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HEARING

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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, 30 JULY, 2012

AT 10.20AM

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

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

THE COMMISSIONER: Mr Strickland.

MR STRICKLAND: Yes, Ms Flanagan is still in the witness box.

THE COMMISSIONER: Yes, Ms Flanagan, the oath was administered to you on the last occasion still applies and the section 38 notice still applies and, yes, that's it, thank you.

10 <ANNE ELIZABETH FLANAGAN, on former oath [10.20am]

MR STRICKLAND: I'm told Mr Smith has a couple of matters he wishes to raise.

THE COMMISSIONER: Yes, Mr Smith.

MR SMITH: Commissioner, just in respect of the confidentiality issues, having gone through the transcript there are a couple of things that if it's  
20 okay we can, can we fix up straightaway?

THE COMMISSIONER: Yes.

MR SMITH: The first two are in Exhibit 2, the first is in Exhibit R4, page 612 of that document.

THE COMMISSIONER: Yes.

MR SMITH: There's at the top of that page a reference to a suburb.  
30

THE COMMISSIONER: Yes. There will be a suppression order on the suburb mentioned in the second dot point on page 612.

**THERE WILL BE A SUPPRESSION ORDER ON THE SUBURB MENTIONED IN THE SECOND DOT POINT ON PAGE 612 OF R4 IN EXHIBIT 2**

40 MR SMITH: Then Exhibit, thank you, Commissioner, Exhibit R8 in Exhibit 2.

THE COMMISSIONER: R8, I don't have it.

MR SMITH: On page 158.

THE COMMISSIONER: R8. What, what page?

MR SMITH: 158 which is at the top right-hand side.

THE COMMISSIONER: Yes.

MR SMITH: Turning the table on its side it's a third of the way down in the third column under "Desirable", again there's the reference to that suburb.

THE COMMISSIONER: Yes, the suburb in R8 of Exhibit 2, page 158 in the third column under "Desirable," the name of the suburb is suppressed.

10

**THERE WILL BE A SUPPRESSION ORDER ON THE SUBURB MENTIONED IN R8 OF EXHIBIT 2, PAGE 158 IN THE THIRD COLUMN UNDER "DESIRABLE"**

MR SMITH: Thank you, Commissioner. Now, in respect of Exhibit 17 upon which Ms Flanagan has been examined, under document F10 on page 54.

20

THE COMMISSIONER: Sorry, 54, yes.

MR SMITH: On the fifth line, the first word is the system in respect of which - - -

THE COMMISSIONER: Yes. The name of the system in Exhibit F10, sorry in F10 of Exhibit - - -

MR SMITH: 17.

30

THE COMMISSIONER: - - - 17 has in its fifth line the name of a system which is suppressed.

**THERE WILL BE A SUPPRESSION ORDER OF THE NAME OF THE SYSTEM IN THE FIFTH LINE OF F10 IN EXHIBIT 17**

MR SMITH: And then finally in F12, still in Exhibit, no, there's two more, there's F12.

40

THE COMMISSIONER: Yes.

MR SMITH: At page 63 of F12.

THE COMMISSIONER: Yes.

MR SMITH: Under paragraph number 6, products that each of the paragraph (c) through to (h), sorry, through to (g).

THE COMMISSIONER: Sorry, from 6(a) to (g)?

MR SMITH: (c) to (g).

10 THE COMMISSIONER: 6(c) to (g). Right. The paragraphs 6(c) to (g), they're not paragraphs, the items 6(c) to (g) on page 63 of F12 of Exhibit 17 are suppressed.

**THERE WILL BE A SUPPRESSION ORDER OF ITEMS 6(C) TO (G) ON PAGE 63 OF F12 OF EXHIBIT 17**

MR SMITH: Thank you, Commissioner. Page 66.

20 THE COMMISSIONER: Yes.

MR SMITH: 67, 68 and 69, all of the descriptions under the column headed "Description".

THE COMMISSIONER: Yes. The material under the heading Description on pages 66 to 69 are F12 of Exhibit 17 will be suppressed.

30 **MATERIAL UNDER THE HEADING DESCRIPTION ON PAGES 66 TO 69 ARE F12 OF EXHIBIT 17 WILL BE SUPPRESSED.**

MR SMITH: And on page 70 the contents of the first column under Additional Components Installed.

THE COMMISSIONER: Well the first column under Additional Components installed on page 70 are F12 of Exhibit 17 will be suppressed.

40 **FIRST COLUMN UNDER ADDITIONAL COMPONENTS INSTALLED ON PAGE 70 ARE F12 OF EXHIBIT 17 WILL BE SUPPRESSED.**

MR SMITH: And finally in this document page 71 in the first table the contents of the second column under – the second and third column under Scope and Quantity.

THE COMMISSIONER: Say that again, please.

MR SMITH: The first table - - -

THE COMMISSIONER: Yes.

MR SMITH: - - - the contents of the second and third columns, Scope and Quantity.

10 THE COMMISSIONER: All right. On page 71, page 71 of Exhibit 17 the items what it's just the first two did you say?

MR SMITH: Yes, oh no, the second and third.

THE COMMISSIONER: The second and third items in the first column will be suppressed.

**PAGE 71 OF EXHIBIT 17 THE SECOND AND THIRD ITEMS IN THE FIRST COLUMN WILL BE SUPPRESSED.**

20

MR SMITH: Thank you, Commissioner. And finally in - - -

THE COMMISSIONER: You keep saying finally Mr Smith.

MR SMITH: The last time I was mistaken, Commissioner, I apologise.

30 THE COMMISSIONER: I wonder why this wasn't done beforehand so we didn't have to waste this time. We just needed to have a list of, of matters to be dealt with, but we'll go on now. I'm anxious for this to, to finish this inquiry.

MR SMITH: I understand that, Commissioner.

THE COMMISSIONER: And we're starting late and we're wasting time. I really would not like this to continue.

MR SMITH: If we can do it another Commissioner, I'd be happy to.

40 THE COMMISSIONER: Well the other way is for you to write to the Commission and say you want these matters suppressed and they will be suppressed, depending on the merits of the application. So far they've all been suppressed.

MR SMITH: I'll do that Commissioner in respect (not transcribable)

THE COMMISSIONER: Well what's the last one.

MR SMITH: There are about six starting at page 145 of document F13.

THE COMMISSIONER: Well on page 145 of F13 the following items will be suppressed. Yes.

MR SMITH: The last word on the first line, sorry, the - - -

THE COMMISSIONER: Just say what they are. Yes, the last word on the first line. Yes.

10 MR SMITH: That is the word beginning with K.

THE COMMISSIONER: Yes, that will be suppressed.

**PAGE 145 OF 13 THE WORD BEGINNING WITH K WILL BE SUPPRESSED**

MR SMITH: Page 146, the last word in paragraph number 2.

20

THE COMMISSIONER: That will be suppressed.

**PAGE 146 LAST WORD IN PARAGRAPH 2 SUPPRESSED**

MR SMITH: Page 148.

30

THE COMMISSIONER: Yes.

MR SMITH: The suburb in the first column in the second row.

THE COMMISSIONER: 148?

MR SMITH: 149, I beg your pardon. Yes, 148.

THE COMMISSIONER: Sorry?

40

MR SMITH: The second row of the first column, Commissioner.

THE COMMISSIONER: In 148?

MR SMITH: Yes.

THE COMMISSIONER: I don't know what you mean.

MR SMITH: Page 148 is a table.

THE COMMISSIONER: Well I've got a different 148. You're talking about the seventh item under Question?

MR SMITH: Yes, yes.

THE COMMISSIONER: Well, Mr Strickland, have you followed this?

MR STRICKLAND: Not really, Your Honour, Mr Commissioner, but Ms Lonergan has and she tells me she has no problem.

10

THE COMMISSIONER: Well- - -

MR STRICKLAND: I'm sorry, this particular document.

THE COMMISSIONER: Yes. Well, this particular item seems to be relevant to the, to our, to the questions.

MR STRICKLAND: Mr Smith will do this in writing, Commissioner, in relation to this last bit.

20

THE COMMISSIONER: All right.

MR SMITH: thank you, commissioner.

MR BUCK Excuse me, Commissioner, may I seek leave to appear for Q Technology Limited and Richard Stokes?

THE COMMISSIONER: Is there no conflict between the two?

30 MR BUCK: No, Commissioner.

THE COMMISSIONER: What's your name?

MR BUCK: Nathan Buck.

THE COMMISSIONER: Yes, you have leave.

MR BUCK: Thank you, Commissioner.

40 MS MOODY: My name's Moody, Commissioner. I seek leave to appear for the Department of Family and Community Services. Thank you, Commissioner.

THE COMMISSIONER: Mr Strickland?

MR STRICKLAND: Thank you. Could the witness please be given Exhibit 17, tab 7A.

THE COMMISSIONER: This is not a document in a bundle?

MR STRICKLAND: It was tendered as part of the Flanagan bundle of documents which was tendered as Exhibit 17 and it was the last- -

THE COMMISSIONER: Yes.

10 MR STRICKLAND: Ms Flanagan, in the evidence that you gave on the last occasion, this is at page 816, you were asked about the question that appears in this email before you, the question being for Mr Paul, are we allowed to ask, "what percentage approximately of your company's annual secured electronics turnover does this project represent to you", and you, your evidence was that you, it was your idea to ask that question of each of the tenderers. You've seen this email, is that correct?---I have.

20 Do you wish to change your evidence in light of this email?---I do. The email is clearly from Daniel Paul to, to myself and to others. What I was agreeing on was a financial capability of the companies, not the specific percentages, that was a recommendation by Daniel Paul.

So your idea was what precisely?---To assess the financial capability of those companies to carry out those works, not the specifics as mentioned by Daniel Paul.

And did you communicate that idea, that is that each company tendering for the Art Gallery had to have the financial capability to deliver, did you communicate that idea to Mr Paul?---I did.

30 And then following that is this email. Is that correct?---Correct.

Yes, thank you?---Thank you.

If I could have that document back, please. I asked you some questions about this that had been disclosed to you by Mr Paul and you gave some answers about that. I wish to pursue that line of questions here. Could the witness please be given Exhibit R10 please, R, the Roche document, 10. So just to refresh your memory- - -

40 THE COMMISSIONER: It's Exhibit 2, so it's Exhibit 2, R10.

MR STRICKLAND: That's correct, thank you. It's an email from Charlie Diekman to Peter Roche, it's the lead email and there are, I particularly want to draw your attention to the email from Daniel Paul to Charlie Diekman dated 24 January, 2009. So Flanagan, before you read that, and I'll take you to it, just to refresh your memory, the tender opens for the Art Gallery in early February 2009, your first meeting with the tenderers was on 27 February, 2009, so this email that I'm directing your attention to is before the tender has opened. Now, could I just ask you to read for yourself

that email of 24 January at 7.22pm. Okay. Were you aware of the arrangements being made, at the time of the tender process were you aware that arrangements had been made before the tender began, shortly before the tender began, between Mr Paul and Mr Diekman as outlined in this email?  
---Sorry, could you repeat the question?

10 Sure. At any time during the tender process were you aware of the arrangements being made between Mr Diekman and Mr Paul concerned the attendance of various people at the Las Vegas International Security Conference?---No, I had no knowledge of Mr Diekman's involvement in that but there was a letter to me from Daniel Paul, I think around 21 January inviting, providing three options for Tony Morris, our head of security, to visit that trade show.

But you did not know that of Mr Diekman's involvement in that?---No, no knowledge at all of Mr Diekman's involvement.

20 Now, would that have concerned you had you known that and particularly the content of this email?---It would have greatly concerned me and particularly the content of this email which is articulating that Daniel Paul will make the arrangements but then invoice back to Charlie Diekman at Kings who were one of the shortlisted tenderers into the future.

Thank you. I've finished with that document, thank you. Were you aware that on February 15 Mr Paul paid approximately \$2,000 from his Amex account for Mr Morris' travel to Las Vegas for that conference?---Yes, I do, I didn't know the specifics of that but I know we reimbursed him through our accounts system for that airfare.

30 Did you know that that amount was paid before there had been formal approval for Mr Morris to attend the conference?---No, I didn't know that.

Now, the conference occurred after or in March 2009, that is after Kings was selected or was awarded the contract. Were you advised by Mr Paul that he and Mr Diekman had engaged in gambling whereby Mr Diekman allegedly owed Mr Paul a sizeable sum of money during that conference?  
---No, I had absolutely no knowledge of that.

40 Would that have given rise for concern or cause for concern?---It would have given, it would have given me great cause for concern.

Were you - did Mr Paul ever tell you about his relationship, of his personal relationship with personnel from Q Video Systems who were supplying the equipment for the Art Gallery tender?---No, I personally don't recall communication to that effect.

Did Mr Paul ever tell you that Mr Diekman had given him \$20,000 in February/March 2009, to Mr Paul, for the purposes of paying for, for the

purposes of paying someone else to go on an overseas trip?---No, I have no knowledge of that.

Did you know whether any money had been deposited by Mr Paul into his account or his joint account from Mr, from anyone from Kings?---No, no.

Okay?---We did a Dun and Bradstreet on the two shortlisted tenderers but that would not be revealed in that process.

10 So had you known the matters that I put to you both on the last occasion and today, what steps if any would you have taken in relation to - - -

THE COMMISSIONER: I think you have to identify them, Mr Strickland.

MR STRICKLAND: I beg your pardon?

THE COMMISSIONER: You have to identify them.

MR STRICKLAND: Each of them?

20

THE COMMISSIONER: Well especially the matters on the last occasion.

MR STRICKLAND: Yes, on the last occasion. Yes, certainly. On the last occasion I asked you whether you were aware of the friendship with Mr – between Mr Paul and Diekman. Excuse me for one moment, I asked you whether you were aware (a) that Mr Diekman had attended the ISC conference with Mr Paul and I think you said you had not?---Correct.

30 I asked you whether you were aware that Mr Paul had visited Kings office during the tender process and I think you said you had not?---Correct.

And if you had been aware of those matters together with the matters I've put to you today, what steps if any would you have taken in relation to Mr Paul's retainer?---I would have duly questioned his ability and capability to carry out the tender. And given the sensitivities of that tender we would have cancelled his appointment duly.

Okay.

40 THE COMMISSIONER: You mean you would have cancelled them had he not been able to give you an explanation?---Correct. So we would have duly investigated those allegations, but if they were found to be true we would have terminated his contract as security consultant for obvious reasons of collusion.

MR STRICKLAND: Now I just want to ask you some more general questions relating to the tender process and any lessons that may have been learnt by the Art Gallery. First, did you consider – when Daniel Paul was

selected as the consultant and I appreciate your evidence was that was not your decision, but were you aware that Daniel did – that Daniel Paul had by far the lowest bid for the consultancy work?---Yes. I was very aware of that.

10 And did that attract any particular scrutiny on behalf of yourself or anyone else at Art Gallery on the basis that he'd bid low because there's a potential for him to recoup money in other less legitimate ways?---The – his bid was 25,000, the BRI was 56,000 and the third party I think was around 110, so there was quite a difference in the three prices. I questioned both Tony Morris and Anne Tregagle and was reassured that he was a single operator, he didn't carry large overheads and hence his price was at that point. The fact that tenderers can vary so much can happen in a tender process and I think with the Art Gallery or with any organisation people bid not only on price but they may want to have on a resume that they've actually performed tasks for those organisations. That was not discussed but I was reassured by the fact that he was a small operator and had reference checks done on him duly.

20 Now at some stage you spoke to a Mr Michael Julian from Westfield about Mr Paul. Is that correct?---Michael Julian rang me, yes.

Do you remember at what stage during the tender he rang you?---I don't recall but it was part the way through the tender. I don't recall.

By you mean part way through the tender you mean part way - - -?---Part way through their carrying out of the tender. So Kings had been appointed, Daniel Paul had been appointed.

30 Okay . And what did Mr Julian say to you?---Mr Julian rang with an off the record comment that – and I don't recall the exact words of it, I can only give you a summary, it was three years ago, that – or four years ago, that he had concern with Daniel Paul who had been a consultant with his company and he was no longer employing him. And that there was concern about paybacks or words to those effect that Mr Paul was receiving.

What did you, what do you mean by, what did you understand by the word payback?---That there was some financial gain through the tenderer and that relationship to Mr Paul.

40 Financial gain to whom?---To Mr Paul.

From what?---Perhaps one could see it both ways, both to Mr Paul and to the tenderer and to the company, the security company.

So do I understand this, that Mr Julian was telling you he had a concern or he had a knowledge that Mr Paul was getting some financial gain from

whom?---I don't recall, maybe he did mention Kings, I don't recall that exactly, but maybe he did and as I said, it was an off-the-record comment.

Did you make a record of that off-the-record comment?---I didn't make a record of it.

Did you tell anyone at the Art Gallery about that comment?---I spoke, one comment I do recall was something about a motorbike as part of that discussion from Michael Julian.

10

Sorry?---I don't remember the context of the motorbike but it was implied that the motorbike was part of that, that payback.

But getting back to what you told anyone from the Art Gallery of Michael Julian's comments, did you say anything to anyone?---I did. I took it as it was given to me, as an off-the-record comment. I didn't have substantial evidence to prove it one way or the other, but I certainly spoke both to Tony Morris and Anne Tregagle to (a), keep a professional distance from Daniel Paul and to act professionally in the way in which we were carrying out that process. So I certainly spoke to both of them.

20

When you say you didn't have substantial evidence, did you seek out any further evidence?---No, I didn't. It was an off-the-record comment so I didn't seek out further evidence, but was watchful myself of course.

Can I just ask you about this off-the-record comment. I mean if you get an off the, if you get an off-the-record comment but which may affect the integrity of the tender process, do you now think that steps need to be done to verify those allegations?---Yes, I would, I would take different steps.

30

What steps would you have taken now?---I think firstly that one would investigate further and would request something that was not off-the-record to understand more fully the implication of that, those, that comment that was made about our security consultant and then I would speak further about that once I knew and had in writing what those comments were.

So, now, you've given, you gave evidence on the last occasion that the Tender Evaluation Committee relied very heavily on the advice of Mr Paul, particularly in relation to the products that was considering, that was considered to be used. Did you ever have a concern that you were relying too heavily upon his advice and expertise?---We were very reliant, as I have said, on Daniel Paul's contribution as the expert on the technical applications. We also had Tony Morris, our head of security, on that tender panel who had a very good understanding and had prepared the, the functionality brief, what was wanted for the institution, so he in turn would be a counter-check to that, but primarily, and I, I stress that primarily the advice was coming from the security consultant and that is what he was commissioned to do.

40

Did, did either you or anyone at the Art Gallery consider that when you outsource a project as large as that, that that itself can be a corruption risk?  
---Sorry, can I have the- - -

When you are outsourcing a tender process to an extent- - -?---Mmm.

- - -relying very heavily on a contractor- - -?---Mmm.

10 - - -such as Mr Paul, do you consider that that itself might be, might create risks for corrupt conduct?---I could see there's certainly a potential for that.

Did you see that at the time?---At the time, not, no, because the tender interview panel comprised of four individuals and each brought different levels of expertise. In reflection of course, yes, there was far too great a reliance on a security consultant to drive the tender process and the specification of that tender process and the selection and the recommendation and in turn selection of the tenderer and the associated equipment.

20

The evidence you gave on the last occasion, was it after Kings first interview on 27 February? Sorry, just to go back a step, after the initial tenders, and I'm just repeating your evidence because that's some weeks ago, ACG was ranked first. You then have the interviews and the Kings dropped, if I might call it the bombshell, at the first interview about the, what they described as the new product they were offering?---Mmm.

30 Now, there was then the meeting between just the Tender Evaluation Committee after the Kings interview and it was at that meeting that Mr Paul in particular, this is your evidence, emphasised the exciting nature of the new product?---Correct.

Is that a fair summary?---That is a fair summary.

And that changed the course of, that changed the parameters and the course of the, who was going to be selected, do you agree with that?---Correct.

So to that extent Mr Paul heavily drove this tender process?---Correct.

40 At the time did you take any steps to try and verify the information that Mr Paul was given?---In terms of verification I recall asking both Mr Paul and Tony Morris to research the Endura 2 which it had appeared had just been released as an accredited system so that was the checks that were put in place.

Was that the total of the cheques?---In terms of that system there was much discussion after the first round interviews about the application of that system for the Art Gallery's network, a lot of discussion and it focussed on

its storage capacity, it focussed on its analytics in terms of what that new system could provide so we were aware that there had been a change in direction but overall we felt it offered a better system for the Gallery and that we would go back to the two shortlisted tenderers to give them a fair and reasonable option to now research this released equipment. It had been anticipated the equipment but it hadn't been released.

10 I just want to ask you a couple of questions about your knowledge at the time of the role of the State Contracts Control Board. Did you know of any requirement for the State Contracts Control Board to operate or run this particular tender given that the value of goods/services was in excess of a quarter of million dollars?---That's the requirement as per the Premier's memorandum of 2006, yeah.

And did you know that at the time of this tender?---At the time, yes, we had policies related to that.

20 But the State, the State Contracts Control Board was not involved in this tender was it?---No, they were not.

Can you explain why that is the case?---As indicated previously there was an understanding by the Gallery that we had the capability to procure in our own right, well, the bases of that understanding is, is complex and perhaps embedded in the way in which the Gallery had been established so it was an understanding within the institution and that I think married with the security confidentiality it was felt it was an appropriate way to go.

30 Is it, is now accepted to your knowledge that that understanding was incorrect?---It was incorrect and we have had that reviewed.

Now, I just want to show you a, a document please, I'm just going to show you a document which is entitled "Art Gallery of New South Wales Corruption Prevention Policy and Procedures". Are you aware of the existence of that document at the time of the tender?---Yes, it's part of our induction and part of our policies and procedures.

Okay. I tender that document.

40 THE COMMISSIONER: The Art Gallery of New South Wales Corruption Prevention Policy and Procedures will be Exhibit 18.

**#EXHIBIT 18 - ART GALLERY OF NSW CORRUPTION PREVENTION POLICY AND PROCEDURES**

MR STRICKLAND: Now you see on that document it's got draft all over the document?---Yes, I do.

Was that a draft document?---I note that it's June 2005.

Yes?---And given that we're talking 2009, these documents I think were then not in draft form.

All right. So you think that that was – the document you have before you was the same policy but it was not a draft policy but in final form. Is that correct?---Correct, correct.

10

Did you, did you have regard to that document during the tender process? Was there any particular parts of that document – do you recall discussing with the other members of the Tender Evaluation Committee or with Ms Tregeagle or with anyone else?---We didn't discuss these policies at the Tender Evaluation Committee, but between three of those on the Tender Evaluation Committee, it's ingrained in you as part of your induction that the policies and procedures are part of the way in which you act.

20 Okay. I'm just going to show you this document, the Art Gallery's gifts and benefits policy, please. Do you recognise that document?---Yes, I do.

And was that, that was in existence at the time of this tender process? That's a question I'm sorry. It came out as a statement but it should have been a question. Was it in existence at the time of this tender process?---Yes, we had a gifts and benefits policy at the time. I'm just not sure of the date of these because it was, it's continually updated but yes.

All right. I tender that document.

30 THE COMMISSIONER: The Art Gallery's gifts and benefits policy will be Exhibit 19.

**#EXHIBIT 19 - ART GALLERY OF NSW GIFTS AND BENEFITS POLICY**

40 MR STRICKLAND: And I'll just show you another document, please, which is the guidelines for the engagement and use of consultants. I'll just take you to just the first, excuse me, the first two pages, which is the Premier and Cabinet guidelines in relation to using consultants. Were you aware of that document at the time of this tender process?---Yes, yes.

I tender, I tender that bundle of documents.

THE COMMISSIONER: Exhibit 20 is the Art Gallery's guidelines for the use of consultants.

**#EXHIBIT 20 - C2004-17 GUIDELINES FOR THE ENGAGEMENT AND USE OF CONSULTANTS**

10 MR STRICKLAND: Thank you. Now finally do you, speaking on behalf of the Art Gallery what lessons have been learnt as a result of this particular matter?---A big question. I think firstly the, the situation that the Gallery has found itself in and the processes that we took that have led us to this particular situation, I've certainly reflected on very deeply. We would certainly look to change a number of things. We have reviewed our policies and procedures very thoroughly. We certainly would look very differently I think at any singular reliance on one specialist consultant through a tender process. I think the processes of tendering and procurement, we've certainly looked at far more thoroughly. So it's that range of issues that we have to (not transcribable) quite considerably.

20

And there were a number of recommendations made by the Commissioner and there was agreement between the Art Gallery and the Commissioner concerning that?---Correct.

I'll tender that at a later stage, Mr Commissioner. They're all the questions I have, thank you.

THE COMMISSIONER: Yes, thank you. Mr Lloyd, do you wish to ask any questions?

30

MR LLOYD: Thank you, Commissioner. Ms Flanagan, I appear for Mr Paul. I'm going to ask you some questions on his behalf. Looking at those exhibits that you've just been shown a few minutes ago, there have been three of them in the series F18 through F20. Looking at F18, that was the thick document, Art Gallery of NSW Corruption Prevention Policy and Procedures. As far as you're aware, that document wasn't provided to Mr Paul, was it?---Not that I know of, no.

40 And you were aware broadly of the contents of this document in late 2008/early 2009?---Correct, a form of this document, I'm not sure if this is the exact document.

The general thrust of the message conveyed- -?---Correct.

- - -in there was well familiar to you?---Correct.

The next one, F19, the Gallery's policy on gifts and benefits, again you're not aware whether this was provided to Mr Paul, are you?---I'm not aware, no.

You were aware of the thrust of this document in late 2008 and early 2009?  
---Correct.

10 And you had this in your mind at the time you were approving Mr Morris to go on this trip to Las Vegas?---We had that and a number of issues on our mind at that time.

And it was part of you having this in mind that motivated you to say, we'll pay for his trip, we won't let Daniel Paul do that?---Correct.

20 And I'll come to that trip shortly. Leaving other things aside that you've been asked about this morning, as I understand your evidence, in general you had no problem with Mr Morris going on a trip to meet with other people in the industry to improve his knowledge?---Yes, I was very keen that he should meet with our colleagues at other institutions in Los Angeles.

Why?---Because we were carrying out a major security upgrade, we had had a theft, I was very keen that we should build bridges with our colleagues internationally as we rely very heavily on their generosity for exhibitions and for exhibition loans. So it was very important that they should (a), meet our new head of security, and (b), understand that we were in the process of rolling out an upgrade to our security systems.

30 Is it fair to say that there is a fair bit of sharing of knowledge within institutions like your own that use security equipment to protect valuable works of art?---There is a sharing of knowledge about systems. I can't comment on whether it relates specifically to types of equipment.

And the final document you were shown was F20, the Premier in Cabinet's Guidelines for the Engagement and Use of Consultants signed by Col Gellatly on behalf of the Premier in Cabinet's Department. I take it the broad contents of that you were familiar with in late 2008 and early 2009?---Correct.

40 THE COMMISSIONER: That's Exhibit 20, Mr Lloyd, not F20.

MR LLOYD: Sorry, Commissioner, 20.

THE COMMISSIONER: I just say that for the record.

MR LLOYD: Bearing that in mind and you said to us that you had this off the record conversation with a Mr Julian about concerns that he had about the integrity, if I can use that expression, of Mr Paul, is that fair?---Fair, correct.

And I take it that was a conversation you had with him prior to the appointment of Mr Paul as the security consultant?---Could you repeat the question?

Well, you've referred to an off the record chat with Mr Julian?---Mmm.

As I understood your evidence that was a conversation you had with Mr Julian prior to the appointment of Mr Paul as the security consultant?

10 ---No, no. My, my comment was I don't recall the time but it was after the appointment of Mr Paul and it was after the appointment of Kings.

Have you made any note whatsoever of this conversation?---No, I have no note of that conversation.

In fact we've seen a lot of documents shown to you during your evidence today and the previous day on which you gave your evidence, do you have notes of any of the conversations you referred to?---Which conversations are you referring to?

20

Well, do you, did you make any notes during the meetings of the Tender Evaluation Committee?---One keeps notes, one annotates certain responses to questions so yes, there are notes taken through the process.

Well, where are they?---And those notes are then compiled by the chair of the Tender Evaluation Committee, Ms Tregeagle and that is what is recorded.

30 So as I understand the situation and I'm now going to put to you what my client Mr Paul said happened at these meetings in relation to note taking. I don't want to trick you, if you disagree with things I'm going to put to you please say so. Mr Paul says there were frequent meetings of the Tender Evaluation Committee over a six month period. Is that a fair statement? ---There were a number of meetings, some obviously around the tender evaluation process. There were many, many meeting discussing what was to be in the tender. I wouldn't say there were many, many meetings with the Tender Evaluation Committee about the tender evaluation.

40 In any event, he tells me that at any meeting that took place where you were present minutes were kept of those meetings, is that fair?---There were, the two meetings with the two tender evaluation meetings, there were many meetings and minutes were kept very diligently by Anne Tregeagle related to the security upgrade. I'm not referring to the Tender Evaluation Committee, I'm referring to the security minutes that would have been attended by Tony Morris, Anne Tregeagle and Daniel Paul and others in terms of the roll-out of that security upgrade.

I understand but the exhibits that we've been provided through Counsel Assisting to the Commission which have been shown to you, some of them bear handwriting. As I understand it, other than your signature on some of them the handwriting we see is all Anne Tregeagle's, is that fair?---I can't comment on that because I'm not clear what documents or handwriting you're referring to.

10 I'll come to them shortly. In any event any documents that you wrote at any of these meetings, have you provided those to the ICAC?---I have and I recall very clearly the appointment of SCI had my notes on it and I commented on those at the last hearing.

Just looking at that, I take it you must be referring to F1 and perhaps you could be shown that?

THE COMMISSIONER: Is that F1 or Exhibit 1, Mr Lloyd?

MR LLOYD: Maybe it's Exhibit 1 of, of, Exhibit 17, the first exhibit in that series. The first page of that series, the top right-hand corner 223, I take it that is the handwriting of Anne Tregeagle?---Correct.

Except where we see the signature of Tony Morris?---Correct.

And as I understand it, your writing appears on the third, the fourth page of that series 226, top right-hand corner?---Correct.

THE COMMISSIONER: 226, did you say 226?

MR LLOYD: 226. I've got, the one I was given, Mr Commissioner, is a seven or eight-page series.

THE COMMISSIONER: What, my page 226 has on top, "The three companies invited to tender were".

MR LLOYD: Yes, the very bottom left-hand corner of that page.

THE COMMISSIONER: Yes.

MR LLOYD: Are you with me, Ms Flanagan?---I am.

40 So you've approved it at the very bottom where we see approved and Anne Flanagan?---Correct.

And I take it by looking at that writing, the words to the very right of your signature appear to have been written by you as well?---Correct.



MR LLOYD: And at that time you would agree with that comment?---Yes, at that time I would agree with that comment.

And Mr Paul had been provided with the estimate that had been given by BRI hadn't he?---Yes, he was asked to investigate that report.

And I just want to show you, to refresh your memory of that report, those pages of that report where a figure was estimated by BRI. Mr Commissioner, I gather that my learned junior has provided to Counsel  
10 Assisting the document that I was going to show to – and one for you yourself Mr Commissioner.

THE COMMISSIONER: I beg your pardon?

MR LLOYD: And a copy for you.

THE COMMISSIONER: Thank you.

MR LLOYD: I'm just going to show you the first two pages. I may show  
20 you other documents - - -

THE COMMISSIONER: This is not an exhibit or is it an exhibit?

MR LLOYD: Well I'll hope to exhibit it. I need to show it to her first to see if she can identify it, Commissioner.

THE COMMISSIONER: Yes.

MR LLOYD: Now looking at the first two pages and if you want the full  
30 document I can get it for you, but I imagine you're probably familiar with it. I am instructed that these are two pages which have been extracted by my client from the overall BRI report. And it's the second page that puts a figure on the task at hand about 10 lines down the second page, it's been estimated as part of this review that the cost for the above works would be in the vicinity of roughly 2.7 million plus outgoings.

MR STRICKLAND: Mr Commissioner, I certainly have been given some documents, I'm just not, I'm not following which precise document is being  
40 referred to.

MR LLOYD: It's the first one in the series.

MR STRICKLAND: Thank you. Thank you. I've got it, I've got it.

MR LLOYD: Does that jog your memory as to the figure that had been provided by BRI?---This is the second BRI report. It came out in October of that year. We had an initial report in June. It is the executive summary and there was quite a detailed synopsis of each of the parts of the contract

and yes, I do recall this document very well. The Gallery independently had reviewed this document back in October and was looking at ways to bring the costs down. I recall there was an allowance for \$400,000 for labour, there were parts to the contract that we wanted to pull back on. But yes, this is the BRI exec summary.

10 I don't want to hold you to the figure, but is that a ballpark figure of you saying to Mr Paul, look here's the report that's been done. Go through it with a fine tooth comb and see if you can save some money for us, more or less?--I'm not sure we actually said those words, but - - -

But was that the effect of it?--- - - - we certainly asked as part of the project for the security consultant, he was to review the BRI report and any other documents necessary to gain an understanding of the Gallery's situation.

Well let's go back to – I tender that document.

THE COMMISSIONER: What's the relevance of it, Mr Lloyd.

20 MR LLOYD: I'll come – it's relevant to budgets and Mr Paul.

THE COMMISSIONER: Well what's the budget – I don't understand. I don't understand what the point is.

MR LLOYD: Ms Flanagan has said as I understand her evidence that there was a budget of \$1.8 million and I'm going to make a suggestion to her that she's mistaken that that was the budget. And this is one of the documents that shows the errors she's made.

30 THE COMMISSIONER: And how – if she's made an error an error in regard to budget how is that relevant to the case involving Mr Paul?

MR LLOYD: Well your Honour, I have no idea why Counsel Assisting asked questions. I assume he does it because he sees the issue as relevant. He was at great pains to try and have this witness say the budget was 1.8 million. Now I'm saying that's wrong. I didn't raise the issue, Counsel Assisting did. If you as the Commissioner, think it's irrelevant I'll go no further.

40 THE COMMISSIONER: Mr Strickland?

MR STRICKLAND: Well, the Commissioner, the issue of what the budget for the Art Gallery is is a relevant issue because of the change in the bid in particular for Kings.

THE COMMISSIONER: Yes, but the specific amount of the budget is not relevant is it?

MR STRICKLAND: Well, the specific, the specific amount of the budget is irrelevant because of where the Kings final, because of what the final Kings' budget was. So if for example the budget was \$3 million for example then a different gloss might be put on the significance of the revised budget from Kings. So my submission is what the actual budget is and more relevantly who knew about that budget, what, what the budget sum was is of some relevance in this part of the inquiry. Whether this particular figure was relevant I'm just, I'm not sure but the actual, what the actual figure, what the, what the, what the Art Gallery believed its budget figure was is in my submission significant because it's also relevant for the price, the weighting given to various tenderers. You will recall that I think there was an initial weight of 50 per cent and 40 per cent and those who got the closest to the actual budget got a higher score. Well, I'm sorry, the cheapest - - -

THE COMMISSIONER: I still don't understand why the amount of the budget is relevant but seeing that you, you seem to be of the view that it is I'll let it go for a while - - -

20 MR STRICKLAND: Some relevance.

THE COMMISSIONER: - - - but I really don't understand why its relevant. Now, what I do - - -

MR LLOYD: Well, we've had the figure, Commissioner, I won't tender the document. It's jogged the memory of Ms Flanagan and I think on that score I'll leave it at that.

30 THE COMMISSIONER: Yes.

MR LLOYD: There is another document, Ms Flanagan, whilst we're on the budget, near the end of this volume and if you would perhaps hand the volume to me I can turn it up for you, which is a spreadsheet, maybe 10 or 15 pages from the end of the volume.

THE COMMISSIONER: Ask Mr Lloyd to find it.

40 MR LLOYD: And I want to suggest to you on instructions from my client what this is. Mr Paul instructs me firstly that it was part of his task to develop a budget which he says he did and this was his final spreadsheet in developing that budget which at the very bottom came to 2.19 million-odd excluding GST.

THE COMMISSIONER: I think you'd better split that up into its composite individual questions, Mr Lloyd.

MR LLOYD: Thank you, Commissioner, noted. Ms Flanagan, first of all you've already agreed with me that it was part of Mr Paul's task to assist in developing a budget, fair?---Correct.

I want to suggest to you that he attended to that task diligently to your observation?---Yes, I would say yes.

10 And as part of the work he did in doing that diligently he prepared spreadsheets which were provided to members of the Tender Evaluation Committee from time to time?---Yes. I don't recall seeing this particular spreadsheet.

Well, it's four years ago, isn't it?---Correct.

You probably don't recall many of the documents that were tendered at the meetings. Is that fair?---No, I recall the documents very well that - - -

Okay?--- - - - were tendered at the Tender Review Committee.

20 Well, did you keep copies yourself of the documents that were tendered at those meetings?---No, we had one master file kept.

And where's that?---And that has been kept at the Gallery and any of those documents have come across to ICAC.

They've all been provided to ICAC have they?---Yes.

30 So any documents prepared by Mr Paul as part of his work were kept on that file and ICAC has them?---I can't comment on that. I'm simply saying that there was a master file kept at the Gallery related to the security tender.

And with the work of Mr Paul that he performed in assessing the budget took the shape on occasion of spreadsheets?---Correct.

And I suggest to you that this is one of them and whether you can say yes, no or you don't remember, please just say so?---I don't remember seeing this document.

40 So you may have - - -?---Correct.

- - - but it would be humanly impossible now for you to member. Correct? ---Correct.

You're a busy woman aren't you? Correct?---I'm busy.

You do many things each day?---Correct.

A lot of paperwork passes over your desk and also is generated by you?

---Correct.

And a lot of paperwork has been generated and passed over your desk since these events in question?---Correct.

Well let's look at the figure even if you don't recall the document, 2.19 million with a few extra dollars, I'll round it.

10 THE COMMISSIONER: What is the date of this document, Mr Lloyd.

MR LLOYD: It's right down the bottom in green that figure. Mr Commissioner, it's been given by my client, I can obtain the actual date if need be. I'm told it's around the events in question.

THE COMMISSIONER: Well I don't know what that means. And if the witness is being asked to say whether she remembers this or not, in fairness she should be told when she is alleged to have seen it.

20 MR LLOYD: This is before – this document I'm suggesting to you Ms Flanagan was shown to the Committee by Mr Paul prior to the interviews of 27 February and then 5 March?---I don't recall as a Committee member being shown this spreadsheet. It has got a date at the top date prepared, but there's nothing filled in there.

30 I understand. In any event you wanted to know a budget figure before selecting a tenderer. Correct?---No. We had reached an agreement in reviewing the BRI report in re-scoping the works and applying for funds from government that the project would be 1.8 million for the security tender. And Mr Paul was aware of that. We then layered it with a fit out for a control room that was handled separately. So of that 2.7 in the BRI report, we reduced the scope, we modified the scope and we broke it down into smaller components. The component for the security tender was 1.8 million.

Where do I find that written down other than a document we've seen which I think was document number 10. And I'll come back to that?---Yep.

40 Where else is it written down?---It's, it would be in discussions with the Tender Evaluation and there was a note to the Director-General then approving funds for the 1.8 million.

You say in discussions with the Tender Evaluation Committee so you would assume it would be found in the minutes of the Committee?---Yes, it should be in the minutes. It should be in the minutes.

Well it's a relevant factor isn't it?---Yes, it's a very relevant factor.

A very relevant factor. Now one of the factors you're looking at in this

tender and the contract to be awarded is the bottom line. What is it going to cost the Art Gallery?---All four members of the Tender Evaluation Committee were very aware that it was 1.8 million that we were looking at.

Well the only place I see the figure that the documents we've been shown is this 6(a). And I think that's in the series that you've already seen - - -

THE COMMISSIONER: 6(a) page 519?

10 MR LLOYD: 519.

THE COMMISSIONER: 6(a), that's the minutes of the meeting of the Risk Management Committee of 10 February, 2009.

MR LLOYD: And have you seen any other document that talks about the 1.8?---Have I seen any document today that refers to that?

20 Have you been shown any other document, either in this hearing by ICAC staff or Counsel Assisting or even outside the hearing?---I'm not quite clear of your question.

I'm asking you categorically, where is another document that says the budget was 1.8?---I think this document is specifying exactly what I referred to previously, that 1.8 was our scope for the project and we had funded separately those components that are identified there, page 519.

I see the figure. Now, this is the only document that you can say you've seen. Is that right?---Is the document that I've seen today, yes.

30 Whilst we're at that document, the last page, page 525, at the very bottom we see summary, the Kings Security Group bid, 1.803 million?---On 525?

The last page of the series, 525 in the top right-hand corner.

THE COMMISSIONER: Where it has summary?---Yes.

MR LLOYD: Do you see that?---Yes, I do.

40 I want to suggest to you Kings never made such a bid. What do you say about that suggestion?---They were appointed based on a bid price of 1.803 plus GST.

The price, as I understand it, that was successful in the tender is shown in Exhibit R8.

THE COMMISSIONER: Sorry, R8?

MR LLOYD: R8, a Roche document.

THE COMMISSIONER: It's Exhibit 2, Mr Lloyd, it's R8 of Exhibit 2. The exhibit, the number which are prefaced by a letter indicate the witness who tendered it, but they are contained in different exhibits.

MR LLOYD: I'm with you, Commissioner, and I do apologise. I'll not that and hope that I do better in future.

10 THE COMMISSIONER: Now, what are you, to what are you referring?  
This is a Tender Evaluation Report.

MR LLOYD: Looking at this, Ms Flanagan, a Tender Evaluation Report, as I understand this document this was the signoff by the members of the Tender Evaluation Committee on who was going to be awarded the tender. Is that fair?---That is correct, and it was prepared by Daniel Paul.

20 Understand. And we see at page 156 in the top right-hand corner, the signatures of the four members of that committee, including yourself  
- - -?---That is correct.

- - -agreeing on 6 March. And as I understand it, the bid which was accepted is that shown on page 157 of that series?---That is correct.

Which was a bid of 2 million by kings, excluding GST. Correct?  
---That's correct.

I want to suggest to you looking at that, that the price they agreed was never 1.803 million, and that is a mistake?---A mistake?

30 A mistake by the minute taker of those minutes that I've shown you?---I don't agree that it was a mistake.

THE COMMISSIONER: Well, can you explain the difference?---I think at the last meeting the same question was asked by Counsel - - -

The last hearing?---The last hearing, the last pub hearing.

40 Yes?---And I said I didn't have an answer for it but my recollection was we were allowing 198,000 for offsite security connectedness and my recollection was not clear but perhaps it was that that part of the project was removed from the contract and they were appointed at the 1.8 with that being removed.

MR LLOYD: Well, do you know or now categorically?---No, I repeat what I said at the last hearing, that that is my best recollection.

So you may be wrong?---I could be wrong.

Thank you.

THE COMMISSIONER: You could be wrong about what?---I could be wrong about the difference between the two and the 1.803.

You mean what causes the difference?---What causes the difference. I don't recall whether it was us removing a part of that tender scope or whether there was some other comment made - - -

10 I understand?--- - - - that changed the price.

You're explaining, please correct me if I'm wrong, that you, that you concede that you might be wrong about the reason for the reduction in the amount of the tender between the document which you've now been shown and the, the later minute of 10 February?---That is correct.

But you're not saying that you concede that you're wrong about the amount of the final tender as set out in the minute of 10 February, 2009?---No, I'm not wrong about that but I don't recall the difference.

20

You don't recall the reason for the difference?---Correct.

MR LLOYD: Well, I'm suggesting to you, Ms Flanagan, that you may also be wrong about the figure and you're disagreeing with me I take it?---I am disagreeing with you.

Thank you. Did you prepare those minutes of that - - -

THE COMMISSIONER: Of 10 February.

30

MR LLOYD: Of 10 February?---Of 10 February, could you clarify that?

THE COMMISSIONER: Well, you look at page - you should have it open, it's 6A, the - - -?---Oh, right, I beg your pardon. No, these were prepared by the minutes secretary, Trish Kernahan in consultation with myself and also with notes provided by myself and Tony Morris.

MR LLOYD: Ms Tregeagle wasn't at that meeting?---No.

40 Nor was Mr Paul?---No.

And where, who is Trish Kernahan?---She is head of administrative services.

And is she still working at the Art Gallery?---No, she just has been transferred last week.

Where to?---She now is employed by Historic Houses Trust.

Going back to the figure at the end of that spreadsheet I've shown you, the figure of 2.19 million, I want to suggest to you that a figure of that size was the figure Mr Paul suggested should be the budget for - - -

THE COMMISSIONER: At what stage did he suggest this?

10 MR LLOYD: Prior to the award of the tender that was the figure he suggested should be the budget figure for the work that became the subject of the tender.

THE COMMISSIONER: Ms Flanagan, I think, I think that although you might not realise this, that is a question?---Right. I'm glad – it didn't quite come as a question to me.

Although Mr, although Mr Lloyd says, "I suggest"- - -?---Yes, I'm sorry, I thought it- - -

20 - - -he is asking you to- - -?---Right.

- - -agree with enthusiasm yes- - -?---Right.

- - -he hopes, but he also realises that you might say no. He stands there in muted silence in that hope. Would you mind satisfying the hope one way or another?---Yes.

30 MR LLOYD: You can dash my hopes, you could support them, or you could be uncertain?---I feel a dash coming on, Mr Lloyd. I don't know the date of this, I have no documentation that records Daniel Paul recommending this as the price.

Okay?---I have a very strong recollection of 1.8 million.

40 Okay. But you've agreed with me that a budget figure should appear somewhere in the minutes of the Tender Evaluation Committee because it was an important factor for their consideration?---Yes, there should be an acknowledgement of the scope of the project, as there is in the audit and risk or at that stage it was the Risk Management Committee of the Board of Trustees, duly recognising 1.5 to 1.8 as our assessment.

Thank you. Just going back whist we are at this document, 6(a), and I want to take you to 520 and just see if I can jog your memory of the process leading to the award of the tender. We see page 520 there at the very top would appear to be minutes of a meeting of 9 December, 2008. Is that fair?

THE COMMISSIONER: But this is the meeting of 9 December?---Oh, on page 520?

I don't, I don't understand?---This is the Risk Management Committee meeting?

MR LLOYD: Yeah?---And these are the minutes from the Risk Management Committee meeting, these are nothing to do with the Tender Evaluation Committee.

I understand.

10 THE COMMISSIONER: But if you look at item 1, confirmation of the minutes, it was resolved to confirm the minutes of 9 December.

MR LLOYD: And these are the minutes.

THE COMMISSIONER: And then go to page 520, it's matters arising from the minutes and it has that heading on it, that being obviously the way in which the matters are handled when they deal with matters arising.

MR LLOYD: So this is a reference back to an earlier meeting.

20

THE COMMISSIONER: Do you follow, Ms Flanagan?---Yes, I do. These are minutes from the Risk Management Committee, so the matters arising from the minutes on page 520 refer to the minutes from a previous Risk Management Committee meeting, as distinct from a Tender Evaluation Committee meeting.

MR LLOYD: Well, why do I, I mean looking at the first page of this series at 517, they're minutes of the meeting held on 10 February, 2009. That's what it says on the first page?---Correct.

30

The fourth page appears to be minutes, or at least a document prepared relating to a meeting on 9 December the previous year. Is that correct? ---Correct.

Now, I don't know how it's found its way into this series but it's there. Correct?---So it's the Risk Management Committee meeting of 9 December and these minutes refer to that meeting.

40 That's right. Well, forgetting the dates, I just want to take you to the content. We see at about the third paragraph in, "Daniel Paul and Tony Morris are evaluation and in discussions with reputable suppliers for CCTV access control and other electronic security components"?---Yes.

Correct. Jogging your memory with that, is it fair to say that both Mr Paul and Mr Morris visited many suppliers of the different components that could be used by tenderers in submitting tenders for the job?---Correct. They were looking at a range of reputable suppliers and I know they took a trip to

Melbourne in November and they reviewed a company and equipment there.

So they went to manufacturers of products?---I don't know manufacturers, but I can only assume that.

Well you know Mr Morris went to the Pelco factory in America as part of his trip overseas in April of that year?---I don't know that myself.

10 I'll come to that. But did you hear that?---I heard that there was interest to actually go to the Pelco factory, yes.

So there's nothing suspicious about either Mr Paul or Mr Morris for that matter talking to potential suppliers or manufacturers. Is that fair?---No. No, that's -- sorry that is correct, yes because they're assessing what types of equipment are currently on the market, what types of integrated systems are available for the Art Gallery security system.

20 In fact when you go over the page to 521 for the work that you were to be paying the security consultant for, who ended up being Mr Paul, the number of his duties are provided there. Do you see that?---Correct.

Including number (3), well first of all number (2), inspecting the Gallery premises and discussing its requirements?---Correct.

And thirdly investigate available security CCTV and alarm systems?  
---Correct.

30 And develop specifications. And you of course were hoping for the latest and most efficient equipment?---We wanted the most appropriate systems to meet the function needs of the Art Gallery of New South Wales.

And in that regard you were relying on Mr Paul's expertise weren't you?  
---We were relying on Mr Paul's expertise, yes.

And you were as stated here, expecting him to investigate available security CCTV and alarm systems?---Correct.

40 Because he couldn't get the best one for you without asking questions of suppliers and manufacturers could he?---That is correct. And he did that with our head of security.

Mr Morris?---Mr Morris.

I'm not going to put a number on this but you know either yourself directly from speaking to Mr Paul or Mr Morris or hearsay, that they visited many people over a number of months?---That would not surprise me.

And a number of the suppliers and wholesalers and manufacturers visited the Art Gallery. Correct?---I don't – I can't comment on that. I don't know that.

That may have occurred?---May have occurred.

Well it wouldn't have surprised you if it did would it?---No, no.

10 To see what needed to be done. Correct?---(No Audible Reply)

And just whilst I'm there it says here, recommend, recommend a tender process and he did so?---Correct.

You had no problem at the time with his recommended suggestions did you?---No, we didn't.

20 And in his appointment as the security consultant he was up against someone from BRI and a third person wasn't he?---Pro Safety, correct.

And that process, although not controlled by you was by way of select tenderers wasn't it?---Correct.

Because you didn't want to use the vernacular every Tom, Dick and Harry knowing about the Art Gallery's security systems?---That's one way of putting it, yes.

Yes, a pretty rough way, but that's the end result isn't it?---Correct.

30 Because you were worried about thieves or potential thieves becoming aware and stealing paintings?---No, we found that information to be a confidential nature.

But the end result of the confidentiality is you didn't want people using the information to break into the Art Gallery?---I'm not going to comment on that.

40 Okay. All right. Sixth duty, provide assistance with the tender process and tender reviews and provide recommendations. Is it fair to say he was one of four in the process?---Correct. And his particular role was as a specialist security advisor.

He didn't make the decision did he?---No. He was intimately involved in the process. He wrote the tender evaluation report, he recommended the select list of companies, he scoped the brief. He was integral to the process.

Madam, I'm not saying he wasn't. I'll put it to you again. He didn't make the decision of who was awarded the tender, did he?---No, he did that in company - - -

THE COMMISSIONER: He participated in the decision?--- - - - with the other three.

MR LLOYD: He was one of a team of four, correct?---That is correct.

10 If anybody had said no, then it would have gone to a majority vote, correct?  
---That's correct.

You were unanimous, weren't you?---We reached a unanimous decision after much discussion.

Nobody dissented?---No, we reached a unanimous decision.

20 The tender was not awarded to the lowest bidder, was it?---In terms of price no, in that sheet you will find that ACG were at 1.95 I recall and Kings were at two million.

So price was not the overwhelming factor was it?---It was 40 per cent of the tender evaluation process.

Who made that decision to change the 50 per cent weighting to price down to 40 per cent?---The Tender Evaluation Committee did that collectively.

30 THE COMMISSIONER: On whose recommendation?---I think there was, I don't recall on whose recommendation but there was general discussion about a whole raft of issues around what that provision is, how they would approach it, price being one of them, a key one recognised at 40 per cent but there were many other parts that made up the suitability of the appointed tenderer.

MR LLOYD: So you're not sheeting on blame on Mr Paul purely - he was the man that said knock it down to 40 per cent, correct?---I have not said that.

40 I understand and thank you for confirming that. Let's go over to page 522.

THE COMMISSIONER: She might not be the one who said it but there are others who might say it, Mr Lloyd.

MR LLOYD: I'm sorry, Commissioner, I do apologise.

Going over to 522, the second last paragraph about 10 lines up from the bottom at page 522. We see that there's reference to the shortlist of seven different products for CCTV and security access control being developed?

---Yes.

But the Gallery's head of security and the SCI consultant visit a number of local and interstate facilities to review and assess the operational aspects. I take it the references to the Gallery's head of security is Mr Morris?

---Correct.

And SCI obviously is Mr Paul. Met with manufacturers, wholesalers and resellers, correct?---Correct.

10

And do you recall, and I can show you documents to jog your memory if you'd like, that during the tender process emails were sent by Mr Morris to many suppliers and potential contractors to ask them to come and themselves familiar with the Art Gallery and its needs in the tender, correct? ---I can't comment but it would not surprise me that he was making connection to better understand what, what the capability was with the security systems.

20

And you would expect that many of the conversations that Mr Morris had with manufacturers and suppliers to the needs of the Gallery would be kept by Mr Morris in confidence, correct?---Between the two of them, yes.

And in any business there has to be a level of trust doesn't there?---One hopes so, yes.

30

So if Mr Morris said to somebody supplying Pelco products I'm scoping, together perhaps with Mr Paul, the potential of one of your products to assist us you would expect those conversations to say in confidence between those persons?---Yes, that, that, that confidential conversation would then feed the documentations and the types of equipment that we were then investigating.

40

I understand. And you were taken to the last paragraph of this page following this extensive review, the Lenel brand product has been chosen for both CCTV and security access control. Your memory was that was wrong?---There was Lenel Verint and you'll notice in that previous spreadsheet of Daniel Paul it was a Verint compatible system. So there was a Lenel brand identified in the tender documents, but Lenel Verint was the combined security combination.

Madam, this sentence in this statement wrong isn't it?---No, it was Lenel brand was identified in the tender documents.

Well let me take you to the tender strategy document which has been exhibited and I'll just turn it up for you, it's number (5) in exhibit, in the Art Gallery exhibits which is Exhibit 17. You'll recall being shown this in your evidence on the last occasion you were here?---Correct.

You saw around this period of time when this document was drafted by Mr Daniel Paul, that is 31 January, 2009 you saw it didn't you?---Correct.

And you read it?---Correct.

And you became familiar with its contents?---As best I could, yes I did.

I understand. Because it was the strategy for the tender that was going to go out?---Yes, for an integrated system which I commented on last time, yes.

10

I'm picking up one or two aspects of it. The third page number 457 at the top right hand, the bottom of 457, the last two lines, to nominate the recommended products we would suggest that the following would be shortlisted for consideration. Now the products were divided into two major aspects we see at the top of 458, CCTV and then security and access control. Do you see?---Correct.

And for CCTV in or particular order but alphabetically it included Lenel, Pelco and Verint?---Correct.

20

And for access control Pelco wasn't there but Lenel was?---Correct.

As was Andover?---Correct.

We see reference in the middle of that page, at paragraph commencing "both the security manager again to visits and demonstrations of products with Mr Morris and Mr Paul"?---Yes.

30 And we see on page 459 some sort of scoring sheet?---Yes.

And we see, we see for CCTV, because we have scoring sheets for both categories, CCTV and security access control, the scores for – let's start with CCTV, Lenel came in at 84 but Pelco and Verint both came in with 76?---Correct.

40 And when you were taken to that 84 by Counsel Assisting you said, oh that gave you comfort in the statement you made in evidence that you thought that Lenel was the preferred CCTV product?---Lenel, as I say were identified in the tender documents, yes.

Were they identified in the tender documents for CCTV or access control? ---I just recall Lenel being there.

In what form?---I'd have to just look at the document in- - -

You weren't shown it in your evidence before, were you?---No, I don't recall being, seeing, seeing the tender documents.

Well, I'll show you the tender specifications. In the bundle that I have provided, on the first two pages of that bundle were the executive summary where we, we had some debate about the 2.7 million?---Oh, yes, yes.

And this is the tender?---This is not the tender, this is the BRI October- - -

10 Sorry, the specs. This- - -?---This is not the specs. This is the BRI October 2007 review. This is not the tender, it's the BRI Security Technology review.

If you see at the bottom of the first page 29109/11, I'm instructed that's the eleventh version of the specifications. I'm sorry, we may have been confused, Ms Flanagan. Do you see now a lengthy document- - -?---Yes, this is the tender.

- - -of some 99 pages?---Correct.

20 Well, what do you understand that to be?

THE COMMISSIONER: Where is that, please?

MR LLOYD: The second document in the series, Commissioner?---This is the tender document for the provision of security services to the Art Gallery of New South Wales.

And that was the document I want to suggest to you that was provided to the tenderers- - -?---Correct.

30 - - -to know what they had to tender on?---Correct.

And it's dated February '09 in the middle of that first page?---Correct.

Correct. And I want to take you just to two pages, you can feel free to read it all, I've only provided it all to you out of fairness and if you want to read it, please do so. I want to take you to page 24, and the pages are numbered in the bottom right-hand corner. Do you have that page?---I do.

40 About six lines up from the bottom of that page, six or eight, there's a paragraph in the topic General and it says, it's starts with, "This means once logged on the user", et cetera. Then there's a sentence, "The security control system, Lenel or approved equivalent, will take control and be the primary control system", and it goes on?---Ah hmm.

I want to suggest to you that there was no doubt that as far as security access control was concerned, Lenel was stated as the preferred system?---Correct.

However, as is stated her, "or approved equivalent"?---Correct.

Because as I understand from Mr Paul, and again correct me if it's not your understanding, these products were put in as benchmarks?---Correct.

That is, if somebody could come up with another product that had equal capabilities or better it would be considered?---It was a performance-based specification.

10 A performance-based specification. And then going over to page 55 of 99, various performance benchmarks are stated on that page and then coming over to the next page, 56, we see in the middle of the page the CCTV system again, and, and the description of these columns is found in the top right-hand of this page, description, purpose, benchmark, device type, and it says, "The contractor is to meet specified requirements as a minimum." And it goes on and it talks about the product Verint Nextiva Version 6 system or approved equivalent?---Ah hmm. Correct.

20 And I want to suggest to you that nothing went out to those prospective tenderers about Lenel being the preferred product for CCTV systems?--- Could you repeat the question?

I want to suggest to you that nothing went out from the Art Gallery to the prospective tenderers saying that Lenel CCTV systems were the preferred product?---No, it says here, as I say, it was the Lenel Verint system that was spec'd.

I'm looking at this document?---Yeah.

30 Looking at this document it doesn't say anything about Lenel being a preferred product for the CCTV does it?

THE COMMISSIONER: Well, it doesn't say that expressly?---It doesn't, no, but it is an integrated system. It was very important to understand the integration.

So what's the effect of that?---They, an integrated system is one that brings all of the security technology and is readable so it must integrate the different systems through the security access system.

40 So, so what is the effect of nominating Lenel/Verint in the tender?---That is the performance benchmark that it must meet the capabilities provided by a Lenel/Verint system.

That being part of the integrated system?---Correct.

MR LLOYD: Madam, I want to suggest to you this document - - -

THE COMMISSIONER: Just excuse me a moment.

MR LLOYD: Sorry, Commissioner.

THE COMMISSIONER: So does that mean that while you might get other devices that might be as good as Lenel or Verint, that's not necessarily the final issue, the devices have to fit in with the system, be integrated?  
---Correct and I think you'll find the contractors, many of them put in up to three alternative type solutions so it was performance based.

10 MR LLOYD: I want to suggest to you, madam, that document does not state Lenel is the benchmark for the CCTV component, fair?---Correct.

It says the benchmark for the CCTV is Verint?---Or approved equivalent.

Exactly. And Lenel was never suggested as the benchmark for the CCTV?  
---No, as identified in here Lenel was identified for the security access.

Yeah, not the CCTV?---Correct.

20 I'm only questioning you about this because the suggestion was made by Counsel Assisting to the reverse of what I'm putting to you. Do you understand the process?---I do understand the process.

THE COMMISSIONER: Well, I don't understand that either. I don't think that that's necessarily, that's not the case that's been, it's not the allegations. This is not part of the allegations made against Mr Paul. The allegations against Mr Paul revolve around his dealings with the Pelco Number 2 so all this, and we've now been going for a long time, Mr Lloyd, are still yet to meet the precise case made against Mr Paul but I'm sure you'll come to it.

30 MR LLOYD: I'll come to it.

THE COMMISSIONER: The point is though we do not have unlimited time and this is - I will ask you to actually deal with the allegations that allegedly involve corrupt conduct. Some time you've got to actually have to meet those.

40 MR LLOYD: Commissioner, I'm happy to do so. What I'm trying to address, the points made as I understand it, by Counsel Assisting when he questions the witness. He tries to make points, if they're wrong I try to correct them. Now, in fairness I suggest I'm entitled to do so.

THE COMMISSIONER: I'm interested in the scope of this inquiry, I'm not interested in, in rabbits going down holes which are not connected to the inquiry.

MR LLOYD: Well, Commissioner, with respect I didn't send this rabbit down this hole. The hole was created by Counsel Assisting. If you're closing me down the record will record me.

THE COMMISSIONER: Don't threaten me, Mr Lloyd, it doesn't work. I'm not closing you down. I am just explaining to you that I would like you to get to the point of the scope of this inquiry.

10 MR LLOYD: I'll finish this line Commissioner with one more question and then move to others. Madam, could I take you to Exhibit 5 of 17. It's probably the same document you've got?---Oh, I see.

And to page 465. Are you with me?---I am.

Where, and read it again if you'd like, where Mr Paul makes some mention of the various systems for CCTV, in the middle of this page he refers to Lenel?---Yes.

20 And he says, "Lenel CCTV solutions are relatively new to the suite of softwares released. It's for this reason the Security Consultants International as along with the management of the Art Gallery determined that Lenel CCTV solution should be considered (not transcribable) but we have not specified this as the preferred solution in relation to primary CCTV solutions"?---Yes.

Do you agree with that statement now?---Sure.

30 Thank you. Whilst I'm there the previous page, that is page 464 we're dealing with CCTV and Pelco, Mr Paul refers to Pelco as a world leading non-proprietary CCTV product and goes on. And in the second paragraph he makes this comment, "Pelco are sometimes slow to release the latest technology". Do you see that?---Yes.

And do you recall in discussions on committees with Mr Paul he spoke about the slowness of Pelco bringing their products on to the market?---I don't recall that directly and it could well have been spoken to.

40 Thank you. Coming back to the meetings, and particularly to the Tender Evaluation Committee meetings of 27 February and 5 March. The documents that appear to minute, apart from the score sheets, what was said in the meetings are limited. Dealing with the score sheets firstly as they appear - - -

THE COMMISSIONER: Where are the documents Mr Lloyd?

MR LLOYD: They, firstly there is Exhibit 17. These are scoresheets firstly  
- - -

THE COMMISSIONER: What page, sorry?

MR LLOYD: F9, number 9 in that series. It's a three page exhibit, 48, 49 and 50.

THE COMMISSIONER: Yes, thank you. Do you have it Ms Flanagan?---I do, thank you.

10 MR LLOYD: I take it the writing, the handwriting on those three scoresheets is all Ms Tregeagle?---Yes, it's Ms Tregeagle.

And whist I'm with you on Ms Tregeagle, she was the chairwoman of the tender committee?---Evaluation panel.

Evaluation Committee?---Evaluation panel, yes she was.

And what was her role as chairperson?---She was to administer the process of the tender evaluation and to take carriage of that process.

20 She was a project manager by occupation?---She's an architect by training and professionally worked as a project manager for many years.

I take it she wasn't on the permanent staff of the Art Gallery, she was a contract employee?---No, she was on the staff in a, a temporary capacity.

On a contract?---No, as a temporary capacity based on the projects that were there.

30 And where is she now to your knowledge?---She's currently overseas.

Where?---I beg your pardon?

Whereabouts?---I don't need to disclose that.

As I've said, apart from your signature and the signature of others, these sheets are in her handwriting?---So sheets on page 54 are her handwriting.

I'm just looking at the three pages at the moment?---I'm sorry.

40 48, 49 and 50, the score sheets?---Yes. They are in her handwriting.

And she's listed questions that were to be asked of the invited tenderers? ---Correct.

And who drafted the questions to your knowledge?---They were done in consultation with both Anne, Tony and Daniel Paul.

Did you have any involvement?---I then reviewed them and would have made some comment, I don't recall the actual comment.

Taking you to 7, "Clarify what version software is being offered by you for the CCTV" and it's got "Pelco"?---Yes.

What needed to be clarified?

10 THE COMMISSIONER: Well, it's got Pelco?---What version of software.

MR LLOYD: Yes.

THE COMMISSIONER: I'm sorry, just as a matter of clarity, I don't - where is Pelco?

MR LLOYD: It's handwritten - - -

20 THE COMMISSIONER: Just clarify what version of software is being offered by you for the CCTV. Where, where's Pelco?

MR LLOYD: You see page 48?

THE COMMISSIONER: Yes?---It's handwritten.

MR LLOYD: Handwritten next to it.

THE COMMISSIONER: Yes, that's 48, I see, thank you.

30 MR LLOYD: Madam, that was the software being suggested by Kings and this is the sheet for Kings in their tender bid, wasn't it, one of them?---Yes, I can only assume with Anne's writing there. My memory was that Kings put up three different alternate solutions but one was benchmarking against the tender and I don't know in terms of version of software, it's not referring to a particular version, it's referring to a particular type.

Well, who drafted that question?---As I said previously, that was in discussion with the group.

40 Somebody must have come up with it, do you recall?---I don't.

And do you know why?---Because it was clearly relevant what the software was that we, the tenderer was nominated.

Because you wanted the latest software, didn't you?---Not necessarily the latest, as I've said previously, we wanted the most appropriate for the Art Gallery of New South Wales' conditions.

Well, if Kings had said all along, amongst other things, that they were providing Pelco what is the need to ask Kings to clarify the version of software?---Because as per the tender it was asked for equivalents and as I've mentioned previously alternate solutions were offered.

Indeed, well let me show you Kings' tender. It's, in Exhibit 2 it's number 4 and I can show you on the, the sixth page of this series, mine are photocopied double sided but it's a bit lopped off at the at the top of the page number but it's 597, it appears immediately before 598. Are you with me?---I'm with you.

We see there three suggestions are made in response to the tender, the second one of Kings being Lenel/Pelco. Are you with me?---Correct.

And the only mention in the whole document of a version of Pelco is found at page 721. And it's that part of the tender which commences at 720 where the tenderer, Kings, goes to this middle solution. We can infer from the logo, Endura and Lenel. And we come over to 721 and we see in the middle of that page about six or seven lines down after the logos, "The Pelco/Endura option for the Art Gallery is based on the Pelco/Endura Vn", would appear to be version, "2.0. The following are some of the added benefits." And then go on. Now, I've searched the bid, I can't see any other version mentioned. Are you prepared to accept that?---Yes, yep.

And I know in the same volume in a two-page exhibit, it's number 7 in this series, again appears to be the handwriting of Ms Tregagle at 576 and 577, Exhibit 17?---Yes.

We see, in her handwriting I take it?---Correct.

Near the bottom of the first page we see Kings x three, meaning they've put in three solutions?---As I said previously, yes.

And one is for 2.73 million and alternatives?---Yes.

And we go over the page and again in her handwriting- - -?---Yes.

- - -we see, "Lenel/Pelco, 2.69 million?"---Yeah.

So is it fair to say there could have been no doubt that all of you were aware when the tender box was opened that Kings were putting in a Lenel/Pelco bid as one of their three?---Correct. As I say, I was not there at the tender box being opened and nor did I sign this tender opening record.

Did you see these?---Yes, I did.

So you wouldn't dispute that you were- - -?---No, I'm not- - -

- - -aware at the time- - -?---I'm not disputing.

- - -that there was a Lenel/Pelco bid being put in by Kings?---Yeah.

Now, back to the minutes. I don't know whether they're minutes but the notes of these meetings. I have the score sheets. Did you make any notes at the meeting?---We did talk about that previously right at the beginning of the investigation and I said there was some annotation and they were compiled together by the chair, Anne Tregeagle.

10

So I'm asking you again, did you make any notes?---I just gave you my answer.

Is the answer, no, you didn't make any?---I made some notes but I have not kept notes, they were compiled by Anne Tregeagle so no, they're not recorded.

So where are those notes you made now?---They are not recorded.

20

You physically wrote on something?---I would have written on something but I don't recall the detail of it.

Where do we find what you wrote on?---As I said, those annotations are little notes, someone's inflection, I don't have notes from that meeting. The notes are done by the chair.

30

Well, we see at number 10 in this series of Exhibit 17 at page 54, notes in relation to as I understand it the first bid, and that is 27 February, the handwriting of Anne Tregeagle?---Yes, it looks like Anne Tregeagle's writing.

Well it's not yours?---Correct.

We don't have any notes of what was said by Kings?---No. There does not appear to be notes from Kings.

40

But notes must have been kept in relation to what Kings said if Ms Tregeagle was following her practice of making notes of important things that were said?---Yes. And I think that is a question to ask of Anne Tregeagle.

I'd like to ask it of Anne Tregeagle, but I'd like to ask where are the notes that she made of what Kings said?---I can't answer that question.

I know you can't. But there would have been notes. There's no doubt about that. Correct?---I can only assume there would have been notes.

And by the looks of it these notes were kept in a notebook because we can see on the right hand side the obvious photocopying of this page from a bound notebook - - -?---Correct.

- - - or a spiral backed notebook?---Correct.

And you were there so you must be familiar with her, her practice. Did she make notes in such a book?---I can see here photocopied.

10 I've just been handed something Commissioner, I don't know what it is. It's similar writing. It may be a missing page.

MR STRICKLAND: I'll just explain it. This document, the notes in relation to Kings were tendered but there were some – the wrong page was tendered. There was a correcting email sent around to the parties. And this is, this is the page.

MR LLOYD: Not to me.

20 MR STRICKLAND: Sorry, if it didn't get to my learned friend I'm sorry, but I'm told, I am told that there was a correcting email sent around in relation to this note, it's page 54.

THE COMMISSIONER: Page 54 of what?

MR STRICKLAND: Page 54 of the tab we're looking at which is tab 10.

30 THE COMMISSIONER: I don't understand that. There is a page 54. Is it said that this is the wrong page?

MR STRICKLAND: No, no. I don't know, Mr Commissioner.

MS LONERGAN: Commissioner, the difficulty was that for F9, I'm sorry F10 the incorrect page was copied. The handwritten note relating to the Kings interview should have in the top corner page 51 and as I understood it, I was instructed that a substitution was made for all parties where page 51 was substituted for the page 54, which appears in the bundle F10. And it appears from what Mr Lloyd has said that that didn't find its way to him.

40 THE COMMISSIONER: Well my bundle goes from page 48, 49, 50, 54.

MS LONERGAN: That's right, Commissioner. That page 54, which is a separate exhibit F10 ought to have been the handwritten notes of the Kings interview.

THE COMMISSIONER: Sorry, F10, you mean page 54?

MS LONERGAN: Yes, page 54.

THE COMMISSIONER: And what is the current page?

MS LONERGAN: It should be 51 in the top right corner which has just been handed to you, Commissioner - - -

THE COMMISSIONER: And what is it?

MS LONERGAN: - - - by your associate. And that is - - -

10

THE COMMISSIONER: What is 51?

MS LONERGAN: Yes. And that is, that is the notes of the, the handwritten notes of Ms Tregeagle of the interview of Kings on 27 February. And Commissioner, some questions were asked of Ms Flanagan on the last occasion about the document you have in your hand now, Commissioner, the correct document, but it appears that the bundles provided to the parties had the incorrect document in it and that wasn't discovered til later.

20

THE COMMISSIONER: I see. All right. So this should go - - -

MS LONERGAN: In substitution - - -

THE COMMISSIONER: - - - the correct 54 should not be substituted but inserted.

MS LONERGAN: It should be instead of 54. 51 should be inserted as F10 and 54 should be discarded.

30

THE COMMISSIONER: I'm sorry, I'm now lost again.

MS LONERGAN: F10 - - -

THE COMMISSIONER: It can't be discarded. You said the document that was 54 which should be 51 is the interview with Kings of 27 February. Is that right or not?

MS LONERGAN: Commissioner, the document, the exhibit number that we're talking about is F10.

40

THE COMMISSIONER: Yes.

MS LONERGAN: The document that's there at the moment is paginated at the top right-hand corner 54.

THE COMMISSIONER: Yes.

MS LONERGAN: And it's the handwritten notes of the ACG tender interview.

THE COMMISSIONER: Yes, but is that an exhibit or not?

MS LONERGAN: It ought not be an exhibit.

THE COMMISSIONER: It's not an exhibit at all?

10 MS LONERGAN: It should be, it should be discarded.

THE COMMISSIONER: It should be discarded.

MS LONERGAN: Yes.

THE COMMISSIONER: And F10 should be this document?

MS LONERGAN: Yes, it should.

20 THE COMMISSIONER: All right. Well- - -

MR LLOYD: Commissioner, with respect, I've just been handed page 53. I know nothing about 51, 52, I've never seen them and this is the first time I've seen 53. I would just like the notes that were taken at the meeting. It's not rocket science, with respect to my learned friend.

30 THE COMMISSIONER: Mr Lloyd, the number of documents in this case are immense. Occasionally mistakes will happen. I apologise that, on behalf of the Commission if mistakes are made. I'm quite sure that a person of your standing and experience will take it in your stride. You have not been prejudiced and there's plenty of time to cross-examine. We'll just get this right and you will proceed. I don't, at the moment I'm still not sure of what Mr Lloyd has been given because I haven't got a document that's marked 53. I think that what we'd better do is adjourn so that this can be got right.

#### **SHORT ADJOURNMENT**

**[12.31am]**

40

THE COMMISSIONER: Yes, Mr- - -

MR LLOYD: Thank you, Commissioner. I've been provided with the notes. I'll need to take instructions on them but I'll go onto another issue.

THE COMMISSIONER: Yes.

MR LLOYD: Ms Flanagan, I just want to try and put in sequence the issue of how it came about, if it did occur, asking the question about the financial viability, for want of a better expression, of the prospective tenderers. Now, as I understand it, when looking at Exhibit 17 and the opening of the tender box which we've just seen, that was Exhibit 1 in the series, so the tender box, sorry, I've gone to the wrong tender. The tender box containing the bids, if I can find it, was opened on 23 February. That's Exhibit 7?---Yes.

10 And page 576 gives us the date. And then I want to show you in part of the bundle that my client is producing, documents that haven't been marked yet. You'll see in that volume after the massive tender specification there is an email of 6 February, 2.46pm, from Anne Tregeagle to Daniel Paul.

THE COMMISSIONER: Mr Lloyd, where are you now, please?

MR LLOYD: Does Your Honour have, in the volume we've provided, the massive tender spec of 99 pages?

20 THE COMMISSIONER: Yes.

MR LLOYD: Just after that there is an email of 6 February you can see at the top.

THE COMMISSIONER: Yes.

30 MR LLOYD: Of 2.46pm and there's a following email of the same date, 6 February but at 3.47pm, where your security officer is sending out to suppliers, and they're all, and tenderers, integrators, as stated on the list, a spreadsheet so to speak in the second series of emails?---Yes.

And your understanding, those emails were sent to advise prospective tenderers and prospective suppliers, or at least those stated on the list, that they could seek more information and they could get in contact with each other, they were all being provided with each other's contact details?  
---This was following the tender briefing in the auditorium.

Indeed?---And this was questions that arose post that tender briefing.

40 Looking at the, well, I don't need to tender these documents to make the point, but just to refresh your memory, the second of that series is the email from Tony Morris of 6 February at 3.47pm. He appears to be sending an email- - -?---Yes, I can see that.

- - -to a variety of people, and just one I see there, because the email address makes it clear, on the third or fourth line of recipients we see Tony, or T Yallouris at Pelco?---Yes.

It's the subject, Supplier and Integrator List for the CCTV and Security Upgrade?---Yes.

And it's addressed to all suppliers?---Yes.

Now, that's not the integrators, is it?---Ah, I, I don't know, I'm sorry, I can't help you with that level of detail.

10 Well let's look at what it says.

MR STRICKLAND: I'm sorry I just, could I be reminded of the date of the email?

MR LLOYD: 6 February, 2009.

MR STRICKLAND: Thank you. I've got it, thank you.

MR LLOYD: All suppliers.

20

THE COMMISSIONER: The email is directed to all suppliers.

MR LLOYD: As agreed please find the attachment that lists contact details for all suppliers and integrators associated with CCTV for security upgrade.

THE COMMISSIONER: What's your question Mr Lloyd?

MR LLOYD: The question is – and next to that is a list. Do you see the list, it's three pages in?---I do see the list.

30

It was annexed to that email, my instructions are?---And it refers to the addendum number 1, attached to this addendum is the list of all tenderers, integrators and suppliers. This list will be provided to any interested suppliers as well.

Sure. Understand. The point I'm trying to make is this, that with your approval Mr Morris was telling all tenderers and all potential suppliers the details of each other so that if they wanted to use that product and get more information they had contact points to do so?---They did have contact points, correct.

40

The next email in this series I think makes the same point. 9 February, if you just turn over the page there's an email from Mr Morris to Daniel Paul copied to you and Anne Tregeagle where in issue 2, Tony Morris is saying, I will make myself available each of the Wednesday's until close of tender to discuss any issues raised by the integrators, you know, for a two hour period?---Correct. And that is also referred to in addendum number 1.

Indeed. And it's your understanding that that occurred?---It's my understanding that it would have occurred.

Next email in the series is 10 February at 1.13pm from Tony Morris to yourself and Anne Tregeagle where Tony sends to you an earlier email he had received from a supplier or a potential supplier and feel free to read it, talking about a design of a megapixel camera which would be hand painted and transformed to a waratah theme?---Yes.

- 10 The point I'm making is coming out of left field throughout this process were some suppliers that were trying to supply a product which met the capabilities but may have been a bit obscure so to speak?---Sure.

And they were being considered?---No, they were not being considered - - -

They were being (not transcribable)?--- - - - for (not transcribable) paint a waratah on a security camera.

- 20 Okay. Now, going on a few, can you go on about another 10 pages, passing the schedule, the costing schedule I've shown you and we see an email which we haven't seen - - -

THE COMMISSIONER: So where are we now? It would have been helpful had this been paginated, Mr Lloyd.

MR LLOYD: I didn't really - - -

THE COMMISSIONER: I don't know where you are.

- 30 MR LLOYD: There is an email after, if I could just turn it up for you, Mr Commissioner.

THE COMMISSIONER: What date?

MR LLOYD: It's an email of 26 February, 1.36pm, immediately after the schedule budget.

THE WITNESS: Yes, I have that.

- 40 MR LLOYD: You have that. 1.36.

THE COMMISSIONER: Thank you.

MR LLOYD: Now, that appears to be an email from Anne Tregeagle to Tony Morris copied to yourself and to Mr Daniel Paul?---Correct.

This is the afternoon before the interviews which are to take place the morning of the 27<sup>th</sup>?---Correct.

And Anne Tregeagle forwards to Tony Morris “Here is the finalised questions as discussed for you to send out”?---Correct.

Now, as a matter of logic you can’t know what was discussed between?  
---I referred to these notes and so I understand what’s written here, yes.

Well, were you party to those discussions?---Yes, we discussed what, what the scope of questions would be.

10 Okay. Well, they’re over the page?---Correct.

They were annexed?---Correct.

And which of those questions did you draft?---I don’t recall but let’s have a look. I was particularly interested in the subcontractors that they were using and I was particularly interested in the staff that they were allocating to the project, that line of question.

20 Which, which questions are those, perhaps you can - - -?---So they were not identified to one particular individual, it was a general discussion and a set of questions were then drawn up.

Well, the questions are numbered 1 to 11?---Correct.

Which ones, is it fair to say, you drafted?

THE COMMISSIONER: She’s just explained, she didn’t draft them?--- I did explain I didn’t draft them, it was done - - -

30 THE COMMISSIONER: It was a general discussion and somebody drafted them after the discussion?---And Anne Tregeagle drafted them so I can’t identify on the list 1 to 11 something that is specifically from my hand.

MR LLOYD: Did you have any involvement in question 7?---Clarifying the version of software, no that would not be a question that I would ask. Not a level of detail that I would know.

40 That was at 1.36pm. Then at – the next one in the series is at 5.39pm on the 26<sup>th</sup>?---Correct.

And I’ll come to that shortly. The one after - - -

THE COMMISSIONER: There’s one, there appears to be a 2.29. Are we ignoring that?

MR LLOYD: I’m coming to it, now. At 2.29pm, we have emails from Tony Morris to Kings Security?---Yes. And also further on and they’re in similar terms to Tony of ACG?---Correct.

Effectively enclosing the list of questions that are going to be asked the next morning?---Correct.

And there's no doubt by this stage that Tony Morris was familiar enough with Charlie Diekman to be referring to him as Charlie not Mr Diekman?

---Yes, as evidenced in the email, yes.

Likewise Tony Grubisic?---Correct.

10 Because you were well aware that up to this point the representatives of Kings and ACG and the other party that became the third firm to be interviewed had had discussions with Mr Paul and with Mr Moore about aspects of their bids?---Yes, they were there at a tender briefing and Tony Morris was made available on those hours to answer any of these type questions.

Okay. So they go out at 2.29pm. There is then at - - -?---5.39.

20 5.39pm the scoresheets sent by Anne Tregagle to each of the other members of the TEC?---Correct.

And they reflect the questions on the list?

THE COMMISSIONER: Sorry where, I don't - - -

MR LLOYD: Perhaps not in time sequence, Commissioner, but it's after the email at 1.36pm and before that at 2.29pm. They're out of sequence.

30 THE COMMISSIONER: I've got the 1.36pm.

MR LLOYD: After that.

THE COMMISSIONER: Yes, thank you.

MR LLOYD: So the scoresheets have gone out reflecting those questions? ---Correct.

40 And then as I understand it we move to a document which is in the document that you've been shown by Counsel Assisting - - -

THE COMMISSIONER: Well can we do that at 2 o'clock Mr Lloyd?

MR LLOYD: (No Audible Reply)

THE COMMISSIONER: We'll adjourn until 2 o'clock.

**LUNCHEON ADJOURNMENT**

**[12.59pm]**