSIONER: What, what are you referring to?

MR STRICKLAND: These first contracts? I'm sorry, if I could just - I'm  
not asking him to look at any documents at the moment, I beg your pardon,  
these first two contracts related to the Penrith and Mount Drutt office?  
---That's right, yes.

40

Okay. Now, if you go please to - sorry, yes, page 19 through to 29 I think  
you'll find the ACG schedule for those contracts, is that correct?---Do you  
have that there?---Yes.

Does that, does that - is that the ACG - if you look at the bottom, if you go  
to page 38, sorry, page 20 I beg your pardon you will see emails from  
Mr Grubisic attaching the schedule?---Yes.

Is that right? And then if you go for example to page 42 you'll see a list of items together with - sorry, I beg your pardon, 24 I'm sorry, page 24 you'll see some items together with pricing, is that right?---That's correct.

Now, when you evaluated, that is evaluation the technical aspect of their bid - - -?---Yes.

- - - is that the schedule you relied upon to undertake a technical evaluation?  
---I believe so, yes.

10

Was there any other, was there sufficient information in that schedule for you to ascertain whether they could technically comply with the specification?---There's also schedule 4 - - -

Yes?--- - - - which states that they fully comply.

Yes, but that's - but you can't tell from that schedule whether they do or not, can you?---(NO AUDIBLE REPLY)

20

As is there, it's simply a statement that they do but in order to ensure that they do do you go beyond anything in schedule 3?---Yes, exactly, yeah, yes.

So you look at schedule 3 and that's it?---Schedule 3 to see if there was an allowance for manuals and documentation, to be sure that the components listed on schedule 3 is correct, yes.

So is it just schedule 3 is what I'm asking you?---And schedule 4.

30

Okay. If you go back to Exhibit 1, tab 6 and you look at the actual, have you got that still there?---Yes.

MR STRICKLAND: That's the - and you'll see the customer quotation from Kings at page 19.

THE COMMISSIONER: I don't have page 19, it starts at page 23.

40

MR STRICKLAND: I'm sorry. I'll go and get the - I'm sorry. This is different. Exhibit 1 tab 6. Yes, it should be at page 19, it should be a Kings customer quotation number 6146. It's Exhibit 1 tab 6. You don't have that, Commissioner?

THE COMMISSIONER: No.

MR STRICKLAND: Can I ask 01 tab 6 should go from pages 17 through to 22.

THE COMMISSIONER: Mine goes from page 23 to 33.

MR STRICKLAND: I think there is - there is a substitution. On addition, I'm sorry.

THE COMMISSIONER: I know I've got pages 17 to 22.

MR STRICKLAND: Thank you.

THE COMMISSIONER: You're going to page 19, Mr Strickland.

10 MR STRICKLAND: Yes, please.

What I want you to do is just to compare - well first, do you recall whether you received any similar quotation from ACG?

THE COMMISSIONER: Similar to the one at page 19?

MR STRICKLAND: That's correct.

20 THE WITNESS: No, I don't recall, no.

MR STRICKLAND: You can see that the, the information at page 19 from the Kings quote contains more detail than what's contained in the schedule three document from ACG. Do you agree with that?---Correct.

So my question is can you ascertain, can you do a proper technical evaluation comparing a Kings quotation with the ACG in the absence of the more detailed information at page 19?---Yes, I can.

30 And how can you do that?---ACG suggested that they would be fully compliant, meaning that they would meet every clause in the specification and on the drawings.

See what you're saying is you can do that because of schedule 4, is that right?---(No audible reply)

You can, you can make that assessment for comparison because of what's, what's written in schedule 4 which is where they state fully comply?  
---That's one reason, yes.

40 And what's another reason?---That they've allowed a price for all the components that are necessary for the project on schedule 3.

But my question is if you look at, if you compare the Kings quote at page 19 with schedule 3 in the ACG quote there is more detailed information in the Kings quote concerning the precise products that they will be - they offer in their tender. You agreed with that. My question is how can you evaluate, how can you do a technical comparison between ACG and Kings unless

ACG provides similar detailed information?---‘Cause they’ve said they fully comply with the specification and the drawings.

But that’s - - -?---So the quantities have to be correct.

But - - -?---Now if they say they full comply and then they don’t and they would have won the job they still have to do the job as per the specification and the drawings.

10 I see. Do you recall ever asking ACG to provide a quotation in the same detail as Kings did at page 19?---I don’t recall.

Okay, thank you. Now if you could go please to Exhibit 1 tab 7. I should say before I ask you, I’m sorry. Do you recognise that as your, do you recognise that as your tender evaluation report in relation to the first - - -? ---Yes.

- - - contract for the, for the first officers at Penrith at Mount Druitt?---Yes.

20 If you just go to page 52. The prices of ACG and Kings are set out next to one another. Correct?---Yes.

Did you advise Kings about what the budget was?---No.

Did you advise ACG what the budget was?---No.

At page 53 under section 4, Tender Evaluation Process, you say that once the original tender responses were reviewed a detailed evaluation process was conducted. Was that done by you?---The tender evaluation?

30 The detailed evaluation process?---Yes.

And that process you say was twofold, one was the financial evaluation, so you’re simply comparing the prices. Is that right?---Yes.

And the second is conducting a technical evaluation, reviewing the tenderer’s capability against specification?---That’s right, yes.

40 Are you saying you’re able to review, you were able to conduct that technical evaluation in relation to ACG simply by looking at schedule 3 and schedule 4. Is that right?---That doesn’t so much apply to these sort of projects because the equipment itself was actually specified, Housing knew they wanted to use a certain type of system. If I received a tender that had different equipment in it all together, that’s where this point would come into play.

But when you say this doesn’t apply, you mean there’s no need to conduct a technical evaluation because the products have already been specified. Is

that what you mean?---Exactly, as long as the equipment has been allowed for.

But, but you see you say that you have conducted, you don't say that in your report?

---That's our standard, that's our standard form for tender evaluations.

So that's, it's inaccurate to that extent, is it?---A little bit, yes.

10 The little bit is that what would have been more accurate would be simply to say the tender evaluation process was that you conducted a financial evaluation?---And I think the next point should have been maybe and the specified equipment was allowed for.

So you basically recommended Kings on the basis of the fact that they were cheaper. Is that correct?---And fully compliant.

Okay, but ACG was also fully compliant?---But they weren't cheaper.

20 No. So, so the reason you selected Kings therefore was because they were cheaper?---Exactly, exactly. Government tenders basically, if it's fully compliant and cheapest price it's very hard to go anywhere else.

Okay. Now, if you could please go to tab 11, sorry, Exhibit 1, tab 11. Sorry, Amanda, Exhibit 1, tab, keep, keep tab 11, but Exhibit 1 tab 9, I'm sorry. That's an email that you wrote to Mr Diekman on 2 May, 2007. It was after the awarding of the first contract?---Yes.

30 You sent an email to Mr Diekman saying - you attached a security requirement and standards. Do you see that, that that's attached to your email?---Yes.

And then you've also said, "Also keep an eye out for a chance to quote on more work coming from DOH." Do you see that?---Yes.

You didn't send a similar email to ACG, did you?---No, 'cause ACG wasn't doing the current sites.

40 And so why did you write to only one contractor saying that you would keep an eye out to quote on more work?---To ensure that they'd do a good job for DOH.

Were you hoping that they would get a second contract, that is Kings?  
---I wouldn't care, as long as they did a good job for DOH. My client was DOH.

And if you then go to item, tab 11, you then on 15 June, do you have that, Exhibit 1, tab 11, on 15 June you sent some more documents to Mr

Diekman relating to what I refer to as the second contract which is the offices in Bankstown, Liverpool and Campbelltown?---Correct.

And again that was a budget of roughly \$60,000 each for each of those offices?---I believe so, I believe so.

Now, why did you - in relation to that second contract, again there were only two companies invited to tender weren't there?---That's right.

10 That's Kings and ACG?---Yes.

Is there any reason you didn't suggest a third or fourth company to - - -?  
---I just keep the same format as the first lot.

Is there any particular reason why you only invited two?---The same thing, there was discussions about it with both Mr Moody and Mr Smith and it was never an issue for anybody.

20 I beg your pardon?---It was never an issue for anybody.

And by never an issue what do you mean by that?---Well, no one mentioned back to me that hey, we should go for three, four or five.

Did you ever say that the reason that there were only two tenderers invited was because there was time pressure in relation to the - - -?---There was time pressures on the project, yes.

30 And was that a reason that was given to you in relation to this second contract as to why there should only be two tenderers?---Can you repeat that question, please?

Is that a reason that was said to you by anyone that that is why there should only be two tenderers in relation to this second contract?---Nobody ever said to me there should only be two tenderers.

Well, was that a reason that it was said to you that two tenderers were sufficient because there were time pressures?---That was one of the reasons, yes.

40 And who told you that?---Mr Smith.

All right. And do you remember when he, when he said that to you?---I don't remember exactly when but I remember him saying look, we could almost even just go for Kings to keep uniformity and not go out to tender at all.

And did you say anything in relation to that?---I don't recall but it's not something I like to do because then it's a bit hard to get a price, gauge on price.

You see, wasn't your practice that, or IPP's practice, that you would always have three quotes for projects of this kind?---Three or more.

Right. Three or more, isn't that right?---Yeah.

10 So this was contrary to your usual practice, only having two?---Slightly.

And did you advise Mr Smith this was a departure from IPP's practice?  
---I don't recall saying that.

In relation to this second contract, after the contract, after the quotes were obtained there was, there was a period of many months wasn't there - - -?  
---Correct.

20 So whatever you were advised about time pressures proved to be inaccurate because in fact the process spread out over, over months didn't it?---Well, my time pressures came up to getting the documentation out for tender. Now, once the tenders had closed and my report was done, yes, there was about I think four or five, maybe six months before the project started.

And then you, you in fact communicated with Kings to see if the old quote was still valid didn't you?---That's correct, yes. That was a question put back to me by I think Mr Moody saying, you know, it's five months down the track, are they still going to do it for the same price.

30 So I want to suggest to you that at any time did Mr Smith or anyone else tell you that there time pressures on the project which meant that - - -?---I disagree with that.

I haven't finished the question?---Okay.

Which meant that two tenderers would suffice?---I disagree with that, there was time pressures to get the documentation out to tender.

40 Could I just ask you please to look at - sorry, do you accept that on 24 July 2007 Businesslink recommended the tender submission by Kings for the three offices, do you, do you recall that?

THE COMMISSIONER: Do you accept it, I'm saying will be accepted.

MR STRICKLAND: Was accepted?---(No Audible Reply)

THE COMMISSIONER: I think you better put the question again.



MR STRICKLAND: Okay, I'll put it again. Do you accept - I'll see - if you just - if you go to, sorry. I keep on forgetting, 2-1. Could the witness be shown Exhibit 219. Just have a look at Exhibit 219 page 37.

I'm sorry, Mr Commissioner, there's a - the documents that I have are differently paginated from the ones - that's why I'm struggling a little bit. Sorry, Commissioner. Could the witness please be shown Exhibit 1 tab 13.

10 And do you recognise that as your tender report in relation to the Bankstown, Liverpool and Campbelltown offices?---Yes.

And again on page 115 the two prices of those three offices are set out between ACG and Kings, is that right?---Yes.

And you recommended Kings because they were compliant but had a cheaper price, is that right?---Yes.

And did you advise Kings at that time of what the budget was?---No.

20 Did you ever advise Kings what ACG's price was or was likely to be?---No.

But you did that in relation to the first contract?---No.

And your recommendation was accepted wasn't it and that Kings did those three offices?---Correct.

Now did you ever receive any cash from Kings or Mr Diekman in relation to anything?---No.

30 In your involvement with IPP?---No.

Did you ever receive any cash from Mr Grubisic in your capacity as an IPP consultant?---No.

Or at any capacity at all?---No.

Did you receive any cash from Mr Diekman or Kings in any capacity at all?---No.

40 Were you ever advised that Mr Diekman was - I'm sorry, I withdraw that question. Were you advised that Mr Grubisic was to pass on some cash to you?---No.

Were you ever advised that Kings or Mr Diekman would pay you some cash?---To me?

To you?---No.

And emails have been tendered in this hearing where Mr Diekman has said that he has paid, he has paid seven and a half thousand dollars cash to an IPP consultant via ACG. Do you know anything about that?---No.

Have you received any benefit at all from Kings?---No.

Or from ACG?---No.

10 There is - bank documents have been tendered in this hearing indicating that a transfer - there was transfers from Mr Diekman's account to another one of his accounts which is described as IPP ACG in the sum of seven and a half thousand dollars. Do you know, do you know anything about that? ---No.

Did you favour Kings in any way?---No.

Excuse me, Commissioner.

20 What kind of relationship did you have with Mr Grubisic at the time of these contracts that were awarded to Kings?---Probably a pretty good business relationship.

All right. And did you socialise with him?---We'd catch up for coffees or a bite to eat every now and then, yes.

Did Mr Grubisic ever express to you disappointment that ACG had not won these contracts?---I don't recall.

30 Was there any discussion with Mr Grubisic that ACG would be awarded any future contracts?---No.

Were you aware that ACG and Kings had ever, well, that Mr Grubisic or Mr Diekman had ever put their heads together to discuss who would win particular DOH contracts?---No.

Yes, they're the questions I have, thank you.

THE COMMISSIONER: Yes. Any other questions for Mr La Greca?

40 MR VINCENT: Yes, Commissioner.

THE COMMISSIONER: Can you please identify yourself and your client.

MR VINCENT: Yes, Commissioner. Vincent for IPP. Mr La Greca, during your examination just then you said that prior to the first contract, I think that was the term used for the first tendering process (not transcribable) you said that there were discussions with Mr Smith and Mr Moody where it was said that at the moment there's two contractors or two

tenderers on the list and that's okay, don't need to have any more than two. You gave that evidence. Did you ever suggest to either Mr Smith or Mr Moody that there should be more than two tenderers?---I never took it any further from that point.

They're the questions.

THE COMMISSIONER: Yes. Any other questions for Mr La Greca? Mr Strickland?

10

MR STRICKLAND: Would you excuse me for a second? I just wonder if I could, could I just have a one-minute adjournment, please.

THE COMMISSIONER: We'll adjourn for five minutes.

**SHORT ADJOURNMENT**

**[12.37pm]**

20 MR STRICKLAND: Thank you, Commissioner. Mr La Greca, do you recall on a previous occasion in relation to this second set of contracts for the three offices that you said that you attended a meeting with Mr Moody and Mr Smith and you were in your words, that you were adamant that you wanted a bigger group of – you wanted three or more tenderers? Do you remember saying that?---I don't recall, no.

Okay. I just want to, Mr Commissioner, I seek a variation of a suppression order made in relation to the compulsory examination of Mr La Greca on 27 April, 2012?

30

THE COMMISSIONER: Yes, that suppression order relating to Mr La Greca's compulsory examination transcript will be vacated.

**#THE SUPPRESSION ORDER RELATING TO MR LA GRECA'S  
COMPULSORY EXAMINATION TRANSCRIPT WILL BE  
VACATED**

40

MR STRICKLAND: Thank you. I'll show you now if I could – I'll tender – I now tender a copy of that transcript dated 27 April, 2012.

THE COMMISSIONER: Yes.

MR STRICKLAND: I'll tender the whole thing.

THE COMMISSIONER: Exhibit 224 is a copy of the transcript of Mr La Greca's compulsory examination.

**#EXHIBIT 224 - COMPULSORY EXAMINATION OF MR LA GRECA DATED 27 APRIL 2012**

10 MR STRICKLAND: I'm sorry, Exhibit, thank you. Do you have a copy of that?---No, I don't.

So if you just – I'll just take you – just go to page 1181. I'll just give you the context of what I want to ask you. The last question on that page you were asked, "Did you make any comment in your role as the tender evaluator that there ought to be a third tenderer because you weren't that pleased with Kings' security work?" Answer, "The same thing, in a meeting I discussed it with the same group of people." And then the question is, "This is a subsequent meeting to the April job or are we talking about something else?" And then you said, "For the Campbelltown group of jobs." Do you see that?---Yes.

So the Campbelltown group of jobs is the second contract, isn't it?---Yes.

Okay. And then you were asked these questions, and these are the questions I want to ask you about – "Who was at the meeting for the Campbelltown group of jobs?" And you said, "Again Kevin Moody." Question, "Yes?" "Businesslink being Robert Smith and another person from his office which really I can't remember their name." Question, "That's all right?" Answer, "And there was a few other people, the architect and I think the managers of each of these offices so- -?" Question by the Commissioner, "What was their response when you said you should have a third?" And you said, "I was more adamant this time, sort of pushed the fact because a bigger group of projects, it was like three or four." Then you were asked, "Three sites?" "Yes, offices there." Sorry, "Three sites?" And then you said, "Offices there. And again they make my position very difficult when trying to review two prices, I've really got nothing to gauge so, and again there was a quick, you know, quick turnaround et cetera, if the builder wants to go out to anyone else it's up to them." Do you see that?---Yes.

40 And then a little bit further down you said, "Well, it's really putting me under a lot of pressure." Do you see that?---That was time pressure, yes.

So having been reminded of those answers is it true to say that at this meeting for the second contract you were more adamant to push the fact that there should be three or more tenderers?---Like I said, I did bring it up again, yes.

And was that evidence you gave correct before, in the compulsory examination?---Yes.

Right. So even though you were adamant or more adamant that you should have, there should be three tenderers, that was nevertheless knocked back. Is that right?---It never seemed to be an issue for anyone there from the government.

10 Well, just when you say it never seemed to be an issue, you were, you were more adamant that there should be three or more quotes. Correct?---Yes, yes.

But there were only two, there were only two quotes, weren't there?  
---Yeah, 'cause again- - -

No, hold on, I'm just doing it step by step?---Yes.

20 There were only two quotes and therefore you're, you're pushing the fact that there should be three quotes was knocked back. Is that right?  
---Knocked back, well, no one actually- - -

Yes, it was refused?

THE COMMISSIONER: Or it wasn't followed?---It wasn't followed, no.

30 MR STRICKLAND: And the reason you say it wasn't followed was because there was, they required this quick turnaround, that's what you said?---For the documentation to be prepared, yes, there was a quick turnaround.

But then after the evaluation report there were months between the time of that report and the time the job, the three jobs were actually carried out weren't there?---There was months, yes.

Well, there was certainly no time pressure in that period was there?---Are you suggesting we could go out to tender after tenders had closed?

40 I'm asking, there was no time pressure was there?---Not once the tenders had come back, no.

You see, I want to suggest that you said in this compulsory examination and what you're saying now is, is fabricated isn't it?---No.

There was no pressure put on you and no refusals for there to be three or more quotes?---That's totally incorrect. There was no time pressure after the tenders had closed.

The decision for there to be only two quotes was your decision?---No.

