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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

PUBLIC HEARING

OPERATION BARCOO

Reference: Operation E09/1383

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 24 AUGUST 2011

AT 2.10PM

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

ASSISTANT COMMISSIONER: Thank you, please be seated. Yes, does anybody apart from Ms Bourke wish to examine this witness? Yes, Mr Purdy. I think Ms Bourke should go last. So you don't or you do?

10 MR PURDY: Mr Johnson, I represent the Department of Education as you probably know. If you could turn to page 14 of the Exhibit 1 bundle which is the Agreement of Confidentiality Pecuniary Interest Disclosure. Now, I think your evidence to Mr Fordham before lunch was that this document although signed you on page 16 was not submitted?---I can't recall. I mean, to my mind unless it's been signed by someone within the Department then it would not have been used.

20 So what you're saying is you cannot recall submitting it?---Certainly I would have signed a document similar to this and it would have been signed by somebody within the Department, it must have been in order for me to gain security access to the premises.

Well, I suggest to you that that's not necessarily the case?---Well, I would strongly disagree with that.

30 What I suggest to you is that this, this document was submitted to the ITD administration which was an essential pre-requisite to, to your timesheets being processed and so on?---That's not the case, that's not the case at all. Subsequent to this document being filled in with Sunbright Systems I did actually sign and had to sign another document exactly the same as this that would have been signed by somebody within the Department. Only once that was completed satisfactorily and submitted with a wide variety of other documents would I have gained network access and access to the premises.

So what you're saying is that you signed an identical document?---Correct.

And that presumably omitted reference to Sunbright Systems on it?  
---Correct.

And did it have Ogawie Pty Limited?---It would have done, yes.

40 And do you have a copy of this in your own records?---I don't know.

And to your, to you recollection was there any crossing out of paragraph 4 in that document?---Most likely, yes, I would have certainly followed the same approach.

What you're saying is that it was given to an officer of the Department - - -?  
---Correct.

- - - and most likely that officer would have been Kevin Johnston?---Not necessarily, I can't recall the exact process but certainly the bundle of documents needed to be forwarded to somebody else within the Department. I can't recall the person but it, from memory they weren't associated with the ITD.

10 And it would have been signed by that person in your presence?---Sorry, it would have been signed by somebody within ITD so most likely Kevin Johnston would have signed the form or his equivalent, somebody similar in, in authority on the floor for convenience sake but the actual documents would have then been submitted either by myself or by Kevin Johnston.

And you're saying that the person who signed it, most likely Kevin Johnston would've signed it notwithstanding the alteration that you had made to the document?---I can't be certain, I mean, it may well have been the case that the omissions, you know, the alterations weren't permitted, I can't recall.

20 Can I take you to page – sorry, just bear with me a second. 105 of the same bundle which is the recommendation concerning the review of the AID project. Now, in the first line or the first paragraph of that recommendation you have referred to ITS contract 2036?---Correct.

And Mr Fordham asked you a question about that this morning, in fact, I recall Mr Fordham putting to you that there was a representation in that paragraph that Catalina IT was an ITS contract 2036 supplier of services to the Department and you rejected that suggestion?---That's correct.

30 What do you understand by the term ITS contract 2036?---My recollection is that in order to, in order for the payment mechanism to be established with a new vendor, supplier there had to sit under 2036, that was a code that was used internally to signify that this was a new vendor that had been, you know, entered into the system effectively.

So you believe it to have been an accounting code?---Correct, yes.

I suggest - - -?---Or something similar.

40 I suggest to you that what it is in fact is a contract in certain terms between the Department of Commerce or the State Contracts Control Board and a supplier of IT services, can you comment on that?---Not specifically, that may be the case.

And that the Department, or the Department of Commerce entered into a number of contracts with certain suppliers who were, as the phrase might go, preferred suppliers of IT services, can you comment on that at all? ---I'm aware that there was an approved list of preferred suppliers that the Department had access to, I mean, that was certainly that was the original intention for this particular engagement was to use a preferred supplier but

as it turned out that wasn't an option that was available to us with the time constraints.

Well, that's what you said in answer to Mr Fordham this morning, you said that wasn't an option. Why do you say that wasn't an option?---Because of the time constraints, I can't recall all the details but the engagement needed to be completed, undertaken and completed within a very tight timeframe and from memory the vendor that was the, which was nominated within ITD because they had recently completed an engagement from memory they  
10 weren't available to start another project for some weeks and I believe they were based in Queensland as well so they cost and the time constraints, you know, were significantly more than we had available.

You didn't refer to any of that in this recommendation, did you, you didn't say that there were no other suppliers capable of performing the service?  
---Not specifically but this is only one part of the, this is the tail end of a very long process. The decision had already been made, it's not a decision that I made, this is a bureaucratic prerequisite.

20 The decision had been made to undertake the review hadn't it?---Correct.

And what, the decision that hadn't been made was to which contractor, if you like, was going to undertake the review?---No, that's not entirely correct, no, the decision had been made as to which vendor would do the work.

And when do you say that decision was made?---That would've been during the process of consultation with Kevin Johnston, with ITD with - - -

30 Would that have been documented anywhere?---Quite possibly.

It may interest you to know that Kevin Johnston says that he, firstly, he never saw this recommendation, can you comment on that?---Well, certainly he didn't sign it, the standard operating procedure as I understood it at the time was that these documents needed to be signed by somebody, a permanent member of staff of a certain level and the fact that Dave Wasson was the Director of EMSAD which is a level higher than Kevin Johnston.

40 You knew Kevin Johnston could have signed this?---No, that's not the case at all.

Well I suggest to you that - - -?---Well I just to you you're completely wrong because the reality is we have a PCG and the PCG, which was alluded to yesterday, the quorum of which is myself and six other individuals, Kevin Johnston, Vince Gee, Aidan Dalgleish and then the client side you had Robert Cordaiy, Dave Wasson and Des Gorman, all senior executives. They were all privy to the discussions.

And the discussions I suggest to you were simply about the need for the review?---In part, but also how we're actually are to engage with an external provider, the difficulties associated with the available providers on the list and I offered a solution because I was aware that Catalina were available, they could the work. And I would have mentioned that to Kevin Johnston and certainly to David Wasson.

10 I suggest to you that that is not the case. You never mentioned Catalina IT to either of those individuals until this recommendation was provided to David Wasson?---Well I disagree with you.

Can you look down on page 105 to the third, third last paragraph, like immediately under the heading Funding Applications. And do you agree that that refers to a PCG meeting in June 2008?---Correct.

So would you agree with me then that discussions concerning the need for the review of the AID project occurred at a PCG meeting in June 2008? ---Correct.

20 And you're saying today that the need for the review was so urgent at the time you carried out this, this memo, I'm sorry, I'll withdraw that. You're saying that the urgency of the need for the review was discussed in June 2008?---Correct, if that's the date.

And you're saying that in the context of those discussions you indicated that only one supplier would be capable of carrying out the review within an acceptable timeframe?---Correct.

30 And you're saying that that contractor that you identified at that meeting was Catalina IT?---No. That's, what I'm saying is subsequent, the prerequisite for the decision making process was the PCG. Once that decision had been made then numerous discussions would have taken place in terms of trying to, you know, the difficulties in getting a vendor to start the engagement as soon as possible. And what I'm saying is that those discussions did take place between myself, Kevin Johnston, most likely Vince Gee and certainly with the business unit.

40 I suggest to you that that evidence is simply a fabrication, that no such discussions concerning the difficulties of obtaining the service from any other quarters nor the Catalina IT as being a suitable provider of those services took place with the individuals you've mentioned?---Well I disagree strongly with you. In fact David Wasson, who is the Director of EMSAD was very appreciative of the fact that we actually had been able to find somebody to do the work in the timeframe allotted.

And you saw fit to put none of this, to record none of this in this memo? ---No.

I have no further questions.

ASSISTANT COMMISSIONER: Mr Johnson are you saying that you contacted all of the suppliers under contract 2-0-3-6 and none of them could do it?---No, I'm not saying that, no.

10 What are you saying?---I'm saying we would have, I would have approached a number of preferred suppliers, Digital, (not transcribable) to try and establish their availability and their interest in doing the work. The challenge with something like this with on the preferred supplier list, it's such a small amount of work. Some of the preferred suppliers was based in Queensland. There was very little incentive for them to actually take part in this project because of the size.

So you decided you had to go outside the preferred suppliers to get the work done?---Correct, in consultation with others.

20 Well I still don't understand why you put in this memo under ITS contract 2-0-3-6 because you were clearly going outside the contract to somebody who wasn't a preferred supplier under the contract?---Well that's, those words, I mean the wording of the, this memo is a standardised form, the format of which you know I followed and essentially the, the wording and specifically relating to ITS contract 2-0-3-6 software development services is the term that I was instructed to provide on the first paragraph.

Who instructed you to provide that?---Well, it would have been somebody on the, within the ITD because that's, that's the phrase, that's the, the expression that was used on other similar engagements.

30 Well, that's the expression that's used when the person is a preferred supplier under the ITS contract, it's not an expression I would suggest that can be used for anybody, is it?---Well, it, it would have most likely been provided by Kevin Johnston or Vince Gee.

So they told you to put that in there?---That's correct. I mean, I can't be certain of that but certainly that, that's, I mean, that code, that number is nothing that means anything to me.

40 Yes, thank you. Does anyone else wish to question this witness? No. Do you wish to re-examine, Ms Bourke?

MS BOURKE: No, I have no re-examination.

ASSISTANT COMMISSIONER: Thank you. Nothing for you, Mr Fordham?

MR FORDHAM: Just one issue I'd like to tidy up if I could.

You've just been asked some questions by the Commissioner about the memo and the contents of the first paragraph, correct?---Yes.

You've made reference to alleged contact with other preferred suppliers in your answers to both the Commissioner and Mr Purdy, haven't you?

---Correct.

You didn't seek to profit to the extent of 50 per cent of the contract sum from any of those other supposed preferred suppliers, did you?---Correct.

10

And what I want to suggest to you is that in a manner not dissimilar to the Contractor Assessment Forms you have put a form of words in here in order to ensure that Catalina IT were retained so that you could profit in relation to this memo to the tune of some \$35,000, correct?---Not entirely, no, certainly, certainly I profited from it but that's - your, your assertion's not entirely correct, no.

20

You've used that form of words, you've told the Commissioner because it was necessary in order for the funding to be approved?---That form of words is the prescribed wording for a (not transcribable)

Answer my question. You have used that form of words in order to ensure that the funding was approved, haven't you?---That's correct, yes.

And you did that to ensure that you would have the opportunity to profit to the tune of some 50 per cent of the contract price or \$35,000, that's right, isn't it?---That's correct.

30

Thank you.

ASSISTANT COMMISSIONER: Thank you. Well, if there's nothing else, you're excused, Mr Johnson, from further attendance. Thank you.

**THE WITNESS EXCUSED**

**[2.28pm]**

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ASSISTANT COMMISSIONER: Now, Mr Fordham, I take it that concludes the evidence of the inquiry?

MR FORDHAM: That's the oral evidence. There are two - - -

MS BOURKE: Sorry, your Honour, Commissioner, if my client could just - he doesn't understand he can leave the box.

ASSISTANT COMMISSIONER: Oh, yes, Mr Johnson, your evidence is finished now, you may leave the witness box. Thank you.

MR FORDHAM: There are a number of statements which apparently were not reproduced on the DVD that was supplied to everybody. There's a statement of Robert Stewart Cordaiy of 11 August, 2011 and Johnny Lui spelt L-U-I of 19 May, 2011. I apologise that they weren't on the DVD and I tender both of those documents.

ASSISTANT COMMISSIONER: The statement of Robert Cordaiy dated 11 August, '11 will be Exhibit 24.

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**#EXHIBIT 24 - STATEMENT OF ROBERT CORDAIY DATED 11 AUGUST 2011**

ASSISTANT COMMISSIONER: The statement of Johnny Lui will be dated 19 May, '11 will be Exhibit 25.

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**#EXHIBIT 25 - STATEMENT OF JOHNNY LUI DATED 19<sup>TH</sup> MAY 2011**

MR FORDHAM: I'm just checking, that concludes the evidence that I wish to present.

ASSISTANT COMMISSIONER: Yes. Now, Mr Fordham, it's intended to take written submissions in this matter. When might you be able to give your written submissions?

30

MR FORDHAM: Three weeks from Friday if that's possible.

ASSISTANT COMMISSIONER: Three weeks from this Friday?

MR FORDHAM: Yes.

ASSISTANT COMMISSIONER: Does anyone know what date that is?

MR FORDHAM: We're about to turn it up.

40

ASSISTANT COMMISSIONER: 16<sup>th</sup>, is that – 23<sup>rd</sup>. No, that's giving him too long I think the 23<sup>rd</sup>.

MS BOURKE: 16<sup>th</sup> of September, Commissioner.

ASSISTANT COMMISSIONER: Yes. Ms Bourke says it's the 16<sup>th</sup> but can we agree on that?

MR FORDHAM: Yes.

ASSISTANT COMMISSIONER: 16<sup>th</sup>. All right. Well, Counsel Assisting will provide written submissions by 16 September and any party who wishes to provide submissions in response or to assist the inquiry shall do so by two weeks after that, that is, by 30 September. This inquiry is now concluded and I will adjourn.

**AT 2.31 PM THE MATTER WAS ADJOURNED ACCORDINGLY**

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**[2.31PM]**