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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 29 MAY, 2019

AT 9.30AM

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

THE COMMISSIONER: Mr James.

MR JAMES: Commissioner. Thank you for recognising. I'm merely indicating my presence here today. I'm not going to seek to take a positive role unless it should be necessary on a procedural matter. I've already spoken to Counsel Assisting concerning that. It was merely to indicate that I remain in and concerned, albeit behind the scenes.

THE COMMISSIONER: All right. Thanks, Mr James.

10

MR JAMES: Thank you, Commissioner.

MS WRIGHT: I call Alex Lee.

THE COMMISSIONER: Mr Lee. Now, Mr Lee, do you take an oath or an affirmation?

MS HOGAN-DORAN: Commissioner, I seek authorisation for Mr Lee.

THE COMMISSIONER: And does he seek a declaration under section 38?

MS HOGAN-DORAN: He does, and it has been explained to him.

10 THE COMMISSIONER: Thank you. Now, Mr Lee, a couple of preliminary matters.---Yep.

The first one is your Senior Counsel has informed me that you would seek a declaration under section 38 and that it's been explained to you.---Yep.

Can I just emphasise, there are two exceptions but there is one of the exceptions that I need to emphasise. That is that the protection given by section 38 doesn't prevent your evidence from being used against you in a prosecution for an offence under the ICAC Act, including an offence of
20 giving false or misleading evidence, for which the penalty can be imprisonment up to five years. So it's a very serious offence, it's like a form of perjury, so it's very important that you are truthful today and not provide false or misleading evidence.---Yep.

Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by this witness during the course of the witness's evidence at this public inquiry are to be regarded as having been given or produced on objection and there is no need for the witness to make objection in
30 respect of any particular answer given or document or thing produced.

**PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY THIS WITNESS DURING THE COURSE OF THE WITNESS'S EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO
40 NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

THE COMMISSIONER: Now, Mr Lee, I also noticed that you brought some paper, pieces of paper.---Oh, yeah.

Are they relevant to or possibly relevant to some of the evidence that you anticipate you'll give today?---Yeah, just jot down some of the information regarding the volume and the page number.

MR YOUNG: I'm sorry. I can't hear a word he's saying.

MS HOGAN-DORAN: (not transcribable) some information he jotted down, some volumes and page numbers. I understand it's an aide-memoire. Perhaps if Mr Lee could be invited to put it to one side.---Yes.

10

THE COMMISSIONER: Mr Lee, would you put it to one side?---Yeah, yeah, of course.

Questions will be asked and you'll be shown some documents.---Okay.

If you suddenly think, oh, look, there's another document relevant in answering this and I need to refer to the note I put on that piece of paper, speak up and I'm sure we can facilitate that.---Sure, yeah.

20

And also if you could speak up and into those microphones, that would be tremendous. Thank you.---Yes. Okay.

MS WRIGHT: Sir, could you please state your full name.---My birth name is Siu Lee.

Are you employed with the Roads and Maritime Service?---Yes.

What is your job title at RMS?---Project engineer.

30

Project engineer?---Yes.

How long have you been a project engineer in RMS?---About 12 years.

You've been in that role for 12 years?---For project engineer position. I have been working in another unit before.

Does your current role sit within the Heavy Vehicle Programs Unit?---Yes.

Have you been in that unit for the last four years?---Yes.

40

Did you provide a statement to the Commission dated 2 April, 2019?---Yes.

And is that statement true and correct?---Yes.

Now, when did you commence at RMS?---February 2007.

In 2018 were you reporting to Mr Soliman?---I am directly reporting to Mr Zatschler and then Zatschler reporting to Soliman.

I see. Now, commencing at paragraph 13 of your statement, Mr Lee, you have set out that Mr Soliman approached you in late June 2018 to see if you would like to manage a project to procure 425 portable weigh scales.---Yes.

When Mr Soliman approached you, he didn't mention the quantity of scales at that stage, did he?---No.

He said it was a project to procure scales?---Yes.

10

At paragraph 15 you said that Mr Soliman asked Mr Singh to forward you the documents used for the recent procurement of 125 scales.---Yes.

And you've said at paragraph 17 and 18 that you and Mr Walker decided to do some research on Novation.---Yes.

Did you discover that the company was just a one-man band, I think you said?---Yes.

20

And the director used his residential address as a company?---Yes.

Did Mr Walker give you that information?---No, I do my, I just go to the ABN check and they found a residential address there, then I pop into the Google Map and find out this is just a residential address.

And you also discovered that Novation was only a supplier and unable to conduct servicing?---Yes.

30

How did you make that discovery?---Because, I can't, I can't recall that. I think, I can't recall that.

You don't recall now.---Yeah.

But you discovered that at that time.---Around that time.

And you've said that Mr Walker did some research in that he telephoned IRD?---Yes.

40

And at 19 you say that Mr Walker cautioned you to follow RMS procurement policy.---Yes.

Did he give you a reason for the caution?---He is just thinking we given that big tender to that small company and we better do it cautiously.

THE COMMISSIONER: Do it what, sorry?---Cautiously.

MS WRIGHT: Cautiously?---Yeah.

THE COMMISSIONER: Cautiously.

MS WRIGHT: You've said at paragraph 20 that Mr Soliman said that he had an external consultant to carry out, or sorry, he had an external consultant carry out a study to test other portable weigh, portable scales on the market.---Yeah.

10 When did Mr Soliman say that?---I can't recall exact date but it should be around that time, June.

At the commencement of this process?---Yeah.

Shortly after he asked you to be involved?---Yeah.

What did he say?---He just say he got a scoping study testing the portable weigh scale on the market and he's still waiting for that report to come back to him.

20 Did you ask him which brands of scale had been tested or types of scale?
---No, but he mentioned to me PAT scale, Intercomp and HAENNI.

Did he say that there was a study coming up?---Yes.

Did he tell you subsequently that a study took place?---Yes.

When did he tell you that?---June/July, at that, around that time.

30 So he told you that there was one about to occur, did he, and then afterwards he told you that a study had taken place?---I think to be, to be, he told me the study is still ongoing.

I see.---And he, and he's waiting for the report.

Now, later, at a later time did he ever tell you that the study had taken place?---No.

Did you ever follow up with him about any study?---Yes. I keep asking him when, when will the report be available.

40 Did you ask him if the study had occurred?---Yes.

And what did he say?---He say the, the study is going, is ongoing and he is just waiting for the final pieces. This is the scoping report.

THE COMMISSIONER: Sorry, he's waiting for the final?---Final bit of that study.

You said of the scoping report?---Yes, yes.

MS WRIGHT: At any stage before the procurement process was finished did Mr Soliman ever tell you that the study had been completed?---No.

Did he ever give you a scoping report?---No.

Did you ever ask him if the PAT scales had been tested?---Yes. He, he did, he did mention to me.

10 That the PAT scales had been tested?---Yeah.

What did he say?---He just say he testing the PAT scale, the Intercomp scale and the HAENNI scale.

THE COMMISSIONER: So those three he said had been tested?---Yes.

MS WRIGHT: So that suggests he told you that the study had been completed, doesn't it?---He didn't say it's completed because if it's completed then the report should be presented to him and then he should
20 give it to me, but I never saw that report.

You understood that there was some testing but it was ongoing.---Yes.

Is that the case?---Yes.

Now, at 21, paragraph 21 of your statement you say that, "I assumed," and this is halfway through your paragraph 21, "I assumed I would need to purchase 425 IRD PAT branded scales based on the conversations I had with Soliman. I thought that IRD PAT is the only product in the market that
30 could fulfil all the RMS requirements." Now, here you're talking about the start of the process, the start of the procurement process. Did you assume from around the beginning of the process that you would have to purchase IRD PAT branded scales?---I, I should say IRD scale is the, is a prefer option because Mr Soliman keep saying to me PAT scale is the best.

Yes. So how many times did he say that to you approximately?---More than 10.

THE COMMISSIONER: More than 10.---Yeah. Because almost every
40 conversation we're having over the phone or face-to-face conversation he sort of mentioned PAT scale is the best.

MS WRIGHT: And that was from the start of your involvement - - -?
---Yes.

- - - in the tender process?---Yes, yes.

When you say you assumed you would need to purchase 425, you agreed with me earlier that he didn't mention that number when he first asked you to be involved.---Yes.

10 So when you say in paragraph 21, "I assumed I would need to purchase 425 IRD PAT branded scales," should that really say, "I assumed I would need to purchase IRD PAT branded scales?"---The 425 come up is because when I having an interview with Adam Griffith [sic] November, then the procurement exercise is already finished, so that's why I know that number.

Yes, but this paragraph, do you agree, Mr Lee, is talking about your state of mind, what you assumed back at the start of the tender process, so putting yourself back to around - - -?---June, yes.

- - - June 2018.---Yeah.

Do you agree that that's what the paragraph is dealing with? Do you need to read it again?

20 THE COMMISSIONER: Do you think we should get it up on the screen, would that help?

MS WRIGHT: Yes, yes.

THE WITNESS: Yeah, it would be helping.

MS WRIGHT: Thank you, Commissioner.

30 THE COMMISSIONER: And Mr Griffith [sic] was one of the investigators - - -?---Yes, the ICAC.

- - - who assisted you in taking your statement?---Yes, yes. Yeah.

MS WRIGHT: So you see you've said there, "As the majority of the scales used by the heavy vehicle inspectors are IRD PAT branded scales, it seemed as though those were the scales that would be purchased."---Yeah.

40 How did you know that the heavy vehicle inspectors used PAT branded scales?---That's what Mr Soliman told me.

And you said, "Therefore when I was given the project, I assumed I would need to purchase 425 IRD PAT branded scales based on the conversations I had with Mr Soliman."---Yeah.

Now, you've said that he told you PAT scales are the best.---Mmm.

Were there any other conversations at the beginning of the process that made you think that you would need to purchase PAT branded scales?
---Can you repeat?

So just try and think back to this time around June 2018 and shortly thereafter. At that time did you think, "I have to buy PAT branded scales"?
---No, because we still need to do the procurement exercise going for the open tender process. So although we are having majority, majority of the PAT scale, but we still need to open to the market, to scan the market to see
10 what brand of scale may be suitable to our tender process.

So you thought you had to do a market scan to see what would be the best scales?---Yes. Yes.

But you've said Mr Soliman said to you PAT scales are the best.---Yes.

And he said that about 10 times?---Yes.

Did he say that right from the start?---Yes.
20

And did you assume from the start "Because the heavy vehicle inspectors used PAT scales, I need to buy PAT scales in the end"?---Not necessarily the case as I understand.

Well, isn't that what you've said in paragraph 21, Mr Lee?---Yes, yes.

So can you explain what you mean in paragraph 21 if you're not saying that's the way you proceeded, on the basis that you had to buy PAT scales?
---Yeah, that - - -
30

Do you understand what - - -?---Yes, I understand, yes.

- - - the difficulty I'm having?---Yes. I, just like the majority of the inspector is using PAT scale, so I think if they using the latest model of the PAT scale, will be easier for them. And also Soliman told me PAT scale is the best, it's reliable, durability is good. Then I think, oh, PAT scale should be the best. But - - -

THE COMMISSIONER: So are you saying that was your expectation?
40 ---Exactly, yes. My - - -

The PAT scales would be the best?---Yes. But we still need to go through the procurement exercise.

MS WRIGHT: But you've said here, "When I was given the project, I assumed I would need to purchase 425 IRD PAT branded scales based on the conversations I had with Soliman."---Yes, that's why I say I assume.

Based on - - -?---I didn't say I was direct.

THE COMMISSIONER: No, no.

MS WRIGHT: No, I'm not asking you if you directed - - -

THE COMMISSIONER: We're not saying that, no.---That's why I say I, I, I'm assume I should, I should buy. But we still need to go through the process, yes.

10

MS WRIGHT: I understand you would still go through the process, but you've said here, "Based on conversations I had with Mr Soliman," and you've told us he said PAT is the best.---Yes.

And your understanding that the inspectors used PAT branded scales.---Yes.

That you assumed you would need to, at the end of this procurement process, purchase PAT scales. Is that the case?---No, because we still need to go through the procurement exercise to see what brand of scale is suitable for us. So I can say Mr Soliman try to, try to, what's the words that I say, to influence me - - -

20

MR YOUNG: Oh, I object to that. I object to that. That is a conclusion, there's no basis given for that.

THE COMMISSIONER: Well, he might - - -

MR YOUNG: And I ask that it be struck out.

30 MS WRIGHT: It'll be stepped through, Your Honour, in the evidence.

THE COMMISSIONER: Well, I assume that you were going to take him through the basis.

MS WRIGHT: Yes.

THE COMMISSIONER: I'll allow Counsel Assisting to explore it. If you still have an issue at the end of it, please raise it, Mr Young.

40 MR YOUNG: Thank you.

MS WRIGHT: I will come back to it, Commissioner, as we go through the evidence. I just need to deal with your paragraph 21 further, Mr Lee. I'm sorry, I don't mean to labour the point.---Yeah, yeah, okay.

But you have said here, "When I was given the project, I assumed I needed to purchase 425 PAT scales." And you go on to say, you see the last

sentence, "I thought that IRD PAT is the only product in the market that could fulfil all the RMS requirements."---Yeah, yep.

Did you have that belief when you embarked on the procurement process?
---What do you mean?

10 When you started down the track of being involved in this procurement, did you think that PAT was the only one that could fulfil the requirements and that you would need to purchase them?---I think that thinking is before the procurement exercise start. I am thinking PAT scale may be the only one but when I going through the procurement exercise, there is submission from the tenderer, then I can see what else branding, what else are, scale is available on the market.

So you were open minded to other possibilities?---Yes.

But you assumed that you would need to purchase the PAT scales?
---Exactly.

20 And at that stage at the beginning, you weren't aware of precisely the quantity that you would be purchasing?---Yes.

That came later?---Yes.

Now, at paragraph 23, you referred to a procurement strategy being needed for a procurement of this size.---Yes.

30 And if I could take you to that at volume 11, page 296. This is in fact a covering email. You prepared a draft of a procurement strategy, is that the case?---Yes.

Did you send that to Mr Soliman?---Yes.

Did he complete it and send it back to you?---Yes.

40 Is this the email by which he sent it back to you?---Yes. We, the emails coming backward and forward a couple of times because you, you can see there's procurement strategy version 06. So there's still 1 to 5 before so we doing back and forward a couple of time and - - -

Thank you for that. And then at page 297, there is a memo to Ms Bailey from you. Did you draft that?---Yes.

And then over the page at 298, is this the procurement strategy?---Yes. That's the template and I input the relevant information into that template.

Yes. So this is the final document not the template?---Yes, yes.

At page 299, you have said in your statement at 24 that Mr Soliman provided all the figures and data that appears in the document.---Yep.

And said that they came from the previous tender.---Yes.

What is it that Mr Soliman provided? If Mr Lee could be shown page 301. These are the financial figures?---Yes.

Did Mr Soliman provide that data?---Yes.

10

And then going back to page 300, what did you draft here?---I think point 3 all the way down, literally everything, literally everything.

That you drafted?---Yeah. And based on the information provided by Mr Soliman.

How did he provide you with the information?---Either verbally or by email.

20

And then at page 299, do you see the last two paragraphs under the heading Background?---Yes.

It says, “In January 2018 the Heavy Vehicles Programs Unit was allocated \$2 million to procure the first portion of 125 portable weigh scales to replace the current fleet of end-of-life scales.”---Yes.

You said in your statement that Mr Soliman provided information that came from the previous tender.---Yes.

30

Did he provide this information?---Yes.

And the rest of the information on that page or did you draft some of that? ---Yes, and have the - - -

Sorry, it wasn't a yes/no question. Was it Mr Soliman or was it you?---Both of us, because as I mentioned before, this is the version 6. So version 1 to 5 I starting from the template and I input some information, Soliman input some information and then we move a bit back and forward and come up with version 6.

40

See where it says, the final paragraph, “This open tendered panel success,” I should read you the paragraph before. See it refers to the request for quote being issued to the Heavy Vehicles Programs Maintenance Panel - - -?---Ah hmm.

- - - for the procurement of 125 portable weigh scales?---Yeah.

“The procurement was successfully completed and delivery of the new scales has completed ahead of schedule.”---Ah hmm.

But in the next paragraph it says, "This open tendered panel successfully scanned the market for scale suppliers."---Yeah.

"Five scale suppliers submitted responses and all vendors were placed on the panel."---Yep.

Did you understand that to be referring to the Heavy Vehicles Programs Unit Maintenance Panel?---Yes, the panel contract, category B.

10

You were not involved in that appointment process?---No, no.

And it says, "Hence there is a very high confidence level that all relevant suppliers in this niche market are available on this panel."---Yeah.

Did Mr Soliman or did you set out this information in the procurement strategy?---This is Mr Soliman wording.

20

THE COMMISSIONER: Can I ask, what did you understand a market scan or successfully scanning the market involved?---As I said, it's not my wordings, so that's what - - -

Did you turn your mind to what it meant or were you just - - -?---Yeah, and Mr Soliman explained to me as well because they setting up the panel contract, they believed they scan the market already, which mean they sent out all the invitation to all the potential scale provider, that's what I believed, they have been scan the market.

30

So that's what it means. You sent out an invitation to all scale manufactures or scale providers.---Yeah, yeah.

MS WRIGHT: Did Mr Soliman give you the tender documentation relating to that previous tender for the Heavy Vehicle Maintenance Panel?---Yes.

He gave you the request for tender document?---He actually direct me to Mr Singh and Mr Singh, Mr Singh provided me all the information regarding to the previous tender.

40

So did you read the request for tender for the establishment of the Heavy Vehicle Maintenance Panel?---No. They just give me one page for the category B, that page.

What did the page say?---The page say the panel contract set up a category A and category B. Category B is more likely we can use in this procurement exercise, and category B say procurement and service of portable weigh scale. That's why we can use that.

So did the page tell you what the criteria were for appointment to the panel or did it tell you who the panel members were?---No. No.

What did it say?---Just say category A and category B. You can put it up.

If Mr Lee could be shown volume 11, page 247. The first, perhaps the front page, which is page 240. Now, that's a fairly generic looking front page but that's the front page of the tender for the Heavy Vehicle Maintenance Panel, Mr Lee.---Ah hmm.

10

And then at page 246, you see the heading Description of Work.---Yeah.

Then at page 247 - - -?---Yeah. That's - - -

- - - it sets out category A and category B.---Yes.

And it says category B is for procurement and maintenance of existing weigh-in-motion systems, procurement and maintenance of PAT brand and HAENNI brand portable weighing scales and serviceable parts.---Yes. Yes.

20

And it goes on.---Yeah.

And then it has a note, "Important note."---Yeah.

"Roads and Maritime may consider brands not specified above." Do you see that?---Yes. Yes.

Back then when you started on the procurement for the 425, did you see this document?---Yes, yes.

30

THE COMMISSIONER: All of it or - - -?---Actually just this page.

And we're on page 247, aren't we?---Yes, yes.

MS WRIGHT: So you see how it refers to particular brands for the portable weigh scales?---Yes.

How is it that that would be a market scan for all brands of, all possible brands of portable weigh scales?---Yeah, because on the second-last paragraph say, "May consider brand not specific above." So not necessary saying only PAT and HAENNI.

40

But it doesn't sound very encouraging, does it, to potential bidders when it says "may consider".

MR YOUNG: Well, I object to that. That's not directed to anybody outside the RMS.

THE COMMISSIONER: I'm sorry?

MR YOUNG: It is not directed to anybody outside the RMS.

MS WRIGHT: It was published on the eTender website.

MR YOUNG: Yes, but it's not directed to discourage other persons.

10 THE COMMISSIONER: No, I think the opposite was – well, Ms Wright?

MS WRIGHT: It's a tender – I'm suggesting that it's being directed to specific brands with a small qualification and it's not encouraging of other potential suppliers of other brands, and I'm seeking his comment on that.

THE COMMISSIONER: View on that.

MS WRIGHT: Yes.

20 THE COMMISSIONER: No, I'll allow it. Do you understand the question?---Yep.

MS WRIGHT: How would you respond? Sorry, Commissioner.

THE COMMISSIONER: Yes. How?---From my, from my understanding that, that not only, so, sorry, start again. From my understanding, RMS can consider PAT, HAENNI or any other brand that not specific above. That what I understanding from here.

30 MS WRIGHT: Do you agree that when it says "may consider" it's not saying that the agency will consider other brands?---Mmm. Yep.

And in specifying particular brands in the second bullet point under category B, doesn't it indicate to potential bidders that what Road and Maritime Service is really interested in are the PAT and HAENNI brands? ---First of all, that's not what I prepare.

40 I understand.---And I just been direct to use that panel contract and when I been given that, I say, I, I can see, we can procure PAT and HAENNI and also we may consider brand not specific above. So, which mean not specific, I need to buy PAT scale or HAENNI scale, I can buy Intercomp, I can buy any others by using that panel contract.

That was your view at the time?---Yes.

When you look at it now, would you agree that it's directing readers to particular brands and it's - - -?---I still believe I can use this panel contract to buy anything in the market while it fulfil our requirement.

What I am suggesting is that companies that might provide portable weigh scales would see this and think RMS is really interested in PAT brand and HAENNI brand for this panel.---Yep. If you, if the company really want to get into market they will provide all of the, the, good thing from their, from their scale. So we didn't, from RMS point, I shouldn't say from – sorry. From RMS point of view, I, from my understanding, we, the, the, the tenderer and provide or can present their own brand of scale. That's my answer.

- 10 So yes, I understand that any company was free to put in a tender submission even if they weren't PAT or HAENNI, but do you agree that a company reading this would think RMS is really interested only in PAT and HAENNI brand?---I, I am not from that company so I can't say that.

Well, isn't it plain, Mr Lee, that the request for tender for this Heavy Vehicle Maintenance Panel was directed to particular brands of portable weigh scale?---I can say from my personal point of view, I can say it's look like RMS prefer these two brand. That's my personal point of view.

- 20 Yes. That's what I'm asking, for your personal point of view. So then going back to the procurement strategy which is at page 296. Sorry, it's not 296, it's 299. Last paragraph where it says that that panel, the one I've just taken you to, successfully scanned the market for scale suppliers and there is a very high confidence level that all relevant suppliers in this niche market are available on this panel. Do you agree that that is a gross overstatement of the scope of the Heavy Vehicle Maintenance Panel?---Again, that's not my wording and that's what Mr Soliman put there, and at the beginning of the procurement exercise I don't have any information or knowledge on the panel contract. I don't know what they have done. I just been told by Mr
30 Soliman, we can, we could use that panel contract to do our procurement exercise.

So that's what Mr Soliman wanted to be included in the procurement strategy?---Yes.

Now, you submitted the procurement strategy to Mr Bass?---Yes.

And that's at page 305, you have forwarded your email to Mr Bass, so you've copied it to Mr Soliman, Ms Willis and Mr Chiu.---Yes.

40

And Mr Soliman's responded, "You've done excellent work so far, mate." ---Yeah.

"And please make sure you manage the signature process."---Yeah.

You set out in your statement at paragraphs 25 to 27 that you liaised with both Mr Soliman and with Mr Bass about the procurement strategy?---Yes.

And there were two options, weren't there, being an open tender process where you would go to the open market - - -?---Yeah.

- - - or proceed by way of a select tender using the Heavy Vehicle Maintenance Panel - - -?---Yeah.

- - - and issuing a request for quote to the five vendors on that panel?
---Mmm.

10 And at 29 of your statement you state that Mr Soliman said if it went to open tender you would miss the deadline?---Yeah.

What did he tell you the deadline - - -?---End of financial year.

End of the 18-19 financial year?---Yes, yes.

When did you have that discussion?---I think from the very first beginning when Mr Soliman gave me the task.

20 You had a discussion about whether it should be an open tender or a select tender?---No, he just, at the very first beginning he come over, verbally told me, "Alex, I going to give you a procurement exercise to do," and he say, "We need to purchase some portable weigh scale, because this time is more than \$2 million we need to go to open tender." And what else are you asking me, the last bit?

THE COMMISSIONER: Well, you're being asked about the deadline.
---Oh, yes, the deadline, yeah.

30 Now, that conversation according to your statement must have occurred around late June 2018?---Yeah, yeah, around that time, yes.

So you've got to what, spend the money - - -?---Yes, yes.

- - - by 30 June, 2019?---Yes.

40 Is that correct?---Yes. So he told me we need to buy the scale and we need to spend the money before the end of financial year, and because he's saying that the proposed scale must be manufactured by from oversea, so that's the delivery time we need to consider as well. So he suggest we better do the procurement exercise as soon as possible. That's why he keep pushing, "Alex, you need to do that quickly, quickly, quickly." And he do mention open tender from the first, from the start, and but he also mention if we're doing the open tender then we may, we may, we may miss the end of financial year deadline. So this open, it's an open, open statement. If we can use the closed tender method then we may be able to speed up the delivery or we may be able to speed up the procurement process.

MS WRIGHT: Did he say that?---Yes.

THE COMMISSIONER: Can I just ask, what were you told, that you had to spend the money by 30 June, 2019 or you had to spend the money - - -? ---Yes.

- - - and actually have the scales physically at RMS?---Exactly.

10 Which, which one?---He told me we need to spend all the money and also get the scale to deliver to, to Australia, to Australia or to RMS.

I can understand spending the money by 30 June, but I don't quite understand spend the money and actually have the scales physically at RMS by 30 June.---Because he told me - - -

20 No, no, no. Is that your understanding how it works or are you relying on what Mr Soliman told you?---I highly rely on what he told me because I don't know where they, the scale made, how they're going to deliver to us. I, depends on the information he given to me.

MS WRIGHT: So at first he said open tender.---Yes.

And then you had another conversation with him where he suggested that if it were a closed tender you could make the deadline.---Yes.

You would make the deadline.---Yes.

30 And he said that the market had already been tested in the tender on the 125 scales in March 2008. That's what you've said in your statement at 29. ---Yeah.

Did he say that the market had been tested in that previous tender or in the Heavy Vehicle Maintenance Panel tender?---I think on the panel tender, on the panel contract.

So is that part of your – perhaps if that could be brought up on the screen at paragraph 29 of Mr Lee's statement.---Yes, I read that.

40 So you see the sentence, "Soliman stated that the market had already been tested in the tender on 125 scales in March 2018"?---Yeah.

Is that what he said?---Yeah, because the 125, they're also using the panel contract.

Did he say that?---Yes.

And when did he give you that information?---I can't recall the exact date but it should be on June/July, on that period of time.

So where you say he stated that the market had already been tested in the tender on 125 scales, at that time he also said to you, because that procurement was based on the Heavy Vehicle Maintenance Panel, is that correct?---Yes. Yes.

Now, and I think you even go on to that at paragraph 31. You say, "I had no understanding of what was the best scale on the market."---Ah hmm.

10 "Soliman told me that as panel contract had already been created and identified all the relevant vendors, and that the procurement of 125 scales had identified the most suitable scale on the market for use by RMS, therefore why do we need to run the same exercise again?"---Yes.

Now, Mr Lee, what you've set out there, are they your words or is that what Mr Soliman has said to you?---That's what Soliman told me and say, say to me.

20 Well, you've said, "Therefore why do we need to run the same exercise again?"---Yeah, yeah. That's the wording from Mr Soliman.

Are you suggesting he said, "Why do we need to run the same exercise again?"---Yes, yes.

Wasn't he running this tender?---No, but he and me have, like, regular meeting. We were talking during that procurement exercise.

30 What did he say to you?---He say, "Okay, we need to do the procurement exercise. We need to do it open, open tender or closed tender." But he keep saying, "Actually we can use the closed tender because we scan the market already, and if we can use that, why do we need to do the exercise again?"

Sorry, why - - ?---Why, sorry, they, why do we need to run the same exercise again?

40 Why would he be asking you that?---That's his expression I think. So during the sort of informal talking between me and him, he say, he say oh, RMS, we need to follow the procedure, we need, because it's more than \$2 million we need to go for open tender but from his point of view he, he saying, Alex, I don't know why I, we need to do it again because we can literally use the closed tender method. So if we can use, if we can get the procurement strategy saying we can use the closed tender method, then it can speed up our process and we can spend our money before the end of financial year. This is the, like, informal conversation between me and Mr Soliman.

So did you have an understanding that the exercise was fairly pointless in that - - ?---No, no.

No?---No. Because we still need to follow the RMS procurement policy.

But if you've already identified – I see what you're saying. Because you've identified the vendors from the panel, the potential vendors from the Heavy Vehicle Maintenance Panel, you still need to put the tender or the procurement to those vendors?---Yes, yes.

10 But your understanding was that the previous procurement had resulted in the PAT brand scales being selected?---Yes.

And that that would be the preferred brand?---Yes.

Now, just going back in time, Mr Lee, page 108 of volume 11. This is an email chain dated 18 June, 2018, in which you thank Mr Soliman for background info and his email to you says, "Some early feedback from the users regarding a portable scales trial happening now."---What, what do you mean now?

20 Do you see his email to you?---Yeah.

You see, you've thanked him for the background info?---Yes, yes.

THE COMMISSIONER: We're going back in time with the emails, okay?
---Okay, all right, okay.

So your email was the last one and you're responding to what Mr Soliman said to you on the same day at about half past 12.00. okay?---Yes, yes, yep.

30 MS WRIGHT: Do you recall this email?---Yes.

He sent you some feedback from users regarding scales trial happening now.---Yep.

And he says, "The IRD PAT scales have received excellent reviews so far in the trial. Keep this in mind for the tender."---Yep.

40 "It is critical to create the RFT to look at all aspects such as proven durability et cetera, not just price." And did you read the feedback which he forwarded to you?---From David Jones?

Which is in the rest of the email chain.---Yes, yes.

And what did you know about the trial at that stage?---Nothing until I read the information.

So only what's in this email chain?---Yes.

And who did you understand Mr Jones to be?---To be the operation manager from the, from his signature, yeah, signature box down there.

THE COMMISSIONER: Did you have dealings with Mr Jones, have you ever met him?---Back to that time, no.

MS WRIGHT: And could we have page 109. This is part of the email chain.---Yeah.

10 And do you see the bottom email is from Mr Soliman to Mr Jones?---Yes.

And he says, "Thanks for letting me come onsite with you DJ, I've uploaded some videos and photos from the trial."---Yeah.

"My overall impressions were that I was satisfied with the new PAT 10A III scale design and the quality of the modifications."---Yeah.

"It performed well under weighing also with no obvious issues."---Ah hmm.

20 And then you read this at the time?---Yes.

And he sets out some criticisms of the Intercomp LP788.---Yep.

And then going forward in time, the email above is a response from Mr Jones?---Yep.

And Mr Jones concurs.---Yeah.

30 And then back to 108 that you've already seen. Mr Jones adds some comments about the LP788.---Ah hmm.

And then Mr Soliman sends you all of that.---Yeah.

Was that email significant to you at the time?---Not really, because just for my background information.

But it's expressing a view about the particular scales that might be part of the tender?---Yes.

40 So wasn't that email significant to you in that your manager, isn't Mr Soliman your manager?---Yeah.

And Mr Jones, an inspector, are expressing a view about a particular scale that they like?---Yeah.

Was it significant or did you just note it?---I consider just information provided to me to learn more about the portable weigh scale.

You had already thought that the PAT was the preferred brand?---Yes.

And was this, did you understand that, well, the email said PAT 10A III.
---Yeah.

So you understood that that was the PAT brand which was being preferred in this email?---Yes.

10 So did that endorse that idea, that it should be the PAT brand that's selected?---Not really, he just say PAT scale is the best from what I'm understanding from the information.

Okay. And that was your understanding.---Yes.

Now, at page 111 of volume 11, did you organise a meeting with Nathan Chehoud?---Yes.

You copied Mr Soliman to that meeting organiser?---Yeah.

20 What did you understand Mr Chehoud's involvement would be?---Mr Soliman told me Nathan will help us to run the procurement exercise.

What else did he say?---Say he can help us with the specification as well.

What did you understand Mr Chehoud's involvement in the procurement to be?---Mr Soliman told me that Nathan have been helping Heavy Vehicle Program to develop that panel contract, so he got knowledge of the previous panel contract, that's why he can help us to do that procurement exercise.

30 Were you told anything about Mr Chehoud's position or his qualifications?
---No. He, Samer just told me he is from external, from WSP, and I know WSP is a big consultant company, that's why they can provide procurement, sorry, professional service to RMS. That's my understanding.

Did you think that he would have any particular title or anything in the procurement process?---As an external adviser.

External adviser?---Yes.

40 THE COMMISSIONER: Could we go back to page 108 for a sec, please. The email from Mr Soliman at 12.29pm. Where he says, "It's critical to create the RFT," that's the request for tender?---Yes, yes.

"To look at all aspects such as proven durability, et cetera, and not just price."---Yeah.

So at that stage you were still to develop the tender documents?---Yes. Yes.

And this is Mr Soliman suggesting to you that something should be included within the requirements set out in the tender.---Yes. Yes.

MS WRIGHT: Now, you've said at paragraph 32 of your statement that you accessed the RMS Procurement Manual via the intranet.---Yeah.

And you saw that it said that it needed to go to an open tender for a contract worth over \$2 million.---Yeah.

- 10 And at page 112 of volume 11, you were copied to an email, or you were sent an email which Mr Soliman sent to Mr Chehoud attaching the procurement manual.---Yeah.

And Mr Soliman – this is on 29 June, 2018 – forwarded to you and Mr Chehoud an email for, it says “for your consideration” but his email is actually addressed to Nathan, in which Mr Soliman says the goal is to get the procurement over the line as fast as possible with the best scale on the market.---Yes.

- 20 And he asks Mr Chehoud to “Advise on his previous experience (not transcribable) exceptions for government procurement of this size” - - -? ---Yeah.

- - - “that would help our decision with which procurement option to take.” ---Yeah.

So by this stage Mr Soliman had discussed with you the possibility of doing a select tender, is that correct?---Yeah, yeah.

- 30 And he has sent an email to you and Mr Chehoud, forwarding an email he sent to Mr Jansen about the issue.---Ah hmm.

Did you read the email?---Yeah.

Was the select tender something you would have thought of yourself, do you think?---Yeah.

- 40 You would have thought of, well, you said you accessed the procurement manual and it said a contract value over \$2 million, you need to go to an open tender.---Yeah.

Would you have thought of the option of a select tender or a waiver from an open tender yourself?---Myself is listen to the advice from our RMS Procurement team.

What I'm asking is, if Mr Soliman hadn't suggested it, would you have thought about this yourself?---I will of course.

Now, you see the email from Mr Soliman to Mr Jansen.---Yeah.

And it says there are two options, option one and option two.---Yeah.

Option one is to gain an exception to bypass the tender process.---Yeah.

Based on exception reasons from the procurement manual.---Yeah.

10 Insufficient time to conduct a formal tender because of an immediate requirement.---Yeah.

A situation where work needs to be done immediately due to public safety. ---Yes.

Now, and then an absence of competition for technical or policy reasons is given in the second bullet point.---Ah hmm.

20 “The tender which was run last year for procurement of 125 scales showed that the successful supplier in fact was the only one which met the requirements.”---Yeah.

30 “This supplier is the sole supplier for the IRD scales which have been used by RMS for 30 years.” And a third bullet point, “Experience, expertise, type and all quality of goods or services.” And then he refers to, “A scoping study has been run to assess the quality and durability of all leading scales on the market and this study also conclusively showed that the Swiss made IRD scale is the clear winner in every KPI.” These three bullet points, Mr Lee, did you understand they were being put forward by Mr Soliman as possible reasons to bypass or avoid an open tender process?---Can you repeat the first couple of word that you - - -

You see Mr Soliman set out as option 1, you see he says, “Gain an exception to bypass the tender process”?---Yep.

40 And he says, “Based on the following exception reasons from the procurement manual.” So did you understand he was referring to reasons set out in the procurement manual that would justify not going to an open tender?---I think, I think this is the option for senior management to, to make - - -

Yes but you understood, didn't you, that Mr Soliman was suggesting here that there were some reasons why you might not need to go to a full open tender?

MR YOUNG: Well, I object to that. I mean, the document commences, “Good morning Arnold. As requested there are two options to procure.” Now, it's in response to a request.

THE COMMISSIONER: Yes. And he's putting forward, Ms Wright is exploring what Mr Soliman has put forward under option 1.

MR YOUNG: Well, but it's a document to the recipient to which Mr Lee has simply been copied in. Well, what's his understanding of the document got to do with it?

10 THE COMMISSIONER: Because he's running the procurement strategy and is having discussions with Mr Soliman about whether it's got to be an open tender or a closed tender.

MR YOUNG: Yes, but this is a document to a senior person.

THE COMMISSIONER: I assume where it's going is it's reflecting Mr Soliman's thinking at the time.

MR YOUNG: Well, please the Commission.

20 THE COMMISSIONER: Please continue, Ms Wright.

MS WRIGHT: Mr Lee, you said you read this email?---Yep, yep.

THE COMMISSIONER: Can I just ask, the reference in the third dot point to the scoping study has been run, what was that referring to, do you know? ---Yeah. It refers to the beginning when Ms Wright asking me about that scoping study.

30 And that was the one that you never saw the results of?---Yeah. The ongoing one.

And that you asked Mr Soliman about where it's up to?---Yep, yep.

And he kept on saying things like, "The trial's still continuing"?---Exactly.

That suggests that it's been finalised, doesn't it, "The scoping study has been run"?---Yeah.

40 Suggests that it's been done?---You mean from, you mean on, on, on the time when that's emailed?

Yes. "Scoping study has been run and this study also conclusively showed that the Swiss-made IRD scale is the clear winner."---Then that's an inconsistency between the information given to me and given to the senior, senior management.

MS WRIGHT: Mr Lee, did you understand that this email was informing Mr Jansen and you, because it's been forwarded to you, that there were two possible options?---Yep.

And perhaps if we could just show page 113, you see the second option is run an open tender.---Yes.

And Mr Soliman says, “This is my preferred option, however I understand the need to procure these scales quickly due to the risks mentioned above.”
---Yes.

10 And going back to page 112, the first option is an option to bypass the open tender, do you understand, that is not hold an open tender.---Yes.

And Mr Soliman sets out some reasons from the procurement manual that might justify that course.---Yeah.

And he has given some detail about that, so the scoping study, as the Commissioner drew your attention to.---Yeah.

The fact that there has been a previous procurement of 125 scales.---Yes.

20 And that was the only one that met the requirements.---Yes.

And he’s also said that there are some public safety issues associated with not having functional portable weigh scales.---Yes.

Now, when you read this at the time, which option did you think Mr Soliman was favouring out of these two options?---First I can’t put, put his word on my mouth - - -

30 No, I’m asking you what you thought about what, if he was favouring a particular option, I’m not asking you what he thought, I’m asking what you thought about whether he preferred a particular option.---He didn’t prefer any particular option, he just say he want to get it done ASAP.

THE COMMISSIONER: Sorry, this, what are you, is that based on, what’s that based on, is that what – sorry, I’ll start again. Is that based on your reading of the particular email?---No, based on the, the usual conversation between me and Mr Soliman.

40 MS WRIGHT: Now, for this particular procurement you issued a request for proposal document.---Yes, yes.

And at paragraph 48 of your statement you address the request for proposal. You’ve said at paragraph 49, you say that you sought guidance from Mr Soliman.---Can you put it up on - - -

Yes, it’s coming, sorry.---Yep, 49, right?

Yes. You sought guidance from Mr Soliman.---Yes.

Was that throughout the tender process?---Yes.

And at paragraph 50 you said you met with Mr Chehoud and Mr Soliman to compile the specifications.---Yes.

And during the meeting Mr Soliman provided the details relating to the specifications of the portable weigh scales.---Yeah.

10 So you didn't provide any of the specifications or formulate them at all?
---No, no.

And you've said you relied on what Mr Soliman told you.---Yeah.

Now, you say that he said to you that he'd already spoken with company representatives from IRD and that Mr Soliman told you that the IRD scales is the best scale for the requirements of RMS.---Ah hmm.

20 Did he say that in front of Mr Chehoud?---Yes.

Mr Soliman was not on the Tender Evaluation Committee.---Yeah, yeah.

Did you think that this was unusual that he would be expressing that view to you when you were going through a tender process?---No, because he's my manager, he just telling me the background information.

Did you anticipate that you would be on the Tender Evaluation Committee at this stage?---Yes, because I running that, that procurement exercise.

30 Wasn't he preferring the IRD scale, wasn't he saying to you the IRD scale's the one we need to select?---He didn't say select, he say it's the best, it's the best.

And so didn't you understand that he was conveying to you, expressing to you that he preferred the selection of the IRD scale?---I agree. I agree.

40 Yes. And did you feel that you should select that one because your manager is telling you that's what he prefers?---I can see the pressure from him. He try to pushing it. But on top of that we still need to follow the policy, the, the RMS procurement policy.

I understand. I understand that there is a procedure that you understood had to be followed.---Yes. So that's only the point of view what he expressing, expressing.

And you say at 51, "Soliman stated that the specifications were in line with the steel housings in the back of the inspectors' vehicles where the scales are stored."---Yeah.

“Soliman said that the procurement was for 425 portable scales.”---Yes.

And he said that, did he, that if the RMS sourced a different scale with different measurements, the housing would have to be changed?---Yeah.

Did he say that?---Yes.

10 And did he say the next words, “There is no budget for that”?---Yes.

And “We should stick with the original housing, so we should pick a scale that fits within that existing housing”?---Yes.

Now, you’ve said there, “This concerned me as it leads to another problem in that it narrows our market for using a different scale.”---Yes.

20 Did anyone say to you that the IRD scale would fit within the current housings?---No. I, I’m, I’m assume it’s fit because we’re using, RMS using the vast majority of the IRD scale.

Because you’ve said earlier at paragraph 21 that the majority of the scales used by the inspectors were IRD scales.---Yes.

30 So did you have any information whether there would possibly be any other scale that would fit into the existing housings in the inspectors’ vehicles? I’m not asking you about when you got the tenders, I’m asking you about beforehand when you’re in this process of setting specifications with Mr Chehoud and Mr Soliman. Did you think, “Are there any other scales that might fit these housings?”---I believe that there should have, some other scale fit into that specification.

THE COMMISSIONER: You thought that some may?---Yeah, yeah.

MS WRIGHT: You thought that might be a submission made later? ---Yeah. Yeah. Yeah.

40 THE COMMISSIONER: Was there any discussion about whether a price for refabricating the steel housings for the scale in the inspector’s vehicle had been looked at or priced before?---He just told me that it will be an expensive exercise to do.

Mr Soliman just said an expensive exercise?---Yes. And they don’t have the budget for that.

MS WRIGHT: Could we have page 163, volume 11 onscreen.

THE COMMISSIONER: Sorry, what page?

MS WRIGHT: 163. Mr Lee, this is an email from Mr Soliman to you of 29 June, 2018.---Yeah.

Do you recall receiving this email?---Yes.

In which Mr Soliman sent you dimensions of the existing housings in the vehicles?---Yes.

10 And he says, do you see the second large paragraph, “In essence”?---Oh, yeah, yeah.

“We preferably should look for cost savings by reusing the existing housings.”---Yeah.

And do you see how he’s listed 1 to 6?---Where, where?

Do you see, “In essence, we preferably should look for cost savings” - - -? ---Oh 1 to 6, yes, yes.

20 “However, to enable competition we should put a comment in the tender which states that if the tenderers’ scales does not fit in the existing housings, they must include the cost to 1 to 6.” And then at 4, you see it says, “Manufacture custom fabricated stainless steel housing in all vehicles which will store the 300 scales”?---Yep.

Why was he referring to 300 scales, did you - - -?---I, so I remember the, when the very first beginning, we going to buy 300 and then later on we get more funding then that’s why we come up 425.

30 And you’ve just answered a question from the Commissioner about the cost. Did Mr Soliman say to you the cost of getting new housings would be expensive?---Yes.

Do you see below the email I’ve just taken you to is another email from Mr Soliman to you?---Ah hmm.

That was on 20 June.---Yes.

40 And he says, “Hi mate. I’ve spoken to the inspectors and here are the updated requirements for the RFT.”---Yep.

And he asks you to have the RFT updated and ready to go.---Yes.

What did you understand to be the inspectors input in the requirements? ---My understanding?

Yes.---I think he talked to the inspector and got that information from them.

Did you think that the inspectors set the requirements or why did you think he was sending you this?---I don't know.

He's asking you to, is he asking you to put the specifications in and to update the RFD accordingly?---I have to, yeah, yeah, yeah. So he just pass the information to me. I didn't question where it's come from.

10 I see. And you understood these should be requirements included in the RFT, is that the case?---Yes, yes.

And then nine days later, he sends you the email at the top of page 63 with the dimensions of the existing housings.---Yep.

And he said, "We should use the existing housings preferably"?---Yes, yes.

Now, at page 165, this is another email from Mr Soliman to you and Mr Chehoud, do you see?---Yep.

20 And he forwards or relies to the previous email. Do you see the email chain?---Yes, yes.

And it's the email to Mr Jansen with the two options about an open tender or an exception to the open tender.---Yep.

And he says, "Alex, also for option 1 below, procurement exemption. I have attached the approval template for your consideration if this option is recommended."---Yes.

30 What did you think about his attitude to option 1?---I think he prefer option 1.

And when he says, "If this option is recommended," by whom did you expect the recommendation to come from?---By RMS Procurement team.

THE COMMISSIONER: They had to give the tick, did they, approve?
---Yeah. Because, yeah, because we doing the procurement strategy at that time.

40 MS WRIGHT: Page 167. Is that the procurement exemption template which Mr Soliman sent to you?---Yes.

Now, page 170. Did you receive from Mr Chehoud a proposal for WSP to assist Roads and Maritime Service with the procurement?---Yes.

At page 171 is this the letter which Mr Chehoud sent to you setting out his proposal?---Yes.

And do you see the first paragraph?---The first?

The first paragraph.---Yeah.

It says, “Roads and Maritime,” this is the last sentence in the first paragraph, “Roads and Maritime Heavy Vehicles Branch is proposing to call an open tender for the supply of new scales.”---Yes.

But at that stage there had been discussion of the select tender option.
---There’s a discussion.

10

There had been, well, Mr, Mr Soliman had emailed you about the bypassing of an open tender by that stage, hadn’t he?---Yes.

And had there been discussion also of the other option, which was to go via a select or closed tender, as you referred to it?---Yes, there’s three, there’s literally three option here.

Yes.---Yes.

20

Now, do you see the words, Program, Reliability and Portability, in bold font?---Yes, yes.

And under Portability it says, “The new scales must fit in the allocated space.”---Yeah. Yes.

And that reflected your understanding that the new scales had to fit the existing vehicle storage racks?---Yes.

30

Now, do you see on the bottom of the page, Mr Chehoud says, “To assist Roads and Maritime in achieving these outcomes WSP proposes the following methodology.”---Yeah.

“1, research available portable weighing scale in use by other Australian state road authorities and in New Zealand and other nearby countries.”
---Yes.

Yes.---The first point, yes.

40

And it goes on.---Yeah.

Was that proposal from Mr Chehoud to do research about other scales taken up?---Yes.

By RMS?---(No Audible Reply)

Was it accepted or adopted that Mr Chehoud would do research into other scales around the world?---Yeah, he will do his own research.

THE COMMISSIONER: And did he do that?---Yes.

MS WRIGHT: Did he provide you with the results of the research?
---I remember one meeting he bring up his laptop and show me some of the information, some of the picture what his colleague done.

Were there scales that he showed you?---Yes, yes.

How many?---I cannot recall.

10

Many or not many?---Not many.

Did you document that?---No, he just show me on the, on his laptop.

And what did you do with that information?---Nothing.

Were there scales other than PAT scales that he showed you?---I cannot recall the details.

20 He didn't provide you with a report?---No.

And was that considered to be the research which he proposed to do in this letter?---Yes.

But no formal documentation of it, it was just him showing you on a laptop, was it?---Yeah, I, yes, I cannot remember whether he sent me a copy or not, I can't, I can't recall.

30 Was he showing you websites or was he showing you a document he had created?---He had a Excel spreadsheet he been created.

I see. He showed you an Excel spreadsheet?---Yeah, showed me an Excel spreadsheet, yes.

And what did it contain?---A couple of, I think maybe the name of the scale some pictures, some comments, good or bad, and that's about it. That's what I can recall.

40 About how many scales did it include?---I cannot recall how many. As I say, as I say before, it's not many.

And do you remember any brands?---No.

Were you interested in these options?---No.

Why not?---Just as a reference information for me I think.

You were looking at possible options to procure scales.---Yes.

Why wasn't that interesting that there were other options?---Because, because, because to me the research he's done is just a simple list of scale, that's it, because he just present it to me as an Excel spreadsheet. It's not presenting to me as a formal, formal report prepared by WSP. If, if professional consultant agency provide a report to RMS, they should have a cover page, content page, who prepared, but he not providing, providing to me anything of that. He just open up an Excel spreadsheet, show me that's the research he had done.

10

THE COMMISSIONER: But according to this letter, public money up to \$10,000 is being paid to WSP for that work.---Yes.

And it seems as if, A, it's not formalised. You just look at it and then it's not - -?---Yeah, I think that's, at that point when he's showing to me it's maybe the interim report.

Did you get a final report from him?---No.

20

And they were engaged pursuant to this letter, as I said, where they're going to charge up to \$10,000?---Yes.

MS WRIGHT: Couldn't those options that he showed you on the laptop be taken further? You could have said, "Oh, there are some options. Can you give us some more information?"---I can ask that.

But you didn't.---I didn't because we, because to me at that point that research is not my first priority. My first priority is get the RFT complete. So this is just a minor thing in my procurement exercise.

30

Well, why retain a WSP to do the research?---That's what Mr Soliman suggest.

You had another meeting with Mr Chehoud, if page 173, volume 11 could be shown. On 6 July, 2018 you organised a meeting with Mr Chehoud and Mr Soliman.---Ah hmm.

And that was to discuss the draft request for tender document which WSP had provided.---Yes.

40

And a draft tender evaluation report.---Yes.

And that included draft selection and criteria weighting.---Yes.

And item 4 on that agenda which you've sent includes the open tender (not transcribable) procurement exemption from CE as a topic for conversation. ---Yeah.

So at this point it was still in play, or the question of which procurement option to pursue was still being considered?---Yes.

And at page 174, this is on 17 July, you sent to Mr Soliman some amended documents.---Yeah.

And if we could go to page 175. You see this document here.---Yes.

10 Mr Chehoud had provided the initial draft of the tender documents, is that so?---Yes.

And subsequently you made some amendments to it.---Yes.

And you said in your email at 174, "Amended as per discussed this morning."---Yes.

This was 17 July, 2018.---Yeah. Yeah.

20 What had you discussed with Mr Soliman that morning?---I - - -
Do you recall?---I can't recall.

Can I take you to page 200. Mr Lee, is this the part of the tender documentation which sets out the non-price evaluation criteria?---Yes.

30 And one of the criteria is reliability and durability and providing evidence that the scale models have a useable lifespan of a minimum of 10 years with evidence including, could include demonstration that no fewer than 10 highway agencies from around the world have used the tendered scales for 10-plus years?---Yep.

Who to your knowledge set that requirement?---Mr Soliman.

Did he talk about the requirement with you?---Yep.

What did he say?---Literally same as what we written here or similar.

40 What did he say to you, if anything, about why that requirement would be in the non-price evaluation criteria?---To, to prove that the portable weigh is reliability and durability.

Did he say anything about why you needed to have that as a requirement, evidence - - -?---No, I just directed by Mr Soliman to put it there.

With no real discussion between you about why it would be there?---No.

And do you see the second matter is ability to deliver within the time nominated?---Ah hmm.

You understood that to be by the end of the financial year?---Yes.

“Provide examples of successful delivery of 100 plus scales in the last 24 months.” Did Mr Soliman discuss that requirement with you?---Yes.

What did he say about it?---He say to prove the delivery program is, is, is reliable then we should have some example for successful delivery in the past.

10

And what about the aspect that it had to be successful delivery of 100 plus scales in the last 24 months. Did he take to you about that specifically?

---No. He just put it, he just propose it to me and - - -

Did you type this up?---No. It's done by Nathan Chehoud.

Had these criteria been discussed in one of your meetings with Mr Soliman and Mr Chehoud?---Yes, yes.

20 And then Mr Chehoud went away and inserted it in the document?---Yes.

And provided it to you?---Yes.

Did you ever question these requirements at all?---No.

“Why should we need evidence of no fewer than 10 highway agencies around the world,” you never asked that question?---Because this, this, because this makes sense to me.

30 Makes sense?---Yeah.

And what about examples of successful delivery of 100 scales in the last 24 months?---Yeah, no, I, I agree with that.

Why?---Just to prove that they can do the job, they can successfully deliver.

And you knew of a particular example of that with one of the suppliers?
---Yeah, yeah. That will be Novation, the 125 scale.

40 Did you think that that might be directed to Novation at all?---No, no. That can only say Novation can do that, other can do that as well, if they can prove that.

You knew Novation had recently done that with RMS?---Yes.

And you thought that there might be other possible companies who have done it with other clients?---Yes, of course.

But you knew nothing about whether that was the case?---Yes.

You didn't think that favoured Novation as a requirement?---No.

Well, why not when you knew of a particular example where Novation had done that just recently with RMS?---Someone can do it as well, if they can prove that they can do it.

10 And what if they had a perfectly good scale but they'd never done 100 plus scales in the last 24 months?---Then we got, we got opportunity for them to prove that during their submission.

But if they hadn't delivered 100 plus scales in the last 24 months but they had a perfectly good portable weigh scale, they would be excluded from being a successful tenderer, wouldn't they?---You can't say excluded because the whole scoring depends on the weighting.

I see. So it's one example - - -?---Yes.

20 - - - but you wouldn't consider that it would necessarily exclude them if they couldn't meet that criteria.---Not necessarily.

Is that right, Mr Lee, when it says, "Provide example of successful delivery of 100 plus scales in the last 24 months?" Doesn't it restrict or exclude companies that haven't delivered over 100 scales - - -?---From my - - -

- - - relatively recently?---From my understanding, no, because I believe the other company can do it as well, if they can prove that.

30 What if they can't prove it, I'm asking if they can't prove that, they're out? ---Not really they're out but their scoring for that particular selection will be lower.

40 THE COMMISSIONER: Could we go to volume 11 again, page 163 on that point. The bottom email which was from Mr Soliman to you, and Ms Wright's taken you to this before, but can you see under Durability, this raises those very requirements we've just taken you to, and then it's got, "Failure to provide this will result in the submission being invalid." Now, my reading of that was that if you couldn't satisfy that, that's it, that's the end of your tender, it's invalid. Was that your understanding or was that translated into the tender documents?---That haven't, from my understanding, because we, we evaluate the tender by weighting, durability is only – can I refer to my notes?

So you're saying that when the tender documents were actually created it wasn't a matter of immediate invalidity, it was, it was factored in, given a weight?---Yes, yes.

All right.

MS WRIGHT: Now, page 201 of volume 11, still in the tender documentation, Schedule B7, “The following additional documentation is required as part of the tender response. Failure to provide the documentation listed below will result in the submission being considered invalid.”---Yes.

10 And that includes evidence that you are the authorised distributor in New South Wales for the nominated weigh scale.---Yes.

So not good enough to be anywhere else, it had to be in New South Wales?
---Yes.

As well as dimension drawings, technical specification et cetera. Then at page 215, Schedule 1 provides the supply details and you see that goods include the quantity of scales, 425.---Yes.

20 Is that the first time the quantity is being included in the tender documentation? Now, you recall the document I’m taking you to is an attachment to your email to Mr Soliman on 17 July, 2018?---Yeah.

Page 174, where you say, “Hi, Samer. Please see attached amended documents as per discussed this morning.”---Yeah, yeah.

Do you recall, Mr Singh, whether - - -

THE COMMISSIONER: Sorry, Mr Lee.

30 MS WRIGHT: Sorry. I’m terribly sorry. Mr Lee, do you recall whether you filled out these supplier details on that day?---I cannot recall.

Do you recall what amendments you made as per discussed this morning with Mr Soliman?---I cannot recall. I cannot recall when it’s change from 300 to 425, but I believe there’s some email to prove that there were funding increase. That’s why we can purchase more.

40 And it was around the time that the funding was increased that you determined there could be a larger quantity of scales procured?---Yes.

At page 216 is schedule 2 setting out the specifications, namely the performance requirements.---Yes. Yes.

And did you understand these were the technical requirements of the actual scales?---Yes.

And do you see on page 217, if we could, there’s some words struck through?---Yes.

Who did the striking through, do you know?---I, I cannot recall who.

And you saw, say, page 216, all of these specific material requirements and operating requirements?---Yes.

And over the page again, 217, the physical characteristics.---Yeah.

Which includes the size.---Yeah.

10

The width, the length, the height, the weight.---Yeah. Yeah.

Where did you understand these performance requirements had come from?---From Mr Soliman, and he pass it to Mr Chehoud, and Mr Chehoud prepared that RFT document.

Then at page - - -

20

THE COMMISSIONER: So why didn't you prepare it?---As I, as I mentioned before, I was given that job, that task by Mr Soliman and also Mr Soliman told me we can engage WSP to do it. That's why he say, "Alex, you may be able to just (not transcribable) WSP doing the job." That's why I didn't touch on anything of the details.

MS WRIGHT: Then at page 219, there is a draft tender evaluation plan. ---Yes.

This is still an attachment to your email of 17 July to Mr Soliman.---Yeah.

30

And there's some comments. There's a comment on the side, on page 219. ---Yeah.

Whose comments were they?---From Mr Chehoud.

And going over to page 221, it lists at the bottom of the page committee members.---Yes.

40

And Mr Soliman is listed as being on the committee with you and Mr Chehoud.---Yes.

And so did you understand he at that stage was on the Tender Evaluation Committee?---Yes.

Did that later change?---Yes.

Were you told why that changed?---I don't know because Mr Soliman told me (not transcribable)

What did he say to you?---He just say you, Guido and Paul will be the committee member.

You, Guido - - -?---Alex, Guido and - - -

THE COMMISSIONER: Paul Walker.---Yeah.

MS WRIGHT: Paul.---Mr Lee, Mr Zatschler and Mr Walker will be the committee member.

10

Did he say why he was no longer on the committee?---I think that's all (not transcribable) by Nathan no longer need to be, need to be in that procurement exercise because I recall we got an advice from RMS Procurement team say external adviser is not necessary. So that's why from that point Nathan been excluded and I think that's, that's the reason, that's the timing Mr Soliman want me, Guido and Paul to be the committee member.

20

But why would that affect Mr Soliman remaining on the committee if Mr Chehoud no longer would be on it?---I don't, I don't know.

But it was around that time?---Yes.

But you weren't given a reason about Mr Soliman's inclusion on the committee?---No.

No.---That's his own decision.

30

Could I just take you to your statement at paragraph 53.

THE COMMISSIONER: Are you moving to a new topic or - - -

MS WRIGHT: Well, it's all related, but happy to have a break.

THE COMMISSIONER: Is it a convenient time for you?

MS WRIGHT: Yes.

40

THE COMMISSIONER: All right. We'll have the morning tea break and we'll resume at 10 to 12.00.

SHORT ADJOURNMENT

[11.31am]

THE COMMISSIONER: All right, Mr Lee.

MS WRIGHT: Could we have volume 11, page 215 back on the screen, please. Mr Lee, you recall I, I took you to this document in schedule 1 of the tender documentation?---Yes.

And I asked you about the quantity specified next to goods, being 452, and I think I asked you whether you – I think I put to you that you determined the new quantity around this time, I asked you a question about it, do you remember?---Yep, yeah, yeah.

10 How did that number 425, how was it determined, do you recall?---That was given by Mr Soliman.

Did Mr Soliman tell you that there was a new number of scales going to be purchased and that it would be 425?---Yes.

Was it around this time that you sent him the amended documents on 17 July?---Around that time.

20 So you didn't determine the number yourself?---No.

Then if I could take you back to your statement please at paragraph 53. ---Yeah, 53, yeah.

You've said Mr Jones was on the pervious tender for the 125 scales?---Yes, correct.

And Mr Soliman told you what Mr Jones's view was about the previous tender?---Can, can you repeat again?

30 So you said, "Mr Soliman said that he spoke to Jones for the first tender and asked what are the requirements for the scales and Soliman passed that information to me and the same technical specifications were used for the RFT I was preparing."---Yep.

What did Mr Soliman say to you about his discussion with Mr Jones about the first tender?---No. Didn't - - -

40 Sorry, what did Mr Soliman say to you? You've said, "Soliman said that he spoke to Jones."---Yes, yes.

What is it that you're saying in this paragraph that Mr Soliman said to you about his conversation with Mr Jones because you say, "Soliman passed that information to me."

THE COMMISSIONER: So you say, "Soliman said," I take it to you? ---Yep, yep.

“That he spoke to David Jones for the first tender and asked what are the requirements for the scales and then Mr Soliman passed that information to me.” So what did Mr Soliman say to you about speaking to Mr Jones and then information, if any, that he obtained from Mr Jones?---So what I am saying here is Mr Soliman talked to Mr Jones in the first tender and they set up the requirement in the first tender, so I believe I should follow the same requirement on my 425 tender.

10 MS WRIGHT: Did Mr Soliman say you should use the same requirements from the previous tender?---Either same or similar.

Now at paragraph 54, you say that Mr Jones wasn't invited to assist in the production of the request for proposal documentation?---Yes.

Now, you're referred there to a conversation that Mr Soliman had with you about his relationship with Mr Jones.---Yes.

20 What did Mr Soliman say to you?---He say he had the drama with him and he want him to be in the committee in the 425 tender but he refused.

Did Mr Soliman say that he wanted Mr Jones on the Tender Evaluation Committee, is that what you said?---Actually I ask whether we should involve David Jones because he is the subject matter expert and I, when I was given that task and Mr Soliman told me only Alex Lee, Guido Zatschler and Paul Walker will be on the committee, and I am thinking why don't, we should have a subject matter expert. That's the reason why I asking him.

30 What did you ask Mr Soliman?---To be, include, included Mr Jones to be in the committee member.

As a subject matter expert?---Yes.

What was Mr Soliman's response to you?---He said he have a drama with him.

Did he say anything else?---And he say he ask him but he refused.

40 So Mr Soliman didn't say that he wanted Mr Jones on the Tender Evaluation Committee, in fact he said the opposite?

MR YOUNG: Well, I object to that.

MS WRIGHT: Well, that's the evidence.

MR YOUNG: Well, the evidence is that he asked him.

MS WRIGHT: You said that you suggested to Mr Soliman that Mr Jones should be on the committee as a subject matter expert?---Yes.

And Mr Soliman's response was, "No, I have a drama with him."---Yes, yes.

So did you understand Mr Soliman was rejecting your suggestion that Mr Jones be on the committee?---Yes.

But Mr Soliman also said, "I asked him but he refused."---Yes.

10 At 55 of your statement you say, "From an engineering standpoint I was slightly concerned that we did not have any expert advice to assist in such a large procurement."---Yes.

Was it your understanding that there should be a subject matter expert on the Tender Evaluation Committee?---Yes.

20 Where did you get that understanding?---From my engineering point of view because we are purchasing something that three of us didn't got much knowledge on that, so I am thinking I am doing the administrative work as a procurement exercise which also highly rely on the advice given by the SME. That's why I'm thinking we should have a subject matter expert.

Were you familiar with the procurement manual?---Yes.

Had you had any training in the procurement manual?---No, but throughout my, throughout my engineering experience I have been role maintenance engineer before so I do manage minor works tender and also panel tender as well so I, as I answer to you I familiarise with the procurement manual.

30 Were you familiar with the provisions requiring a subject matter expert on the committee?---No, no. That's only my point of view I think I should have one.

THE COMMISSIONER: When you said that you were on a minor work tender, was it?---Yes.

That was when you worked at RMS but in a different section?---Yes.

40 And you're an engineer. What's your degree in?---Civil engineer major in geotech engineer.

Geo?---Geotechnical engineering and I got master degree on commerce, major in finance.

MS WRIGHT: And you've said that Soliman was your manager and you did not feel like you could challenge his decision not to include a subject matter panel member?---Yes.

Do you agree you were free to question him?---Yes.

And you did raise it?---Yes.

But you didn't take it any further than that?---Yes.

Did you raise it with Mr Chehoud?---No.

Or anyone else in RMS?---No.

10

Look, I'm on this committee which I'm the convenor of, but I don't know anything about scales and we don't have a subject matter expert or a person with experience in the subject matter?---Yeah.

You didn't raise it with anyone else?---No, because I only raise it to Mr Soliman because he is my manager at the time.

Mr Zatschler who you reported to?---Zatschler my, my direct manager but -
- -

20

You didn't raise it with him?---I cannot recall. I cannot recall that. We may discuss during social time but I cannot recall that.

Now, you engaged with the procurement specialist in the Business Services Division of RMS about your draft procurement strategy?---Yes.

At page 229, volume 11, Mr Lee, this is a long email chain between you and Mr Albert Bass and others.---Yes.

30 You understood Mr Bass to be the Chief Procurement Officer at RMS?
---Yes.

And there was a question which we've already, I've already asked you about today, about whether it be an open tender or a select tender to the category B Heavy Vehicle Maintenance Panel members.---Yeah.

And were you advised initially that you can't use the category B panel for a contract over \$2 million?---Advised from who, from who?

40 I'm just asking were you advised?---I cannot - - -

THE COMMISSIONER: Could you repeat the question, Ms Wright.

MS WRIGHT: I'm sorry. Were you advised that you couldn't use the panel, the Heavy Vehicle Maintenance category B panel - - -?---But they advised - - -

- - - for a contract that's worth over \$2 million?---So where it's come from, the advice?

I'm asking you were you advised that.

THE COMMISSIONER: Were you or weren't you, were you ever told that you couldn't use the Heavy Vehicle Maintenance Panel for a contract with a value, where its value exceeded \$2 million?---No, no. I think we got three option, as I mentioned, as I mentioned before we got three option here.

10

MS WRIGHT: You asked – sorry, if I could just have a moment, Commissioner. See on page 230 on 24 July, 2018 you've written to Mr Bass. "Hi, Albert."---Yeah.

You say, "We actually have a panel contract which we used to procure 125 portable weigh scales early this year. Since the contract value was more than \$2 million we were advised we cannot use this panel and must go on to open tender."---Yeah.

20

Sorry, I wasn't trying to trick you or anything, Mr Lee, I was just avoiding going to each individual email, but do you recall that you were advised at some stage that you couldn't use the category B panel and that you had to go to an open tender?---Mmm.

And then you asked Mr Bass if you can use the panel, the category B panel. ---Mmm.

And you asked, "We could split the works into four regions which means four requests for quotes."---Ah hmm.

30

"All will be under 2 million."---Yeah.

And I think by that you meant each would be under 2 million.---Yeah.

And that would avoid an open tender, wouldn't it?---Yeah, yeah, I, I can, I can recall it now.

Yes. And then Mr Bass in his email at the top of the page responded saying you can't do that, you can't do four RFQs because it's against procurement policy to split the contract up.---Yes, yeah.

40

And he said you still need an overarching procurement strategy.---Yes.

And then on page 229 you say that it won't be region-specific, all suppliers will supply the whole state.---Ah hmm.

And you asked for further advice.---Ah hmm.

And then was there an issue about whether RMS procurement specialists or the procurement specialists in TSS would assist?---Assist what?

Assist you with the procurement process?---Procurement process from TSS?

Okay. So Mr Bass says, "Hi, Alex. I note that TSS has been assigned to your project."---Yes.

10 "Can you please coordinate all the project details with your assigned procurement manager."---Yes.

So was there an issue about who was going to help you, whether it be TSS procurement or RMS procurement?---Yeah, that's the issue here.

And Albert Bass was from RMS procurement as the Chief Procurement Officer?---Yes.

And you've said, the top email, that you'll coordinate with Frank?---Yes.

20 Was he from TSS?---From TSS, yes.

And you sought confirmation, "If we could procure all 425 scales using one single RFQ from the panel contract as long as we had an approved procurement strategy." And you say, "If I get a yes, I will finalise the procurement strategy and get the relevant delegate to approve and use the existing panel contract to continue."---Yep.

30 So ultimately you were able to use the panel contract and not go to an open tender?---Yes.

At page 238, please, and then this is an email chain of 30 July. The first in the chain's at page 239. You sent to Ms Willis the procurement strategy that was revised. Was that include that it would be by way of the category B panel that you would put the matter to market?---Can you repeat again?

You sent to Ms Willis a revised procurement strategy?---Yes.

And you also sent her the panel deed for the panel contract?---Yes, yes.

40 That was the category B panel contract?---Yes.

And so by this stage you understand you could proceed by way of the category B panel?---Yes.

And you sent that, why did you send that to Ms Willis?---Because she, during that, that telephone conference, she asking me to send her the panel deed and she is the person in procurement team helping me to get that procurement strategy ready for Albert Bass to sign off.

And at page 238 she asks you to send her the signed panel contract because you only sent a template and then you responded and see your big email there?---Yes.

10 You said, "I think you're after the document shown, the open tendered panel requirements and the successful vendors who can supply portable weigh scales." And then you attached the request for tender document for the category B panel. You recall it's the document I took you to early this morning which contains the note?---Yep.

And then you also sent her the tender evaluation report for the category B panel?---Yes.

And you've said, going back up to point 1, you've said on page 8, "It specifies that RMS wants all portable weigh scales suppliers, not just the current brand."---Yes.

20 Did you come up with this content yourself, Mr Lee? Did you determine what you were saying there yourself?---I, as I recall, that's what me and Mr Soliman sitting next to me to draft the email.

Was Mr Soliman sitting next to you?---Yes.

Did you type the email or did he type it?---Yes. I, I typed it and then I can't remember whether, maybe some, maybe some of them he typed, some of my typing and then finally we send it out.

30 Just focussing on this particular email, the one that starts, "Thanks, Donna." You've got the two points, "Regards, Alex."---Ah hmm.

Is it your evidence that you were sitting with Mr Soliman and that he drafted part of the email and told you what to type?---Yeah.

Which parts did he ask you to type?---I cannot recall. I cannot recall, because we're sitting next to each other drafting that email and then talking and sometime I type and then he grab my laptop and he type.

40 So he took your laptop and actually typed himself?---Yes.

This email?---Yes.

When it says next to point 1 on page 8, now that's a reference to the request for tender for the category B panel?---Yeah, yeah.

It specifies that RMS wants all, in capitals, portable weigh scale suppliers, not just the current brand that RMS has utilised for 20-plus years.---Yes.

Do you think that was what you wrote or what Mr Soliman wrote?---Mr Soliman.

Why do you think that?---I don't, I know nothing about that, the history.

You said that you were given the page from the RFT that said category A, category B.---Yeah.

10 So you didn't know nothing, you had something.---Yeah, I had something.

So could you help us further with why you think Mr Soliman typed that part of the email?---So during that time, as you can see, it's 30 July, so during that time I was being given this task about a month so I'm still learning the history, the background, the technical requirement on that, on top of that I also running all the paperwork, the procurement exercise, so I can tell you I know something but I'm not know everything regarding to the history.

20 When you look at the specific words, that RMS wants all portable weigh scales, not just the current brand, and it refers to the note, was that important to you, that you had noticed that note on the request for tender and you thought, you made your own assessment that that panel tender was directed to all types of portable weigh scale, have you made that assessment yourself for had Mr Soliman pointed out this note and - - -?---He, he point it out and I read that and I agree with that.

I see. So that's why you think he did this typing?---Yeah.

30 Now, if you could go to point 2, you've sent the tender evaluation report for the category B panel to Ms Willis.---Yes.

And it says that portable weigh scale suppliers, on page 1 of this document you can see that the panel is separated into two categories.---Yeah.

Category B includes all suppliers for portable weigh scales.---Yeah.

“Note that all submissions for scales were successful in being added to the panel, so we're confident with the market scanned and there is no real benefit from going to open tender again unless you advise us.”---Yes.

40 Did you draft that?---No, no.

Are you clear about that?---Yes.

Was that your view of the category B panel and the tender evaluation report?---As I mentioned to you, I just given the page, one page.

So was that your view?---I, at that time I read that and I believed it makes sense to me, so you can say it's my view, yeah.

But do you think now looking at it that there was a market scan for suppliers of portable weigh scales in that category B panel application process?---If, if, at the time when they setting up the panel contract, it's doing properly which mean they really send out to everyone and get many, many submission then yes, but I didn't go into the details on that panel contract so I don't know.

10 And now you know that they only asked for the PAT brand and the HAENNI brand?---Ah hmm.

And then they had this note about, "RMS may consider other brands." Do you think that was a confident market scan?---Yeah.

It's not, is it?---What do you mean?

It's not because they only asked for particular brands in that panel.---And all, and all others.

20 There was a note, Mr Lee, just a note saying we might consider other ones, we might not but we might.---Yes, of course, of course but it's still open to other competitive or other company to propose their own scale.

But it's highlighting two particular brands.---Yeah, I see - - -

Don't you accept that?---Yeah, to me it makes sense because we setting up the contract, we can have preferences.

30 And so RMS is expressing a preference for particular brands?---Yes. To me when I reading that, yes. That's my point of view. RMS prefer these two particular brand of scale but we also mentioned that we are not, we are not confined with only these two, may be open to anything.

To maybe considering anything else?---Yes.

Maybe, not we will.---Is it, is it - - -

40 THE COMMISSIONER: It says, "May consider."---May but it's all, it's all, on all, all of the RMS contract we use, may mostly likely. We just, may, we will not say must. We all say may, we use m-a-y, may.

MS WRIGHT: You didn't say that about the HAENNI and the PAT brands, you said, "This category B concerns procurement and maintenance of HAENNI and PAT brand scales." There's no may in there.---But I am talking about may consider other, maybe you're talking about these sentences.

I know but you said we always say may and I'm saying well you didn't say may in respect of the two specified brand, you said this is what this is about, PAT brand and HAENNI brand. So there was no may, we may consider those brand, it's "We are considering PAT brand and HAENNI brand," and then there's a note in small print, although it's in bold, "Roads and Maritime may consider brands not specified above if the tenderer an demonstrate equal or superior performance, life expectancy and serviceability." So I'm suggesting you couldn't be confident that that previous panel was a market scan and that there was no benefit now from going to open tender again.

10 That's what I'm suggesting, you could not be confident of that based on that previous panel. Do you agree or disagree?---I couldn't, I could not?

You could not be – you've said in your email - - -

MS HOGAN-DORAN: Commissioner, I object. I object. That question had a number of segments to it, including two nots.

THE COMMISSIONER: Could you break it up?

20 MS WRIGHT: I feel it's getting quite repetitive, Commissioner. Mr Lee, this is your email?---Yes.

But you've said Mr Soliman drafted - - -?---We drafted together.

Drafted together and he drafted this bit about confident about the market scan?---Yes.

And I've asked you whether you agree with that content Mr Soliman drafted and you said you did at the time?---Yes.

30

And I asked you whether, looking at it now, do you still agree with it and you said, "Yes." And I'm just giving you an opportunity to consider that in fact what I'm putting to you is it's wrong because you couldn't be confident that the category B panel tender process was a market scan and that there was no benefit from going to open tender again now for this 425 scale procurement. Because you hadn't – do you understand? you hadn't gone - - -?---I'm confused. I'm confused and so - - -

40 Is the confusion because you didn't draft this so - - -?---Yes.

- - - this is the first time you're really considering this now?---Down to that, that details, sentences by sentences.

Well, I'll move on, Commissioner. Was Mr Soliman involved in drafting other emails from you to your memory?---I cannot, I cannot recall. May or may not because as I mentioned to you we have informal, informal conversation. Sometime we sitting next to each other, quickly draft up an

email and send it out so I cannot recall whether there's any other else, anything else.

Now, at page 288. This is an email chain from Mr Soliman dated 3 August, 2018.---Yeah.

And forwards an email from him to you and Mr Weeks.---Yeah.

10 And it says that the chief procurement officer has recommended that it be done via the panel.---Yeah.

It says, "Should be done via RFQ using the open tendered panel which already performed a market scan" - - -?---Yes.

- - - "for all portable weigh scale vendors and have successfully procured 125 scales last financial year using this panel."---Ah hmm.

But that wasn't your decision, was it, Mr Lee?---No.

20 And did you understand that Mr Soliman preferred that option?---I believe so because it will speed up the procurement exercise.

Did you understand why it was being sent to Mr Weeks?---Because, because we're having the face-to-face meeting with the Procurement team so Mr Soliman say it may be a good idea to get senior management to attend that meeting.

30 And then page 295 there's an email from Mr Soliman to you of 3 August saying that Donna has mentioned that we don't need an external consultant in the Tender Evaluation Committee for this low risk tender.---Yeah.

Did you understand that to be referring to Ms Willis?---Understand – sorry, I missed that bit.

Did you think that was referring to Ms Willis?---Yes.

And Mr Soliman asked, "Can you please confirm that so we can update the tender evaluation plan doc."---Yes.

40 What did you understand Mr Soliman was asking you to do?---During that, that face-to-face meeting we ask that question and Donna Willis told us this is a low risk tender so we not quite necessary using WSP to do that.

Did she say why it was a low risk tender?---No. The, the wording from, from her

What did you understand that to mean?---Low risk?

Yes.---The risk is low.

THE COMMISSIONER: The risk of what, Mr Lee?---Sorry, I'm sorry.

Risk of what, what was low?---For the procurement.

10 What was the actual risk that you, yes?---I think from, from Donna point of view maybe the procurement risk, whether we doing it correctly or according to the procurement manual, because we just following or we just using the panel contract so literally it is just asking the panel contract member to submit their proposal. So I think that's, what she mentioned is low, low risk.

MS WRIGHT: Do you think it had something to do with the extent of the market scan that was required, whether it was risky to go to a more select or closed tender than an open tender because of the risk of missing best value for money?---(No Audible Reply)

20 Do you think - - -?---Can you repeat it again?

You didn't understand the term at the time of the - - -?---Yes, yeah.

You were just following directions in this procurement process?---Exactly, yes.

30 And you didn't have, and I say this with respect, Mr Lee, but you didn't have much of an understanding of the risks in the different options about how to procure new scales?---Yes, yes, we highly rely on the, on the advice from Procurement team, the RMS Procurement team.

And also from Mr Soliman, weren't you?---Yes.

Now, I've taken you already to the procurement strategy which is, the email is at 296.---Yeah.

Where you amended that document and sent it to Mr Soliman for his review.---Yes, yes.

40 And he completed the document?---Yeah.

And it refers to, at page 297 is a covering memo to Ms Bailey seeking approval to approach the market.---Yes.

And recommending, and under Implementation it specifies that it will be a select tender with request for proposal.---Yes.

"This select tender approach has been advised and endorsed by RMS Procurement."--- Yes.

And recommending that Ms Bailey approve - - -?---Ah hmm.

Sorry, it's not only to Ms Bailey but it's to Ms Bailey, Mr Weeks and Mr Bass.---Ah hmm.

That they approve the procurement strategy?---Yes.

10 And at page 299, by this stage the procurement strategy is to go via the Heavy Vehicle Programs Maintenance Panel.---Yes.

Then at page 305 you send that to Mr Bass.---Yes, yep.

And Mr Soliman asks you to make sure that everything's signed.---Ah hmm.

So Mr Soliman was guiding you the whole way, wasn't he?---Yes, yes. And he asked me to keep him in the loop.

20 And then at page 307 Mr Soliman wanted to meet with you on 9 August to work through the RFQ so that it can be issued.---Ah hmm.

And do you recall what happened at that meeting?---I cannot recall, but maybe to start up the RFP/RFQ process.

Then at page 308, this is an email chain of 14 August, 2018.---Yes.

30 And in the middle of the page you ask whether you need to wait for the executive director to sign off on the procurement strategy before you publish the RFQ.---Yes.

And Mr Chiu tells you that you do.---Yes.

And then at page 313 this is another email chain on 14 August.---Yeah.

And the last email on the page, do you recall these emails?---Yeah.

40 And so did that email from Mr Tshuma seek confirmation that the Compliance Division budget would be increased to 4 million, sorry, to \$7 million for this financial year for the procurement?---Yeah, yeah, yeah, yes.

And Mr Shiu asks whether it will be spent, the capital expenditure would be spent in the current financial year?---Yeah.

And then Mr Soliman copies an email to you where he answer that yes, that's correct.---Mmm.

So was it, do you recall when the budget was increased to \$7 million, was it around this time?---Yeah, around this time.

Now, the actual request for proposal was at volume 12, page 1, if I could just take you to that. Do you recall that document?---Yes.

And at page 19 these are the requirements.---Yes.

10 And over at page 20?---Yes, yes.

Then at page 32, this is the document submitted by Novation in response to the RFQ.---Yes.

So you had a meeting with other members of the Tender Evaluation Committee?---Yes.

Was that on 4 September?---Yes, that is when it should be. I can't recall the exact date. It should be in the email, in the email somewhere.

20 And who was present at the Tender Evaluation Committee meeting?---Me, Alex Lee, Guido Zatschler and Paul Walker and also Mr Soliman.

And did you receive two submissions?---Yes.

One from AccuWeigh and one from Novation?---Yes.

30 And what happened during the evaluation process, could you describe what occurred inside the room?---So I send them the request before, before the meeting I send them, I tell them location and time, then get into the room, have the screen set up and I open up the USB and then we sign the schedule of tender, it's piece of document to say we received two submissions, and then we then go through one by one each point for each submission and score that.

THE COMMISSIONER: So you scored it collectively?---What do you mean, collectively?

40 Sorry. We've heard evidence of a different tender where the panel members, though in the same room, sat by themselves and scored.---Yes, yes.

Did you do that or did the three of you - - -?---Three of us doing that at the same time.

So you'd look at a submission and say on a particular requirement we think that scores, you'd agree that it would score a 4 or a 9 or something?---Yes, yes, yes, yes.

MS WRIGHT: You've said in your statement, Mr Lee, that during the meeting Mr Soliman repeatedly said, Mr Soliman repeatedly said that the IRD scales were the best in the market.---Yes.

And they are the scale currently used by RMS.---Yes.

Were they the words that he used during the meeting?---Yes, yes.

10 So we're 71. "Mr Soliman further stated that the IRD scales are in each of the RMS vehicles."---Yes.

"And that they are the only scale model that will fit the storage compartment in the back of the inspector's vehicles."---Yep.

"The housing for the scales in the vehicles are custom made." Were these all things that Mr Soliman said during the meeting?---Yes. And also during the whole period of time.

20 From the start of the tender process in June?---Yep, yep. During that procurement exercise.

And you say, "I felt that Soliman was pushing me to accept the Novation proposal"?---Yes.

Is there anything apart from what he said which you've recorded there that made you feel that he was pushing you to accept the Novation proposal?
---As I, as I, as I mentioned before, he keep saying that it's the best, it's the best. He's just, like, like, brainwashing me.

30 Mr Soliman stated, you say at 71, "The weigh scale proposal from Novation is the best." At the last sentence in paragraph 71.---Oh, yeah, yes.

Is that your clear recollection that he said those words during that meeting?
---I cannot say hundred per cent word by word but the meaning is very, very similar.

THE COMMISSIONER: So words to the effect?---Yeah.

40 Sorry, he either said those words or words to the effect?---(No Audible Reply)

Sorry, I'm not being very clear. You take over, Ms Wright.

MS WRIGHT: You can't be a hundred per cent sure whether he used those precise words but he said words that sounded like that?---Yep

Like that, that these were the best scales?---Yes.

Now, he was not on the committee?---No.

Did anyone raise that as a concern that he was in the room notwithstanding that he was not on the committee?---Yes. When me, Guido and Paul walked into the room, sitting down and Samer walked into the room and Paul look at me and I look at him, like, oh, I was like, we say, like, seemed like what's going on here and then Soliman say, "Alex, I am here to because I, I am here to help you." That's it and then we continued.

- 10 Did anyone actually say anything about him being present in the room?
---No.

Like, "Why are you here?"---No. Because he is our manager (not transcribable) top of us.

Were you aware of the policy that the committee members be by themselves when assessing tenders?---Yes, we need to sign the declaration of, of, I can't remember, conflict of interest.

- 20 Conflict of interest but were you aware that you should be alone and assessing by yourselves?---At that time, I did not think about that. I just think, he kept saying I should keep him in the loop and that's why I am thinking although he is not the committee member but he is my manager. So, I couldn't say no to him.

But you said that you and Mr Walker looked at each other and you pulled a face when you gave your evidence and said what's going on?---Yes, yes.

- 30 So you had a concern?---Yes.

Where did that come from, did it come from the policy or why were you concerned?---Because be concern he didn't sign the declaration of conflict of interest.

THE COMMISSIONER: Oh, I see.---Yeah, I cannot recall whether I, I think I have mentioned to him where we were having that meeting at that location and I don't think, I didn't expect he come because this just evaluation three of us.

- 40 MS WRIGHT: At paragraph 72 of your statement you say, "The specifications listed in the RFP were very specific based on the scale housing in the back of the inspectors' vehicles."---Yes.

And then you've provided some other detail and in the last sentence you say, "The specification pushed the other scales out of this tender."---Yeah, yes.

Because not every scale can fit into that housing.---Yes.

Are you referring to the size specifications?---Yes.

And so when you say the specifications push the other scales out of the tender, there was only one option and that was Novation's proposal that could be selected?---We also needs to consider the proposal as well.

10 Yes. So you considered it but because it didn't meet the size specifications it was pushed out of the tender?---But I also don't know what brand the, the tenderer will propose. They may propose a bigger one, they might propose a shorter one.

Aren't you dealing here in this paragraph with the actual evaluation meeting? So you've had the evaluation meeting.---Yes, yes.

And in this paragraph aren't you saying that the other tender from, the one from AccuWeigh was pushed out of the tender because it didn't fit into the housing of the inspectors' vehicles?---Yeah, yes.

20 So that just left one option, just one option and that was Novation's tender? ---If you, if you specify on that, on that particular point literally LP788 is within the dimension. LP788 is within the dimension.

You thought the AccuWeigh option was within the dimensions?---Yes.

30 So in your statement at 72 you've said, "The specifications were very specific based on the scale housing in the back of inspectors' vehicles. They needed to fit housings." When you say "they needed", you mean any scales selected would need to fit the housing?---Yes.

So the specification specifies as specified the size of the scales?---Yes.

So you're referring to the tender requirements in the RFP?---Yes.

And you say the IRD scales?---The PET scale, yeah.

So the RFP also needed to specify the weight of the scales.---Yes, yes.

40 The scales cannot be too heavy.---Yes.

Otherwise they need two people to lift.---Ah hmm.

The specifications pushed the other scales out of this tender because not every scale can fit into that housing.---Yes.

You're referring to the outcome of the tender evaluation, aren't you, because you say, "Pushed the other scales out of this tender."---I believe this is the consideration we need to do during the tender evaluation process.

Well, just reading it normally, it's suggesting that these specifications actually as an outcome, as a result, once you've looked at the tender submissions, the specifications pushed the other scales out of the tender because of the need for scales to fit into the inspectors' vehicles. Isn't that what you've said in your statement?---Yes. What I mean is, we set up a certain size, a certain dimension requirement. If the submission, if the proposed weigh scale is larger than that submission, larger than that specification then they're out.

10

So you would draft that differently now, that part of your statement?
---I may or may not.

If I could take you to the tender evaluation report at 231. Do you see this is the tender evaluation report for the procurement, Mr Lee?---Yes.

And you are named as the author of the report?---Yes.

20

Did you draft the report?---Yes.

And turning to page 232, do you see the executive summary?---Yes.

It says the tender box was opened on 4 September, 2018 at 1.00pm?---Ah
hmm.

Who did that?---Me.

So you obtained the tenders?---Ah hmm.

30

Had you seen the tenders before that, the tender submissions?---No.

You hadn't received them electronically?---Yes, the story behind is that's a eTender so it's, so it's published in New South Wales eTender website, so when the tenderer submit their submissions they all go into the eTender website.

Is that held by Transport New South Wales?---TSS, yes, yes, on TSS. So they're supposed to allow me to get into the eTender website system to download all the submission.

40

Who's supposed to let you?---TSS.

What do you mean, they're supposed to let you?---So the eTender website is managed by TSS and I don't have control of that so when all the submission go into the, go into the eTender they should allow me to, or they should send me the link that I can download all the submission, then our committee to open it. The interesting thing is, TSS is belong to Transport New South Wales and we are Roads and Maritime Services. We both using Objective

but apparently these two Objective is not linked to each other. So what that mean is, the eTender submission is all store into the Transport for New South Wales Objective, and as an employee from RMS, I don't have a right to access that, which means I need to go to Burwood to the TSS office to (not transcribable) download the submission into a USB from the Transport for NSW Objective. Then I bring it back to the office and open it in front of our committee member and we sign paper of the document called tender, schedule of tender, which lists our, to submit, how many submission we got.

10 So when you went to get the tenders to download them, how did you download them?---Via email. Sorry, a USB. I provided a USB to the, to the TSS personnel and then she download it for me.

A blank USB?---Yes.

And then you took it straight back to RMS?---Yes.

Did you look at it?---No, no. I'm not supposed to.

20 And you didn't?---No.

And then what did you do with the USB when you got back to RMS?---Just (not transcribable) my, my pocket.

When you got to RMS, what did you do with the USB?---It's with me all the time.

And then what did you do with it? You did something with it.---No.

30 THE COMMISSIONER: I thought you went to, did you then take it to the meeting that you - - -?---Oh, yes, yes.

MS WRIGHT: Yes. And what did you do with it at the meeting?---I put it into my laptop and opened up.

Were the other committee members there at that stage?---Yes, yes.

And Mr Soliman.---Yes.

40 THE COMMISSIONER: So this was actually at the evaluation meeting? ---Yes, yes.

MS WRIGHT: You did all this on 4 September?

THE COMMISSIONER: Do you remember when you went to Burwood to download?---I cannot recall. I need to check the email because I emailing that, that lady.

MS WRIGHT: So you're not sure when you got the USB that you went straight back to RMS?---Yes.

Just in the meeting, when you've put it into your laptop and opened it - - -?
---Yes.

- - - how did the others see the tender submissions contained on it? Did you print it?

10 THE COMMISSIONER: I thought you put them up on the big screen.
---Yeah.

Did you print them as well or just on the big screen?---I cannot remember whether I print them.

MS WRIGHT: That's okay.

THE COMMISSIONER: Okay.

20 MS WRIGHT: So when the report says the tender box was opened on the 4th of the 9th at 1.00pm, is that not correct, that's not correct?---Technically it's correct because we open up the USB at 1.00pm, 4 September, 2018. The USB downloaded from the Transport for New South Wales Objective, it's what given to me by, I can't remember her name, a lady from Transport for New South Wales. At the time I didn't open it until 1 o'clock, 4 September, 2018.

30 Did you get the documents from the lady at TSS on the USB on 4 September or is it possible it was a previous day?---Previous day, I think it is previous day.

One day before?---I cannot recall. It should be in the, in the, in my email.

40 Why would it be in your emails?---Because I am emailing that ladies to helping me because I, the, the TSS organising the eTender website and when I, when the lady told me, "You can download it from the Objective," and she sent me the link, then I try to assess that link and didn't work and then we ultimately find out there's two system here. That's why I need to physically go there to collect it.

And it could have been more than one day before 4 September?---I can't recall which day.

I note the time, Commissioner.

THE COMMISSIONER: All right. A convenient time?

MS WRIGHT: Yes.

THE COMMISSIONER: All right. We'll adjourn for lunch and resume all right 2.00pm.

LUNCHEON ADJOURNMENT

[1.05pm]