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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 THURSDAY 30 AUGUST, 2012

AT 2.19PM

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.

<ANNE IRENE TREGGAGLE, on former affirmation [2.19pm]

THE COMMISSIONER: Yes, Mr Strickland.

MR STRICKLAND: Commissioner, I just to tender some documents, please. I tender an email from Mr Diekman to Mr Roche dated 26 February, 2009, it's entitled Tender Proposal Interview. It's page 22 and 23. I ask that this be tendered as Exhibit 17, tab 7(B). I think it's already been
10 arranged in your folder as such.

THE COMMISSIONER: Exhibit 17, tab 17(B)?

MR STRICKLAND: No. Exhibit 17, tab 7(B).

THE COMMISSIONER: 7(B).

MR STRICKLAND: And just for everyone's benefit, Exhibit 17, tab 7(B) will comprise this email, which is page 22 and page 23 together with a one
20 page questionnaire which is currently Exhibit 17, tab 7(A), page 24.

THE COMMISSIONER: All right. Can I just have the email, please. I need the new exhibit. All right. Exhibit 17, tab 7(B) will be an email from Mr Diekman to Mr Roche of 26 February, 2009. Is that all?

MR STRICKLAND: No, and there should be, there's three pages to that exhibit, pages 22, 23 and 24.

THE COMMISSIONER: Oh, together with the questions for the interview.
30

MR STRICKLAND: That's correct. Because they are attached to that email.

THE COMMISSIONER: Yes, all right. So it's the email from Mr Diekman to Mr Roche of 26 February, 2009 together with a document headed AGNSW Security Upgrade Tender Questions For Interviews. Yes.

MR STRICKLAND: Thank you. I tender as a substitution a document entitled AG Security Upgrade Tender Interview Assessment of Kings dated
40 27 February, 2009, this should be a substitute for Exhibit 17, tab 9. There are three pages, there are one page to that.

THE COMMISSIONER: So did you say tab 9?

MR STRICKLAND: Exhibit 17, tab 9. This document is a completed copy of that tender interview assessment. What's been tendered is an incomplete copy.

THE COMMISSIONER: Well a complete copy of the tender interview assessment will be substituted for the existing Exhibit 17, tab 9.

EXHIBIT 17 (7B) – EMAIL FROM MR DIEKMAN DATED 26 FEBRUARY 2009

MR STRICKLAND: Thank you.

10

MR LLOYD: Commissioner, can I make a suggestion and I don't want to give away forensic advantage here, could that be just added to that exhibit?

THE COMMISSIONER: Yes.

MR STRICKLAND: I have no problem with that.

THE COMMISSIONER: All right. The completed tender interview assessment will be Exhibit 239.

20

#EXHIBIT 239 - COMPLETE AGNSW SECURITY UPGRADE TENDER INTERVIEW ASSESSMENT DATED 27 FEBRUARY 2009

THE COMMISSIONER: Just a moment, please. Yes, Mr Strickland.

MR STRICKLAND: I also tender an email string, the first of which is from Anne Tregagle to Wayne Henschke, H-e-n-s-c - - -

30

THE COMMISSIONER: Well what's the last?

MR STRICKLAND: This is the last, I'm sorry. I beg your pardon, the last of which is an email from Anne Tregagle to Wayne Henschke, H-e-n-s-c-h-k-e dated 18 July, 2008.

THE COMMISSIONER: Exhibit 293, sorry, 239. Exhibit 240 is the stream of, is a stream of emails the last of which is an email from Ms Tregagle to Wayne Henschke of 18 July, 2008.

40

#EXHIBIT 240 - EMAIL STREAM WITH FINAL EMAIL FROM MS TREGEAGLE TO MR MORRIS SENT AT 2:58PM ON 18 JULY 2008

MR STRICKLAND: I tender a email string from Peter Roche to Anne Tregagle dated 18 March 2009 but that's the last of the emails in the email string.

THE COMMISSIONER: The string of emails the last of which is an email from Mr Roche to Ms Tregeagle of 18 March 2009 is Exhibit 241.

#EXHIBIT 241 - EMAIL STREAM WITH FINAL EMAIL FROM MR ROCHE TO MS TREGEAGLE SENT ON 18 MARCH 2009

10 MR STRICKLAND: Thank you.

I tender a - excuse me. I tender a spreadsheet in relation to five, sorry, I beg your pardon, in relation to six tenderers. It doesn't have a title page on it.

THE COMMISSIONER: Exhibit 242 is a spreadsheet with a figure 21 on the top left-hand corner.

#EXHIBIT 242 - SPREADSHEET SHOWN TO MS TREGEAGLE

20

MR STRICKLAND: Commissioner, there is - I've been provided today by Ms Tregeagle's counsel a notebook made by Ms, a notebook of notes made by Ms Tregeagle in relation to a number of matters most of which had nothing to do with this hearing but there a few pages that may be relevant. If they're being copied now and I will tender those pages. Mr Lloyd has requested that in order to save time so he doesn't use time during this hearing that he be given a copy of the entire book so he can satisfy himself with nothing else relevant. I have no objection to that course.

30

THE COMMISSIONER: Mr Smith.

MR SMITH: There's no objection to it but I might ask for a suppression order in respect of the copy if you like because we don't - - -

THE COMMISSIONER: Well Mr Lloyd can give it back when he's finished with it.

40 MR LLOYD: I undertake there'll be one copy only, you'll probably get my scrawl on it and I'll give it to you when we finish. Thank you, Commissioner.

THE COMMISSIONER: Mr Smith, why wasn't this given to the Commission before?

MR SMITH: As I understand it Ms Tregeagle and the Art Gallery will ask for copies of the parts of the document which related to meetings and they were provided and recently we were asked if we had the full notebook,

we've made inquiries, searches yesterday we found them and we gave it to Mr Strickland.

THE COMMISSIONER: Mr Strickland.

MR STRICKLAND: Can I continue?

THE COMMISSIONER: Pardon?

10 MR STRICKLAND: Sorry.

THE COMMISSIONER: Proceed.

MR STRICKLAND: Thank you.

Could the witness please be shown Exhibit 242.

Ms Tregeagle, have you seen this spreadsheet before today?---Not before today, no, no.

20

THE COMMISSIONER: Do you know who prepared it?---I'm sorry, Commissioner?

Do you know who prepared it?---No, I don't. I know I did not prepare it.

MR STRICKLAND: Under the - in the heading - in the notes under Kings you can see that, you can see that there are 12 different columns and the column on the right-hand side, right-hand side says notes. Do you see that? ---Yes.

30

And under the Kings row the note says that they are, presumably Kings, are a Pelco certified integrator not Verint certified. Did you know, were you ever told or did you receive any information that Kings was a Pelco certified integrator but not a Verint certified?---No, I was not aware of it.

Were you given any information by anyone about whether that, whether Kings was certified to install Lenel, Verint, Pelco security equipment? ---Well, I understood that they were certified to install Lenel because that was the basis that they were invited to the tender.

40

THE COMMISSIONER: Can I ask where this document comes from?

MR STRICKLAND: My understanding is it comes from the Art Gallery? ---Yeah.

THE COMMISSIONER: It's produced, Mr Smith, where does this come from?

MR SMITH: My recollection is that at a compulsory hearing I produced a disc to Ms Lonergan and this document was on that disc.

THE COMMISSIONER: Right. And so how has it been obtained today?

MR STRICKLAND: Commissioner, I - it did not form part of the compulsory examination documents but I asked for, it was referred to or there were some documents referred to in the compulsory examination when I asked for those documents and this was produced to me so I'm afraid I can't assist anything beyond that.

THE COMMISSIONER: Ms Tregagle, can you say was this document ever shown to you by anyone before?---Commissioner, I can't say for sure I've not seen the document as a, as a document but I don't believe I have ever looked at it closely, read it. It was very likely from my computer that it was provided but it's not a document that I looked at in, in any detail if I did look at it.

20 If it was provided from your computer - - -?---Yeah.

- - - how did your computer get it?---Oh, I'm assuming it was sent to me as a draft but it's not, I guess why I say I don't believe I've seen, looked at this document before is that I certainly was not aware of that note about Pelco, about Kings not being a Verint certified integrator and I don't have a memory of seeing this, this document so I can't be 100 per cent sure I've never seen it but I've not read it.

Mr Morris didn't say anything to you about such a document or did he?
30 ---No, no.

Did Mr Morris say anything to you about Kings being a Pelco certified integrator, not a Verint certified integrator?---No, no.

If he had known that I would assume that that's something he would have said?---If Mr Morris knew that?

Yes, that was his job, to, to report on matters such as this wasn't it?---It was more Mr, Mr Paul's job.

40 Yes, I know but - - -?---Yeah.

- - - if Mr Morris had been aware of it he would have, his job was to report such a thing?---Well, I would have expected that he would have raised it, yes.

Because it had a material effect on the - - -?---Yes.

- - - capacity of the different tenderers?---Yes, correct.

And can you say - well, I don't know who's produced this, it's probably been produced by the Commission, I mean the actual document itself today. Does it look like anything that the - is this the sort of thing that the Art Gallery produces?---Ah - - -

10 Could it be?---I, I believe I would probably have been the only person in the Art Gallery to have produced a document of this sort. I don't believe, Mr Morris might have been the only other person. It's not my style of producing a spreadsheet, it's not - I would have the visual arrangement of it quite different to this so that's why I can say with confidence it's not my document. It looks - look, I, I would be guessing where it came from.

Yes, Mr Strickland.

MR STRICKLAND: Do you know what is meant by the statement "their programme does not demonstrate understanding of the two stage project"?
20 ---There was a staging in the project relating to installation of equipment into the control room because it needed to be coordinated with the physical fit out of the control room which was a separate project and the work being done to upgrade the loading dock which was a separate project but was because the control room is on the loading dock or next, adjacent to the loading dock those projects were very closely linked in, in the timing of them.

Excuse me. There's a reference in Exhibit 242, there's two references to the name under column 10, I ask that that name to be suppressed.

30 THE COMMISSIONER: Yes. The name of the suburb in column 10 is to be suppressed.

THE NAME OF THE SUBURB IN COLUMN 10 TO BE SUPPRESSED

40 THE COMMISSIONER: The prices of these tenders, I don't know if they - if you're able to say anything about them Ms Tregeagle, to establish the time at which this document was produced. I take it it was after the tenders, the first tenders were opened?---It was after the tender closed and the tender documents were opened. I can certainly confirm that the Kings Security first price is the price they had for their Lenel Verint combination. And they had three options, so that would correspond there. The ACG one looks correct for their Lenel Verint option as well. I'm not familiar enough with the others to tell.

Can I just ask you about these notes against Kings, the second – did anybody mention that Kings were a Pelco certified integrator not a Verint certified integrator?---I don't believe I have ever heard that. It was a surprise to me when I saw it.

Today?---Today.

10 And the notion that their programme does not demonstrate understanding of the two stage project, have you ever heard that before?---Oh, possibly. That would not have concerned me anywhere near as much as the first note.

Well who would have said that second part?---I would say the author of - - -

Do you know who said – I mean where would you have heard it?--- - - - this spreadsheet would have made that note. But they - - -

Yes, but did anybody say anything at any meeting which you heard to that effect?---It's possible. I don't have a particular recollection of it.

20 But you don't know?---But it's the sort of, sort of thing that we would have discussed most likely with Kings.

All right. Yes, Mr Strickland.

MR STRICKLAND: Could the witness please be provided - - -

30 THE COMMISSIONER: I should say just to (not transcribable) short, in view of the late stage at which this document was produced and in order to arrive at an end to this inquiry by tomorrow afternoon, I do not propose to make any findings which, which rely on this document at all.

MR STRICKLAND: Could the witness please be shown Exhibit 17? Can I just inquire is Exhibit 17 an entire bundle? Good. Thank you. If you go to Exhibit 17, tab 8?---Is that the one that's headed Documents Flanagan?

It should, it should say - - -?---Oh, oh F8, I beg your pardon. I thought you said tab 8.

40 - - - it's a one page document, page 12?---I got it.

So do remember seeing this document before?---Yes, I have.

And this was a – this represents a summary of the ranking of different companies according to price and other criteria. Is that right?---Sorry, I'm looking at the wrong document.

Have you got it in front of you?---Yes, I do, yes, I do. And I believe I would have seen this before, yes.

Okay. So before - the reference to round one interviews refers to the interviews with three companies, ACG, Kings and SMP - - -?---Yes.

- - - that were selected as being the three highest ranking companies. Is that correct?---Yes.

Okay. Thank you. Now could the witness then be shown Exhibit 17, I think it's tab 7B the document that's recently been tendered.

10

UNIDENTIFIED MALE SPEAKER: What number?

MR STRICKLAND: I think it's 17B. 7B I beg your pardon.

So do you recall a letter being sent to each of the three tenderers requesting their attendance at an interview and then asked a list of questions?---I recall that this went out, yes.

20 Right. Okay. And, sorry if I could just, I'm sorry if I can go back to the document I showed you before which was the rankings. In that document it had price rank at 50, it had a rating of 50 per cent?---Yes.

Was that your decision to weigh it at 50 per cent?---No, it wasn't my decision and I can't recall how we arrived or how the, the, the figure of 50 per cent split between price and desirable criteria was decided.

30 THE COMMISSIONER: And you say it wasn't your decision do you mean that it wasn't your sole decision or do you mean you didn't participate in the decision?---Well I can't recall whether we - there was a decision made to, to split it at 50, 50 per cent. As, as far as I can recall we - it's, it's I believe what happened is that we hadn't actually made a decision on how to do that split until around the time of the first interview but I'm not confident I'm correct there, my, my recollection is fairly hazy. We may - so I'm sorry I'm not going to be very helpful on that one.

But it does seem that at some point in time the 50 per cent was agreed upon?---Well what I'm not sure about was whether we agreed on it or whether it was a recommendation and we - - -

40 But it was certainly followed?---looked at that recommendation and decided to change it or whether we made a decision and then consciously made a change to that decision.

I understand.---Yeah.

MR STRICKLAND: Do you recall, you recall it at some stage that price rating went down, was reduced to 40 per cent?---Correct, yes.

And do you remember who was responsible or who made that decision or how that decision was made?---I believe the, the, the Tender Evaluation Committee made that decision as a committee.

And why, why did they reduce the waiting?---Well I, I believe that we were wanting to ensure that the desirable criteria played a greater role in the selection process than the price. Because those issues were more critical to the gallery to ensure that the, that the project was able to un roll out in a, in a, in a smooth way within the operating environment of the gallery.

10

Okay, thankyou. And then if you go to tab 7A?---That's the next page.

Page 25?---Questions for interviews?

You got page 25?---Okay, yes.

THE COMMISSIONER: 7A page 24?---Yes, I have the second page.

MR STRICKLAND: No, it shouldn't be.

20

THE COMMISSIONER: Page 25 of 7A.

MR STRICKLAND: That's right?---Yes.

Do you see an email from Daniel Paul to yourself and the other members of the Tender Evaluation Committee of 26 February, '09?---Yes, I do.

And Daniel Paul asked, are we allowed to ask and then what percentage of your company's annual secure electronic turnover does this project represent to you, do you see that?---Yes.

30

And was there anything that, was it your understanding that that was a question that Daniel Paul wished you to ask each of the, each of the tenderers?---I, I believe so but look, I would have expected it, just from, from where I am now, that's what I would have expected it to mean.

Okay. Now, if I can ask you about what happened at the 27 February meeting, first, you took some notes of that meeting, is that correct?---Yes.

40

And if you go please to Exhibit 17, tab 10?---Oh, we're in 17, yes, thank you.

And do you recognise the - and if you go to I think the, it's not paginated but if you go to, I beg your pardon, if you go to page, it should be 51? ---The first page showing - - -

Well, the top right-hand corner - - -?---Yes.

- - - has page references?---51, yes, I have that.

And are they the notes you made for Kings?---They are.

And there's just one page of notes?---I - - -

Just one page of notes for the Kings interview?---Yes, yes, that's right.

10 And you've obviously read those notes recently have you?---Yes, I have.

So doing your best what is your recollection of what was said by Kings or Kings' officers or employees during that meeting?---They talked through their responses to the questions that we had sent them prior to the interview.

20 Yes?---They then said that they had a, gave us a document which they said was a change to their, their proposal based on the fact that they had just heard that the new version of the Pelco camera was now released and available to be, to be considered as, as an option in the, in the equipment list for the project and they gave us a revised price if we were to proceed with that, with that option. I, I recall they gave us a written document, each member of the, of the committee and then I said to them that we weren't able to consider that offer because we were in the, in the stage of the tender that was investigating the original submissions and we weren't able to look at it a new alternative price and I gave the documents back to them and said we wouldn't be taking them on board.

30 THE COMMISSIONER: Which documents did you give back?---Well, it was a, I think a one-page or possibly a two-page written document which outlined the, the revised camera system and some other additional functionalities that they were offering in addition to the, what was in the scope and, and a price. That's how I recall it.

Was this in a, were these pages in an envelope or were they - - -?---No, they were just a sheet of paper, it didn't have a formal cover to it and they tabled it to each member and I collected them together and gave them back and said we can't consider these at this point in time.

40 MR STRICKLAND: I'll just show you a document and see if you recognise it?---I didn't retain a copy of it.

Could the witness please be shown Exhibit 2, tab 5. It's a tender proposal interview, the Kings tender proposal interview. It appears not to be there.

THE COMMISSIONER: Use mine.

MR STRICKLAND: I'll give you a copy. Just have a look through that document. You said in answer to a question about what was said at the

meeting that the Kings people talked through the questions that you had asked them in your – in the email of 26 February?---From Mr Morris, yes.

Mr Morris?---Yeah.

Do you recall this document refers to those questions, do you recall this document being handed out?---Yes, that's what I believe happened.

Okay?---Yep.

10

And did you – was that document left with you - - -?---Yes.

- - - or was it taken back?---No. That document was left with us. There was a copy for each member of the committee.

Okay. So if you just for example go to page - - -

MR LLOYD: Could I, Commissioner, could I ask the source of that document be told to us?

20

THE COMMISSIONER: The source of it?

MR LLOYD: Yes, the source of it.

THE COMMISSIONER: I'm not sure what you mean, Mr Lloyd.

MR LLOYD: I mean where it was seized from by ICAC officers?

MR STRICKLAND: It was produced by the Art Gallery under a section 22 notice.

30

THE COMMISSIONER: Originally, originally.

MR STRICKLAND: Originally.

THE COMMISSIONER: Yes. It was produced with the first lot of documents that the Art Gallery produced to the Commission.

MR STRICKLAND: So if you go for example, not for example, if you go please to page 36, it's got clarify what version of software is being offered by you for CCTV, were you, were you aware at the time of this interview, by reading this document or verbally that the software that was being offered by Kings was version 2.0 Endura?---What I was aware of was that I couldn't tell you what version it was, but that the version that they had in their original tender was the earlier version to the one that they told us about at the interview. So they were at the interview proposing the revised price based on a subsequent version of the Endura 2.

40

THE COMMISSIONER: Subsequent to - - -?---Pelco system.

When you use, when you say subsequent you mean subsequent to their original tender?---Tender, yes. That was my understanding of what was being put on the table.

MR STRICKLAND: Just to be clear your understanding – in their original tender they offered, they were offering Pelco Endura, a Pelco Endura solution. Is that right?---Yes.

10

But then at this meeting they offered an upgraded or new version of that solution, Pelco Endura?---That was, that was my understanding. And that was - - -

Based upon? Your understanding based upon?---Well based upon the fact that the, the reason they could give us a revised price was because it was a new version of the, the Pelco system.

THE COMMISSIONER: But who said that?---That's my recollection.

20

Who said it?

MR STRICKLAND: Who said that?---Oh it would have either been Charlie Diekman or Peter Roche, one or the other. I couldn't tell you which one.

And in an earlier answer you said, when I asked you what was said, you said that one of the Kings people talked about a new version of Pelco camera. That's the words you used?---Yeah.

30

Were they referring to a Pelco camera or a Pelco software or an interface or do you recall?---I, look it may have been both. Certainly it was, it was part of the software because I understood that there was, they were saying that the software could integrate with the Lenel. Whether there was an upgrade to the camera as well, I actually can't recall precisely, but there may have been an upgrade to the hardware as well.

40

Okay. And did Mr Paul - what was Mr Paul's reaction upon hearing this news?---Well as I recall it he was surprised and said - he had been telling us previously that there was in the wings a new version of the Pelco camera and that it was coming up but it would not be available in time to being considered for this project and his surprise as I understood it was that it was now available earlier than he was expecting and, yeah.

THE COMMISSIONER: And was he for or against it?---He was very pleased about the idea that, that this - because he had been saying that the, the reason the Verint camera system was the benchmark was because the Pelco cameras which were, were always described as very good quality

lacked some functionality in dealing, integrating with the Lenel system that the Verint system had and this new upgrade was meant to rectify that.

MR STRICKLAND: If you go to page 41 of that document, please, under the heading 'Our pricing', do you have that?---I do.

10 And on the second last dot point it says priced using Version 1, Version 2 provides significant cost savings. As I understand the evidence you gave a little bit before or a couple of answers ago you say that your understanding based upon what Kings people told you was that the justification for the significant price reduction was that Version 2 provided a significant cost saving as compared to the earlier version?---That's how I recall it, yes.

Okay. And did Mr Paul challenge or query any of this information that you've just given evidence about?---Um - - -

At the meeting with Kings for a start?---Not challenge or query, he may have asked some questions about it to get some further information.

20 Well when you say he may have, did he?---I can't recall precisely what he asked - - -

THE COMMISSIONER: But did he ask or can't you remember?---I would, I can't say I would remember what he actually asked after the - - -

30 But do you remember him asking questions even though you don't remember what questions?---I, I believe there was conversation about it definitely but I couldn't tell you what he, what he exactly asked. After the, the interview was completed I asked Mr Paul to verify, go and find out - - -

MR STRICKLAND: I'll come to that?---Sorry, I'm jumping ahead.

MR LLOYD: Could you please finish now?

MR STRICKLAND: No, I'm sorry. I, I will, I will - - -

40 THE COMMISSIONER: Mr Lloyd, you are not in control of this examination and you have no right. It is not a trial. The counsel assisting has the right to say that's not what I want to know this is what I want to know. You will have the chance to examine the witness and you can ask her whatever questions you like.

MR LLOYD: I understand entirely, Commissioner, but we all know from experience that spontaneity normally gives rise to truthfulness rather than leading questions. She was attempting to answer a question and you've said on occasions a witness should be entitled to answer the question. I'm just following suit. She was about to say something, it was relevant and she should have been allowed to answer.

MR STRICKLAND: I can guarantee I'll get to it but it's - - -

MR LLOYD: Well you may have.

MR STRICKLAND:; It flows, it flows, it doesn't flow on a chronological order. I can guarantee I'll get to it.

10 Now, Ms Tregeagle, what I was asking you about, what I continue to ask you about is what was said at the meeting when Kings were there. I will next ask you about what happened when Kings left the room and I will get that very matter. Do you understand?---I understand. My apologies.

No, don't worry. Now when Kings were at the meeting did Mr Paul ever say anything along the lines of your original alternate bid is for Pelco Endura 2?---No, pretty confident I can say no to that.

20 Did he ever say anything along the lines of how can Version 2 justify the significant cost savings when your original bid was already based upon Version 2. Did he say anything along those lines?---No, no.

Now, I'll now come to Kings then left the room, is that right?---Correct.

And then you had a further meeting, is that right?---The, the committee discussed the interview - - -

Right?--- - - - and, yeah.

30 Now, you then were about to say something and just say what you were able to say?---Okay. At that, in that discussion I asked Mr Paul to contact Pelco or do whatever he needed to do to, to verify that what Kings had told us was correct and he undertook to do so as quickly as possible.

Is there anything else you can remember about what was said at the second meeting, by second meeting - I withdraw the words second meeting. After Kings left you had a further meeting, just the TEC, is that right?---Yes.

40 Was there anything else that was said at the TEC meeting that you can recall?---We, we discussed the implications of the, the fact that this Pelco camera was, assuming it was correct that it was still available and we agreed that, we liked the fact that it was a better product. We could, we could, we understood that it was an offer of interest. We like the fact that there was potential for some cost reduction.

THE COMMISSIONER: It was a very quick cost reduction?---Yes, it was, yes.

But did it concern you at all that you were in effect allowing a different bid from one of the same tenderers after the tender had closed?---Well, we weren't, at this point in time we had now allowed it, we, we were - - -

Yes, but did you - well, what did you, did you talk about that?---Yes, we did.

Well, what was the discussion about that?---And we discussed how we might proceed and following the three interviews that we had had on that day we talked about the possibility of - and, and following those three interviews we all agreed - - -

All right. I'm sorry?---Am I jumping ahead too far.

I'm sure Mr Strickland, I'm going to stop you, do you mind, Mr Strickland will ask you what happened then. What I'm really asking is at the meeting which occurred once Kings had left before the next tenderer came in, was there any discussion there about how you could take advantage as it were of the new, this new product and the new price?---Ah - - -

Or can't you remember?---Commissioner, I can't be sure when we had the conversations, when in the day we had which conversations. I can only say that I've got a - - -

I understand that?--- - - - I've got a memory that certain things were discussed at, at some point during the day.

Yes, very well.

MR STRICKLAND: Just going back to that meeting when Kings were present - - -?---Yeah.

- - - on 27 February?---Yes.

Why did you say at that meeting words to the effect of we can't accept this offer?---Because it was not fair to the other tenderers for them to put a different, a new offer on the table at that point in time. We were in the clarification stage and we weren't negotiating, we had not determined a preferred tenderer to negotiate with and that's my understanding of the, the process that we needed to follow.

THE COMMISSIONER: Did you have, at that stage did you have a budget?---Yes, we did.

And what was the budget?---Well, the total project budget was \$2 million.

What did that - yes?---This - - -

Does that mean is that, that's what you could afford to spend?---That's how much money we had for all of the, for this particular contract it was, it was - we were working to \$2 million, yes.

And that included the material at the Art Gallery and at the other outlying - - -?---At the collection store, yes.

- - - areas?---Yes, and, and the other - - -

10 It was an aggregate of \$2 million?---Correct.

You asked, after Kings left the 27 February meeting you asked Mr Paul to verify the information or to check the accuracy of the information presented to you by Diekman or Roche, is that right?---That's, that's as I recall it, yes.

MR STRICKLAND: And that's in particular in relation to whether this new upgraded Pelco Endura version was in fact available now. Is that right? ---Yes, that what Kings had told us was, was correct.

20 Did he report back to you?---Yes, he did. And I couldn't tell you exactly at what timeframe but fairly quickly saying, confirming that he had talked as I recall to people in the United States. I think it was overnight, that's how I remember it and that they had - and he confirmed that it was available, that it had been released.

When you say people in the United States - - -?---Oh, Pelco, the Pelco company in the United States.

30 That's what he said to you?---That's, that's how I recall it.

And he spoke to them and what did they - what did he say they said to him?---Well as I recall it that they had told him that yes, they had released the, the new equipment and that it was a fully supported and fully developed system. That's how I understood it.

Now I'll ask you please to go to Exhibit 2, tab 8. I'm showing you now an annexure to a tender evaluation report. If you go to page 158, please?---I have that.

40 And you've seen this document before?---Yes, I have.

And does this represent an assessment of the three companies who participated in the first interview?---It represents, yes, it does.

It's a - I should say it's a table of the - - -?---Yeah, capturing our assessment and a ranking of the price.

Right. So I won't go through it all but as I understand it the – well importantly at the bottom right hand corner there is a summary of the rankings of the three companies which takes into account both the price and the interview. Is that correct?---Yes.

That is there were scores done in terms of their price. Is that right?
---Correct.

10 And there were also scores done based upon the answers that were given to the interview based upon those specified questions?--- Yes, that's right.

And when you combined both the price and those answers then there is the ranking as per the bottom, the bottom right hand side of page 158?---That's correct.

In other words, ACG were ranked 1, Kings 2 and SNP 3?---Yes.

20 And was it – and a decision was made after speaking to all the three companies to then have two preferred tenderers. Is that right?---Yes, at the end of the day.

And that was ACG and Kings?---Yes.

Okay. Thank you. Could the witness please be shown, sorry, could you go to Exhibit 17. Have you still got that there?---No.

30 Exhibit 17, tab 11. And I want to take you please to an email at the bottom of page 55 which is your email to Tony Morris, copied to the other members of the Tender Evaluation Committee of 27 February, 6.56?---Yes.

IE all the interviews have been finished at that stage. Correct?---Yes.

And that what you have asked Tony Morris to send letters to both Kings and ACG. Do you see that?---Yes.

40 What I wanted to ask you was if you go to Kings, if you go to the letter to Kings that you've asked Mr Morris to send to Kings you ask them, if you go over the page to page 56, you've asked Mr Morris to write to Kings, this is at point 3, "Please also advise what a percentage approximately of your company's annual (not transcribable) electronics turnover does this project represent to you." Now that's the question Dan Paul suggest you asked?---Yes.

Why, but that question is not asked of ACG?---Yes.

Can you explain that?---No, not really. I would have expected that we would have asked the question of both of them, so I don't understand why we didn't.

But when you say we this is your email?---The Tender Committee, me, I would have, I would have expected that, that I would have wanted that asked both of them so I don't know why I didn't put that in.

Is that an oversight on your part?---Possibly but I can't say.

Okay?---Yeah.

10 THE COMMISSIONER: So Mr Paul followed your, this, if Tony Morris followed this that's understandable then?---Yes, I believe so. It was - I don't believe he changed anything.

Well, yes. Mr Lloyd, you'll take note of that I'm sure, you don't need to ask any questions about that.

MR LLOYD: Indeed.

20 MR STRICKLAND: Ms Tregeagle, there's another part of this letter, the email I wanted to ask you about where you say, this is in the letter to Kings, "Your maintenance costs for years three to five are particularly high, so we request that you review these costs in tender schedule 2B"?---Yes.

And did anyone suggest you write that to Kings?---That I believe is - would have come from a, a recommendation from Daniel Paul, Mr Paul would have been in a much better position than I to assess whether those maintenance costs were high.

30 So in effect what you would try to do was get them to reduce their price?
---Yes, yes.

Okay. You didn't, and I'm not suggesting you should have but you didn't think there was anything unfair in getting one tenderer to lower their price about maintenance costs but not suggest that the other tenderer lower it in some other area - - ?---Clearly I didn't.

- - - or in the same area?---Clearly at the time I didn't because I didn't put that in. Certainly in hindsight I don't think it was a good way to perceive.

40 THE COMMISSIONER: There is justification for ACG's anger?---Well they were not necessarily party to this knowledge but I can certainly - - -

They weren't party to it at all?---Pardon?

They were not party to it at all?---I, I agree with you, yes.

But that seems to have been a joint decision?---Well it was certainly in knowledge of the whole committee - - -

There's no, there's no particular, yes?---Yes. But I wrote this email.

No, I understand?---Yeah.

MR STRICKLAND: Could the witness please be shown Exhibit 117. This, this is an email from Tony Morris to Tony Grubisic on 2 March 2009 at 11.27am. Have you seen this email before and I'm talking about the second email? I beg your pardon, the email that's in bold?---At, of - the one on,
10 second one on the page?

Yeah. Which begins, "Tony, thank you again for your time and interest in our security - - -?---And that's written - - -

Have you seen that email before?---I'm sure I have.

In that email Mr Morris asked Mr Grubisic the other co preferred tenderer or the other preferred tenderer to in effect provide a new solution being and this is in little b, the new solution he refers to as but he's asking Mr Grubisic
20 to, to tender on the Pelco Endura 2 Solution. Is that your understanding?--- That would be my understanding, yes.

And at the second page he said, "We request a response from you by close of business Tuesday 3 March next week"?---Yes.

But the email's sent to him on 2 March - - -?---I would have, I believe this email was effectively drafted by me and I believe I sent it through to, that I was, yes, that's right, I was expecting it to go out earlier than it did.

30 You see, Mr Grubisic has said that he was given some 29 hours to submit an entirely new proposal?---Yeah, it looks like it.

Do you regard that as unfair process?---I don't think it's enough time.

I beg your pardon?---At this point I do not believe it's enough time.

THE COMMISSIONER: It seems as if you made your mind up to give it to Kings, at least subconsciously?---Well, subconsciously possibly. I do believe we were keen to get both companies' responses.
40

Yes, because it looks good?---Look, no, I don't actually accept that, I don't believe we were that blatant, I don't believe I was consciously that blatant about it but it certainly, I, I agree it is not a good way to have proceeded.

There is something - - -?---Yes.

- - - that is surprising about this email to me?---Yes.

It says nothing about the new product?---Yes, that's true, yes.

Why not?---It's not very clear. I can't tell you at this point. I don't know.

You see, you were asking - - -?---I don't know now.

10 The problem, the problem that I have with this or the, the unusual aspect of this (not transcribable) I think that's a more accurate way of putting it, is that on your evidence Kings knew about the new product which had just become available?---At the time of the interview, yes.

There was nothing to say that AGC knew about the new product?---My memory is that I believe AGC were interviewed after Kings - - -

Yes?--- - - - and I believe we raised it with them at the time.

You did?---I - - -

20 What did you say to them?---Well, we asked them if they were aware that there was a, this is as I recall it, that we, we asked them if they were aware that there was a new - - -

Who asked?---Oh, probably, probably myself but not necessarily, one of the, one of the committee. I'm sorry, Commissioner, I'm not a hundred per cent sure this is correct. I have a, I have an understanding that there was some, some discussion about it with them.

How sure are you of that?---Oh, moderately sure.

30 You see, your second paragraph, the second paragraph of this email requests an alternative, requests alternative costs for a Lenel Pelco system?---Yeah.

It's true that at the bottom of the page you refer to the new solution. In that context what's new is that AGC would read it as meaning it's new in the sense that they had tendered on Lenel Verint and you were now asking for a Lenel Pelco?---I guess that's possible, yes.

40 There is nothing in the email which, which warns AGC that there is this new product that's come out - - -?---Mmm.

- - - which really on your evidence was the fundamental basis for what in effect was the reopening of the tender?---Yes, I agree, yeah.

MR STRICKLAND: In your 30 or 40 previous tenders that you managed before this one - - -?---Yes.

- - - was there, had you ever been involved in a situation like this where you have in effect reopened the tender during the process?---Not with, I don't

recall ever doing it with two preferred tenderers, certainly negotiated, identified a single preferred tenderer and negotiated with them but not with, I don't recall ever doing it with two.

Do you consider that the process, do you consider that the process that was adopted after Kings presented their new solution for their upgraded version on 27 February was a flawed one?---In hindsight, definitely.

10 And in what do you consider it to be flawed?---I, I believe there wasn't enough time, I believe certainly as, as we've just discussed the information was not clear. And I believe that on the -- following the tendering guidelines we mostly likely should have given the tender to, to AGC at the end of the first interview or at least gone to a second round of interviews for further clarifications or identified AGC as, as a single preferred tenderer and negotiated with them because they were at that point in time ahead of Kings.

Could you have a look please at Exhibit 17, tab 12. This is a, the revised bid put in by ACG. If you go to page 64, please?---Yes.

20 There's an ACG letter to Mr Morris dated 3 March, 2009 which encloses the revised bid based upon the Pelco Endura 2 solution with their price of \$1.948 million plus GST. Do you see that at page 65? There's a letter at 64 -- -?---948, yes, I see that.

And attached is a schedule of pricing at page 65?---Yes.

And I take it that you at some stage before the contract was awarded either read this letter or was advised of the contents of this letter?---Yes, I believe that was the case.

30 Which one?---Oh, look I - - -

One of them?--- - - - expect I would have read it.

Right. And if you go to the letter at page 64 Mr Collier from ACG replies to your questions at about a third of the way down the page and one of the questions was, provide certification applicable to the Pelco solution. Do you see that?---Yes, yes.

40 And it says, "We have accreditation and many TOC Schneider and Pelco products. The produce we are proposing is Endura 2 accreditation for Endura 2 is not yet available until April 2009"?---Yep.

That was quite different from what you were told by Kings and also what was confirmed to you by Daniel Paul wasn't it?---Yes.

And did that strike you at the time that they were two conflicting pieces of information?---Look it's not something that I have a strong recollection

about. But I do believe that I would have asked Mr Paul to advise which information was the correct one. My understanding, and it's a fairly strong one because it was such an important issue is that, that what Kings – that what I was advised by Mr Paul was that that what Kings had told us was the correct information.

THE COMMISSIONER: That is that the Endura – that this new Endura – the new Pelco product was available now?---Yes, that's how I understood it.

10 MR STRICKLAND: So in other words you're saying after receiving this letter you asked Mr Paul again to check whether Pelco Endura 2 was available as at February?---I can't be sure, but I believe that's what I would have done.

THE COMMISSIONER: You believe it's what you would have done but you can't remember doing it?---I can't remember clearly doing it, no. I have a, I have a vague memory of having a discussion about it, but it's not something that I feel I can fully rely on.

20 MR STRICKLAND: Did you ever – when you had the second round interviews with Kings and ACG was that ever discussed that ACG was of the view that Pelco Endura 2 was not available until April 2009 but the information that you had was that it was available now, that is early March '09?---Yeah. I don't have a clear memory of that discussion so I don't, but I can't imagine we didn't discuss it.

Can't imagine not discussing it?---I can't imagine not discussing it.

30 Because as you've said more than once that was a critical issue?---It was - exactly - - -

It's current availability?---And, and my memory is very clear that we understood that it was available and that's what was on offer.

THE COMMISSIONER: Well there's something that I need to find out from you also, Ms Tregeagle, you were told by Kings and Mr Paul as I understand your evidence that the, this new product was available now, it's in March. AGC are telling you it's going to become available in April? ---Mmm.

40 Was that month important?---Well I, probably not in reality but I don't - my recollection is clear that it was available when Kings put it on the table at the first interview and that, that it was, that was why they were pricing the, why they were offering that as an option so - - -

Sorry, you said pricing. What did you mean, I don't - - -?---Offering the option of the revised, revision to the Pelco system and therefore a revised price.

The reduction in the price?---Reduction in the price, yes.

So - - -?---So.

I mean speaking as a complete outsider and not having knowledge, any knowledge of all the things that were weighting upon you in determining your decision and the Art Gallery, the month seems to me to be hardly material what really counted was the difference in the price?---That's true. I
10 don't believe that, that - but I don't recall - I don't believe that a month was particularly critical but I don't recall it being an issue for discussion that, that we interrogated that and made the decision that we could live with it being available in a month's time. I don't recall the discussion being along those lines. I recall the discussions being along the lines of it is available now.

That it would have been a - if it was available - - -?---Yeah.

- - - it wouldn't have only been available to Kings it would have been
20 available to ACG?---Yes.

So they were under a misapprehension in your state of mind?---Well that's what I tried to get, that's what I believed I got confirmed was that, that, that they were wrong, they didn't have the level - this is the way I understood it, that they didn't have the level of information that Kings had, Kings had accessed to.

So in choosing Kings above ACG what did, what was it that you relied on predominately?---In the, in the final decision making after the second round
30 of interviews the price was very close with this revision.

Yes, the price was very close now?---And the, the decision was more based on the fact that we felt that the Kings team understood the requirements of rolling out the project more and we felt more confident that the team could understand and cope with the, the complications of doing that role out in the, in the, in the gallery environment with a public open, public space better than the, the ACG team. So that and that Kings sub contractor for the integration of the fire system was a company that had undertaken that work
40 with the gallery for a long time and so we felt more comfortable with that sub contractor as well. So they were kind of more the deciding factors than, than, than anything else in the final - - -

And what, what role did Mr Paul play in all of this?---Well he was integral to all of the discussions.

Yes, but what was his attitude?---I think he was pushing for Kings as the - but - - -

Pushing for Kings?---Well saying that he - - -

I just want you to use your words carefully?---Yes, okay. He was saying that - - -

10 I mean just describe accurately what you, what you think occurred?---I think that Mr Paul was – I think Mr Paul generally was taking the lead from Ms Flanagan and myself and Mr Morris, because the discussion after the third, the second round of interviews was focusing on the issue of doing the work within the Gallery and I think Mr Paul was reflecting our, our, Mr Morris, Ms Flanagan and myself's understanding that the Kings team was the better one to, to work with the Gallery in the long term. But he was certainly supportive of Kings being the successful candidate.

I'd like to show you – you had a notebook. Is that right?---Correct.

If I can just show you this, please?---Yes.

20 Can you see the page before where it says Kings – you see how it says Kings second round interview?---Yes.

And the page before that there is a – first do you recognise that as your notebook?---Yes, it's my notebook.

And there's a reference there to – I don't have a copy in front of me, but Pelco unavailability. Is that right?---There's a, there's a couple of notes I've made to myself saying interview with security - - -

30 Yes?--- - - - two points. The second of which says delay til Endura 2 availability.

And that note was obviously made before the second round interview with Kings?---Yes. Because the second round interview notes follow on from it.

THE COMMISSIONER: So at what stage was that made? I don't follow that?---The?

In relation to the meeting on 27 February.

40 MR STRICKLAND: It's before. No, no, that's the first interview.

THE COMMISSIONER: Yes, I know.

MR STRICKLAND: It's after the – between the first interview and the second interview. Is that correct?---Yes, that's right.

THE COMMISSIONER: How do you know it's after the first interview? ---Because my notes for the first interview are earlier in the book.

I see?---Yeah.

MR STRICKLAND: And what does the note which records delay to Endura 2 availability refer to?---Well I'm not sure now at all, but it looks like the kind of note I would write to myself to – as a, as a checklist of things to do. So it was probably a checklist to, to follow up on something, to investigate something or to, to clarify. So I can only surmise that that's, that's what that note's referring to.

10

I mean had you read ACG's letter of 3 March, 2009 then that note, that may have alerted you to the fact that Endura 2, Endura 2's availability may have been delayed?---It may have been a note for me to follow up with Mr Paul to check whether that was accurate or not or to, to compare it with what Kings were telling us in some way.

When you say whether that was accurate you mean the ACG letter?---ACG's advice that it was not going to be available until April 2009. That it may - - -

20

Their, sorry, their 3 March advice?---Their 3 March advice, yes.

Thank you. All right. Did you follow that up if that was your note?---Well I believe I did, that's my understanding and I certainly had, have a clear memory that, that Endura 2 system was available at the time that we let the contract.

THE COMMISSIONER: At the time you entered into the contract. Is that what you mean?---Yes, that's correct.

30

And had you any idea of what was – had the term Endura 2 occurred to you before – when did, when did you first take notice of the term Endura 2? ---Oh, possibly even just in reviewing the documents for this investigation. I don't believe I had a clear understanding of the different names of the versions of the system in my head.

Mr Strickland, if we're going to – if we're going to sit until 5.00 I think we should adjourn for 10 minutes now.

40 MR STRICKLAND: Yes.

SHORT ADJOURNMENT

[3.35pm]

THE COMMISSIONER: Mr Strickland.

MR STRICKLAND: Commissioner, I don't propose, unless you wish me to, to tender that single page about Endura availability. The evidence has been given and just to speed things up there's a document that is, this has already been done in your folders, Commissioner, but there's a document that lies behind Exhibit, tab, sorry, I withdraw that. There is a document that lies behind Exhibit 17, tab 13 which is page 147 and by reference to the note, Ms Tregeagle's notebook that has been wrongly placed, it should in fact be a document behind Exhibit 17, tab 10 and it should go behind page 51.

10

THE COMMISSIONER: Do you mind - - -

MR STRICKLAND: I beg your pardon?

THE COMMISSIONER: Do you mind repeating that please?

MR STRICKLAND: Sorry?

THE COMMISSIONER: Do you mind repeating that?

20

MR STRICKLAND: Yes, certainly. Page 147, which is Exhibit 17, tab 13 should be taken out of that place and put, it should be, it should become the last page on Exhibit 17 tab 10, that's where it fits.

THE COMMISSIONER: Thank you.

MR STRICKLAND: Ms Tregeagle, in answer to questions from the Commissioner about why you ultimately, why the committee or why the Art Gallery ultimately awarded the contract to Kings rather than ACG you said, your partial answer to that question was the prices were very close, do you remember giving that answer?---Yes.

30

Did you know that in fact ACG's price was lower than Kings in relation to the Pelco Endura 2 product? I'm sorry their total price was less?---Their, their revised price - - -

Yes?--- - - - following the second round of interviews - - -

Yes?--- - - - or at the second round of interviews was lower than Kings by \$50,000-odd.

40

You knew that?---Yes.

Now, if I could just ask you briefly about the second round interviews, could you just turn to tab, Exhibit 17 tab 13. They, they are the notes you took for both the Kings and the ACG second round interviews, is that right? ---I took them during the interviews.

And if you go to page 145 behind tab 13 there is a reference at point 11 to various, what appear to be extras provided by or offered by Kings in that interview?---That's correct.

And that that obviously took place in the second round, the second interview not the first interview?---Correct. Well, it I believe reflects what they put on the table in the first interview that we rejected.

10 I see. So what is, what was mentioned in, what is referred to on page 145, so for example biometric readers and proposed Abloy high security locks, key control software, you said that was actually mentioned in the first meeting?---I couldn't say the whole list was but there were certainly a number of things that they tabled at the first meeting that we rejected of this sort that they were offering.

But, but then accepted it in the second round?---But they reoffered it in the second round and we accepted it.

20 Thank you.

THE COMMISSIONER: I'm not sure what you mean by rejected it?
---Well, when they put the, tabled the sheet of paper I mentioned - - -

When, when you - yes?---In the first interview with the - - -

Revised price?--- - - - revised Pelco system and the revised price there was also included - - -

30 And that's what you - - -?--- - - - a range of additional items that were additional to our scope of works that we'd asked for.

These were just, so there was a, they'd repeated these blandishments?---Yes, I couldn't say the whole list was originally offered but certainly some of it was.

All right?---As I recall.

40 MR STRICKLAND: Now if you go to page 148 and 149 at tab 13, do they appear, do those tender interview assessments appear in that, under that tab?---Yes, they're the ACG first and Kings second.

Okay. They are the rankings that were made by the three, sorry, the four members of the Tender Evaluation Committee after the second interview, is that right?---Yes, after each of the second, after each of the interviews in the second round.

Thank you. This of course does not reflect price, does it?---No, this is just about the issues that we discussed at the interviews.

Thank you. Now when the Commissioner asked you why was, in effect why was Kings awarded the contract, why were they preferred to ACG, you gave a number of reasons. Did you - apart from these assessment sheets did you minute or note any of those reasons?---Unfortunately I have not found any notes to that effect. I don't believe I did or if I did not in a form that I retained it.

10 THE COMMISSIONER: That, that's pretty surprising isn't it?---Um - - -

I mean if you're sitting in an evaluation panel and you choose one tenderer above another don't you normally set out for posterity the precise reasons for your conclusion?---Indeed and, Commissioner, Daniel Paul had the job of writing up the tender review report that - - -

And that, and that's - - -?---was intended to capture our, our discussions.

I see.

20 MR STRICKLAND: Now at this time, I'm now talking about during the tender process, so from the time the tender opens in, on 3 February until Kings were awarded the contract were you, were you busy?---I had a number of other projects on as well as the security upgrade and I was very busy, yes.

30 All right. What other projects did you have on at the time briefly?---The Art Gallery was building a new off site collections store and I was responsible for managing the fit out in that store and the relocation of the whole of the collection or nearly the whole of the collection from the Art Gallery across to that new store. We also had a upgrade to the loading dock happening at the same time and I was responsible for fitting, refurbishing the, the security control room. I think they were the main projects I was working on. There was a couple of little ones as well.

Do you recall feeling under time pressure at the time?---Indeed, I, I was, and I guess I was certainly relying on Daniel Paul to do a lot of the preparation of the documents more than I probably would normally have done.

40 When you say the documents what are you referring to?---Like the tender review report and the and the review assessments of the documents that had been tendered. Yeah.

So if I can just show you the tender review report. Exhibit 2 tab 8 I believe. So do you remember who authored that document?---Daniel Paul and then he edited it following requests from us to rearrange the sequencing of the information to make it clearer. Us being Ms Flanagan and myself I guess, yeah.

Thank you. I want to ask you some questions about the wholesale supplier which are referred to in these proceedings as Q Video Systems or QVS. I just want to show you two parts of your notebook, please. The first, I've just tabbed them with a pink post it note?---Ah hmm.

The first refers to, it's Winsted Q Video and then a telephone number and Paul Thompson in the phone number?---Yes.

10 Do you remember why you wrote that?---We, we needed to have supplied or fabricated a new security control desks, or there was two of them, which was included in the security upgrade contract because of the importance of integrating the security control equipment and monitoring equipment into the actual desk console and Mr Paul brought to our attention this systems, a system desk that was manufactured by a company called Winsted and, and the Australian supplier was Q Video. We went out to Q Video to inspect the desk I think a couple of times and this would have been a note for, for that process. We then decided it was not going to do what we wanted it to do. We didn't proceed with it.

20 Now, based upon where it's located in your journal- - -?---Yep.

- - -approximately what date did you make that note?---Ah, looking at dates nearby it was just before 19 December in 2008.

Thank you?---And after 11 December, 2008.

30 Thank you. So the next note I wanted to ask you about is the next post-it note which begins, "Ask Q Video if they – if they install or we need a contractor, look at putting desks into security CCTV tender, budget 1.8 million", and then a range of figures. Do you see that?---Is this the page that has notes numbered 4.1 down to 6.1?

I'd better have a look – if I can have a look at that?---It's the next tab.

If I could just have a look at the book and I'll show you?---It might be the next, sorry, that's the tab page. Okay.

The left-hand side of that- - -?---Thank you.

40 - - -document?---Yes, I see what you're referring to.

And I particularly refer to the reference to "budget 1.8 million." Just for the assistance of anyone else, roughly what, what date, what date was that page created?---Ah, well, just prior to 17 January, 2009, and- - -

After what date?---And after, the previous date that I have is 19 December.

Okay. So that's sometime between 19 December '08 and 17 January '09?

---Yeah.

And what, what does that note refer to?---It's a breakdown of the components of the, the security upgrade contract, well, contract as, as assessed by Mr Paul. So, well, some of this was, some of this was costs that didn't come from Mr Paul, so for example the cost of the consultancy was his costs, his, his fees, one of the other costs was from a separate company that was supplying some equipment, and, and it just breaks down those components as we understood their costs were likely to be.

10

You said their. Who's their, their costs, who do you mean by their?

---The, the various pieces of equipment or systems that would be included in the security upgrade.

So what's the reference to, "Ask Q Video if they install or we get a contractor"?---Oh, this is when we were investigating their desk system and I would have, I'm sure it refers to whether their, their desk, whether Q Video supplied the desk but we needed to have a separate subcontractor or contractor to install it into the security control room.

20

Before the contract was awarded to Kings was it your understanding that Q Video Systems would be, would be the wholesale supplier of the security products to whoever would be the successful contractor?---Ah, no, I didn't have an understanding that any particular supplier would be the supplier.

You gave evidence earlier today about what communications you advised Paul to have with the integrators, that is that they should, you should be kept in the loop about that?---Yes. And that no information should go out until we all agreed on it.

30

What about his communications with potential wholesale suppliers of the products, was he told, was Mr Paul told anything about how he should communicate with them - - -?---Well - - -

- - - during, during the tender process?---During the tender they - - -

During the tender?---The same advice or requirement existed that, that no discussions should take place with people outside of the gallery about the tender whether it was integrators who were tendering or, or, or suppliers that, that - because it was important to ensure that all tenderers got the same information.

40

And by tenderers you include both integrators and suppliers?---Well suppliers or anybody else outside of that group as well that there was a confidentiality agreement and it was on that basis that we didn't want the information to get out in an uncontrolled way.

Could Ms Tregagle please be shown Exhibit 65 tab 15?---Tab 15 did you say?

That's right.---Yes.

10 This is an email from Mr Paul to Mr Theissen attaching a budget spreadsheet and I want you to assume that the evidence from Mr Theissen is that some of the figures contained in the spreadsheet but not all were populated by him, that is he provided some of the figures to Mr Paul that were then contained in this budget spreadsheet, just assume that is his evidence as it is. Do you understand what I'm asking?---Sorry, I didn't catch the last sentence.

Assume that Mr Theissen who's from Q Video Systems evidence. Do you understand?---Yes.

Or should I repeat it?---I understand.

20 Right. Did you know that Mr Paul had provided a budget spreadsheet of the security, in relation to the security upgrade contract to Q Video Systems in late October 2008?---I don't believe I did, no.

All right. Had you known that would that have caused you concern?---Yes. For the whole of the budget breakdown like this and the, and the scope of the work to be provided I would have had concerns about most definitely.

30 Why is that?---Well it's, it, it reveals what our budget, our bottom line budget is. What I would have not been surprised or concerned about if Mr Paul had made some industry inquiries about specific items in order to populate his own budget spreadsheet because that is I believe fairly normal in the industry but to give the whole picture to one contractor I believe is - I would have had real concerns about that.

40 Could the witness please be shown Exhibit 71. I might just, I might just speed this up a bit. I won't show you this I'll just ask you to assume this information. In 7 February 2009 four days after the tender was open Mr Paul offered Mr Theissen from Q Video Systems to sit down with him before the tender closes to go through some matters in relation to Lenel, Verint products that were specified. Would have concerned you if, if - - -? ---Considerably.

And again why is that?---Because Mr Paul was revealing information about the, the tender that should have been kept confidential that information should be as I've said before it was important that information be distributed to all tenderers equally and clearly this was contravening that. that requirement.

When you say all - - -

THE COMMISSIONER: I should say, Mr Strickland, that I regard all this, this evidence as a matter for argument. What Ms Tregeagle's opinion is of what should or shouldn't happen is not really material.

MR STRICKLAND: Commissioner, the, what I was - the relevance I was going to assign to it was had she understood all the information I'm about to put to her what steps if any would she have taken in relation to his retainer which is relevant to a definition of corrupt conduct. Now, I accept that
10 there's an objective element to that.

THE COMMISSIONER: I regard this as an objective test. Either corrupt conduct or it isn't.

MR STRICKLAND: Indeed.

THE COMMISSIONER: And what Ms Tregeagle thinks, what Ms Tregeagle thinks of it I don't regard as relevant.

20 MR STRICKLAND: Okay. I'll move on.

Were you aware - I'll ask these questions as matters of fact. Were you aware that Mr Paul had expressed an opinion to Mr Thompson on 16 February that he was hoping that Kings or Mr Grubisic, Mr Grubisic is ACG, would get the contract but he was leaning towards Kings, were you aware of that?---Who is Mr Thompson?

A QVS employee?---Okay.

30 Were you aware of that?---No, I wasn't.

Could the witness please be shown Exhibit 17 tab 5. Just go please to page 463. That's a letter from Mr Paul to the Art Gallery that you and Ms, copied to, sorry to Mr Morris, copied to you dated 31 January, 2009. Do you recall this letter?---Yes, I do.

Just go to the conclusion which is on page 463, there's a reference to "SCI would like to reiterate the disclosure statement provided as part of our engagement with respect to no links, ties, financial dealings or relationships
40 with suppliers, integrators, manufacturers or others within the security industry", do you see that?---Yes.

And then there's an attached statement of probity?---Yes.

And did you, did you understand that that, did you read that letter?---I would have, yes.

Did Mr Paul ever disclose to you that he had been paid money by, did he ever disclose to you that he'd been paid money by Q Video Supplies for tender training which he had purportedly done in early, mid-2009?---No, he didn't.

Commissioner, I'll ask this question but you may regard it as irrelevant given your previous ruling but would that have concerned you?---Of course.

10 THE COMMISSIONER: I don't see the point of this. Mr Paul has admitted he didn't disclose it. The effect of the non-disclosure is a matter for argument.

MR STRICKLAND: Okay. Could the witness please go to Exhibit 72. Were you aware at any, from any source that Mr Paul had accepted an invitation from Mr Roche off Kings in relation to an Art Gallery review meeting at Kings during the tender process?---No.

THE COMMISSIONER: Was that contrary to your instructions?---Yes.

20 MR STRICKLAND: I just want to ask you some questions in relation to corruption prevention issues. Could the witness please be shown Exhibit 20.

THE COMMISSIONER: Is that really necessary, Mr Strickland?

MR STRICKLAND: Ah, well- - -

30 THE COMMISSIONER: I really think that we've got to try and finish this case.

MR STRICKLAND: I understand. I've been asked to do so but if- - -

THE COMMISSIONER: Well- - -

MR STRICKLAND: - - -if it's not regarded as necessary then I won't do so.

40 THE COMMISSIONER: Has an agreement not been arrived at with the Art Gallery about- - -

MR STRICKLAND: Yes, there has been.

THE COMMISSIONER: So what's the point of the questions?

MR STRICKLAND: I'll get some – well, I probably don't need instructions if you don't regard it as helpful.

THE COMMISSIONER: Well, I just need to know. I mean if there's, if there is- - -

MR STRICKLAND: I don't believe there's any – there is not difference, as far as I understand, between the Commission and the Art Gallery about corruption prevention issues. That's correct, isn't it?

THE COMMISSIONER: So- - -

10 MR STRICKLAND: In that case, given the time, I have no further questions.

THE COMMISSIONER: I think that I'd like to adjourn for five minutes. I need to see Counsel Assisting.

SHORT ADJOURNMENT

[4.17pm]

20 THE COMMISSIONER: In an attempt to reduce the need for a necessary questioning of Ms Tregeagle I inform all parties of the following and those interested should take a note of what I'm going to say and if anything is missed please tell me and I will repeat it.

I will regard Ms Tregeagle's evidence as being relevant only to the following; (a) the conduct of Kings and Mr Paul at the meeting of 27 February and thereafter the extent that her evidence might support allegations that Kings and Mr Paul made untrue representations or deliberately concealed the true facts having a bearing on the revised tender made by Kings. (b) Mr Paul's alleged failure to keep the Art Gallery informed of all communications he had with third parties regarding the tender. I should say in parenthesis that the first party in this context is Mr Paul and the second party is the Art Gallery. (c) Mr Paul's alleged communication of confidential information to third parties used in the same sense. (d) Mr Paul's failure to inform the Art Gallery of the details of his close relationship with; (1) Mr Diekman (including the financial relationship between them), (2) QVS.

30

40 Does anybody wish me to repeat anything? It'll take you a little time to digest that but I would like to know having heard that how long do you think you will need to examine Ms Tregeagle, Mr Lloyd?

MR LLOYD: If I got a start now, Commissioner, I would have thought I will be a fair way through by the close of play.

THE COMMISSIONER: Thank you. Mr Naylor?

MR NAYLOR: A few questions – very narrow compass – about five minutes in relation to (not transcribable)

THE COMMISSIONER: Yes, thank you. Well, Mr Naylor, won't you go first.

MR NAYLOR: If the Commission please. Ms Tregeagle, my name is Naylor. Can you hear me from back here?---Yes.

10 All right. And I appear for Mr Diekman, Charlie Diekman. Ms Tregeagle, Ms Tregeagle, there's just a – you gave some evidence very early on, and I'll just repeat to you what the evidence was, at least my notes of the evidence that you gave. And what you had said in response to questions by Mr Strickland was that the version in the tender was the earlier version to that spoken about in the interview. That's my notes of what you had said. And remember the context we're talking, the context is the meeting, being the first interview on 27 February, 2009.

THE COMMISSIONER: You mean the interview with Kings?

20

MR NAYLOR: Yes, correct. Thank you, Commissioner. And there was a follow-up question to that from Counsel Assisting which was, and your answer was to the effect that either Mr Diekman or Mr Roche had said that. So something said by either Mr Diekman or Mr Roche informed that evidence that you gave, that is that the version in the tender was the earlier version to that spoken about in the interview.

THE COMMISSIONER: Do you understand the- - -?---Is that a question?

30 MR NAYLOR: That's, that's the background?---You want me to, to, to- - -

That's the background to the questions that I want to ask you. Do you have a memory of giving that evidence?---To that, generally to that effect it was my recollection, yeah.

You, you have acquired an awareness, there, there was an earlier version to the Pelco version 2?---Is that a question?

40 Yes. Are you aware now as you sit there in the witness box that there was a version of the Pelco solution which preceded or was earlier in time to Pelco version 2?---Am I aware now that there was?

Yes?---Ah- - -

THE COMMISSIONER: Well, have you, as you sit there now, do you know that- - -?---Don't understand the question, sorry.

Well, I think- - -

MR NAYLOR: Let me put it- - -

THE COMMISSIONER: When you talk about Pelco 2, it's Pelco Endura number 2. You know that there is a product called Pelco Endura number 2 now?---Yes.

What's your question?

10 MR NAYLOR: Are you aware that there's, that the earlier version was a version called 1.5?---I am now.

Right. And can I ask you when you became aware of the earlier version by that name?

THE COMMISSIONER: Of 1.5?

MR NAYLOR: Yes?---Yes. I don't believe I paid much attention to the actual names of the versions at the time. I don't have a memory of the names of the versions from, at, from that period, so at this stage my awareness of those, the names of those two versions has come from reading documents recently.

And if I can put this proposition to you, that you weren't told at the meeting with Kings on 27 February that the version of the Pelco solution in their original tender was based on version 1.5?---And you want me to respond to that?

30 Yes?---I couldn't tell you what version name was mentioned. I can only say that I have a pretty clear memory that, of an understanding that what they were, what they tabled and we rejected at the first interview was a later version of the Pelco system than was in their original tender documents. What they were called I can't say.

40 All right. I want to suggest to you that your evidence that your understanding that the version that was in the documents, the original tender documents, was an earlier version to that which was spoken about at the meeting was in fact a conclusion which was drawn from two facts, the first fact being that you hadn't read the documents in, in full and the second fact was that there was talk at the meeting about version 2 having just been released. Is it possible, is it possible that, that what you say about what was in the original documents was in fact a conclusion which was drawn- - -

THE COMMISSIONER: I won't allow that questions because - I don't regard it as far in the sense that, and I'm not, I'm sure that you intended it that way, Mr Naylor, in the sense that once you've put the proposition that the meeting was told that Endura 2 had just been released - - -

MR NAYLOR: Yes.

THE COMMISSIONER: - - - that carries with it the implication that its different to what went on before.

MR NAYLOR: Yes. I didn't mean it to be unfair, Commissioner and I accept (not transcribable)

10 THE COMMISSIONER: I'm sure you didn't, I made that quite clear, I know you didn't but I think that for the reason that I have explained I don't think that it is a fair question because the question is pregnant with the assertion that there was a different product before so you can't ask Ms Tregagle whether she was making, whether she was drawing inferences from what she was told because you were actually telling her to assume that she was told that this was a new product that had just been released.

MR NAYLOR: Yes, I hear what you say, Commissioner.

20 THE COMMISSIONER: You can put it, put it in a different way if you want to.

MR NAYLOR: Yes, thank you, Commissioner.

30 Can I try putting it this way, Ms Tregagle. What you had said in evidence was that the version in the tender was the earlier version to that spoken about at the interview and what I'm trying to understand is in relation to the first part of what was said, the version in the tender was the earlier version. Is that based on something that was told to you or is it an inference that you drew based on something that was told to you?---I'm sorry, I'm not clear what you're asking me.

I'm trying to understand the basis upon which you say that the version in the tender was the earlier version, that's all.

THE COMMISSIONER: Well, can I try, Mr Naylor?

MR NAYLOR: Thank you, Commissioner

40 THE COMMISSIONER: I think that your evidence is or part of your evidence, I want to be quite clear that it's part of your evidence, is that you were told that a particular product was, had become, had now become available and it was a particular Pelco product that had now become available. I'm not saying that that, that your evidence wasn't in those very terms but part of your evidence on this issue could I think be put in that way. Do you agree?---Yes, I agree with that.

Now, I think that what, what - the question that is sought to be asked of you on behalf of Mr Diekman is could you have rationalised from that piece of

evidence that the product in the original tender was a different product to that which had just been released or is it something that you were told in so many words by Kings?---Ah - - -

Do you understand that?---As I understand what you're asking, you're asking me whether I knew absolutely from reading the documents that - - -

No?---Or that I just assumed - - -

10 No, sorry?--- - - - assumed that it was different?

No, no. Look, I think that the real crux of the issue is whether you were told that this was a new product and it was different from what was in the first tender?---Yes. That - - -

Now, I think that it's, and that the new product had now become available on the market?---That's - - -

20 What, what they're really trying to, what I think Mr Naylor I think is, if I may say so, is really trying to find out whether you say that you were actually told that this was different from the product in the new tender or is it something you just worked out that it must be so from what you were told. Is that right, Mr Naylor?

MR NAYLOR: Yes, thank you, Commissioner.

30 THE COMMISSIONER: Do you understand that?---I believe I do. It was the crux of the discussion about the, the revised offer was that it was as I understand, as I recall it and my understanding at the time was that it was a new product, that was a - - -

New in what sense?---New in that it - the Pelco system that was now being offered had not previously been available to tender on and that there was a new product that had now become available and that it was effectively the product that had been discussed as down the track being developed and - - -

And the question is - - -?---Yeah.

40 - - - how - from what did you derive your understanding?---Well from I believe from what I was told at the interview by the Kings representatives.

Mr Naylor, I leave the rest to you.

MR NAYLOR: So I can't take the matter (not transcribable)

THE COMMISSIONER: And Mr Lloyd, do you want to start? Does any - - -

MR LLOYD: Commissioner, I'm in your hands. I'll probably be an hour all up.

THE COMMISSIONER: Well, wait. Does anyone else wish to question Ms Tregeagle? Mr Maher?

MR MAHER: I might have a few questions in relation to one topic and - - -

10 THE COMMISSIONER: Yes. Proceed. I think that it will be - I think that if Mr Lloyd has overnight to prepare the question will be shorter than otherwise. So I'm proceeding on that basis.

MR LLOYD: Commissioner, I - - -

THE COMMISSIONER: Yes, that's called blackmail, Mr Lloyd.

MR LLOYD: Could I have a prayer? Could I ask and (not transcribable) in your hands, if I was to get the transcript that would - early - - -

20 THE COMMISSIONER: This is not in our hands, we, we really - speak to the - we've got - we've got an independent contractor with whom we have a contract.

MR LLOYD: But I might provide a lolly.

THE COMMISSIONER: It's not a deliberate ploy, it's not a forensic tactic. It's just that it's, it's outside the contract.

Mr Maher.

30

MR MAHER: Thank you, Commissioner.

Ms Tregeagle, my name's Maher, I represent Mr Roche. Can you hear me from, stay there, can you hear me?---I, yes.

I want to ask you some questions just in relation to the evidence that you gave relating to the document that was provided at 27 February interview by (not transcribable) on behalf of Kings. Do you recall the document you originally referred to as being a one to two page document?---Yes.

40

Do you recall the document? I won't take you right through your evidence on that but you do recall the document I'm talking about?---Not in great detail, I, I have a visual memory of it.

MR STRICKLAND: Mr Commissioner, I'm sorry to interrupt but there may be just some confusion the document provided at the interview there is, there is, there's a document which is one to two pages but there was another

document that this witness has given evidence about which is Exhibit 2 I think it's tab 5 - - -

THE COMMISSIONER: Yes. I think Mr Maher is not asking about the exhibit. You're asking about a document which hasn't been produced. Is that right?

MR MAHER: I've seem to have hallucinated whether it is in fact the same document or we're talking about different documents.

10

THE COMMISSIONER: I see.

MR MAHER: (not transcribable) Commissioner, yeah.

You said, Ms Tregeagle, that document did not have a cover page on it? ---That's how I remember it.

20

Thank you. And I think you said originally that you gave the documents back after the new offer was made. Is that, is that same document that you're talking about the one - - -?---Yes.

- - - to two page document?---Yes.

Could Ms Tregeagle please be shown Exhibit 2 tab 5. Now, Ms Tregeagle, is that the document you're talking about?---No.

We're talking about a different document - - -?---Yes.

30

- - - at the time? Pardon me, Commissioner. Nothing further.

THE COMMISSIONER: All right. Mr Strickland, perhaps it would be helpful if you could just inform the parties now who's coming tomorrow.

MR STRICKLAND: Certainly. Parties tomorrow are Ms Tregeagle, Mr Marinucci, we'll call Mr Roche and, and briefly for my part I'll recall Mr Paul. That's it.

40

MR LLOYD: Maybe we could go to about 5 o'clock without Mr Paul and then be very brief.

THE COMMISSIONER: Are you talking about today?

MR LLOYD: No, no, no, tomorrow.

THE COMMISSIONER: Sorry, I'm sorry, Mr Lloyd, I didn't understand what you said.

MR LLOYD: I think the humour is the time to cross-examine Mr Paul further is ever diminishing.

THE COMMISSIONER: Yes. I think the questions asked certainly from the Commission's point of view of Mr Paul will be very few.

MR LLOYD: I'm sure he'll be relieved.

10 THE COMMISSIONER: All right. Can we start at 9.30 tomorrow?

MR STRICKLAND: Certainly.

THE COMMISSIONER: We'll adjourn till 9.30 tomorrow.

THE WITNESS STOOD DOWN [4.51pm]

20 **AT 4.51PM THE MATTER WAS ADJOURNED ACCORDINGLY [4.51PM]**