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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 29 MAY, 2019

AT 2.00PM

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THE COMMISSIONER: Right, Mr Lee.

MS WRIGHT: Mr Lee, still on the topic of the tender evaluation meeting, do you recall what order you dealt with the submissions during the meeting, whether it was AccuWeigh first or Novation first?---(No Audible Reply)

10 The order in which the submissions were dealt with?---I cannot recall which one go first.

And could we bring up onto the screen annexure O of Mr Lee's statement, which is at pagination 169.

THE COMMISSIONER: Just while that's being found, is there a new person here?

20 MS KING: Yes, Ms King. I'll be seeking leave to appear on behalf of Mr Jansen and may need to ask some questions of Mr Jones when he is called.

THE COMMISSIONER: Thank you. Authorisation is granted, Ms King.

MR BOATSWAIN: Commissioner, just for the record - - -

THE COMMISSIONER: Oh, Mr Boatswain.

30 MR BOATSWAIN: Yes, thank you. I'm sitting in this afternoon in place of Ms Fryer, thank you.

THE COMMISSIONER: Right. Thank you.

MS WRIGHT: Mr Lee, do you recognise that as a scoring card or document?---Yeah.

And if it could be turned to page 169, see your name at the top left of the page?---Yes.

40 Is that your signature next to the name?---Yes.

Are these handwritten notes on page 169 your notes?---Yes.

Now, you've dealt with AccuWeigh in the left-hand column - - -?---Yeah.

- - - next to the Weighting column.---Yes.

And to the right of that you've headed it Novation.---Yes.

Does that indicate to you whether you dealt with AccuWeigh first or Novation first?---I, I cannot recall.

Is it more likely - - -?---Yeah, more, more - - -

- - - you think that you dealt with AccuWeigh first, given that you've put the scores in on the left-hand column?---Yeah, more, more likely, yeah.

Now, you see there's the evaluation criteria set out?---Yes.

10

And 1 deals with price?---Yes.

And you've written, "AccuWeigh no," what's the third word?---No mention modification.

What did that mean?---In the, in the technical requirement we, we require the handle to be a certain, certain dimension and I think if AccuWeigh need to propose the, the scale, then they should modify the handle to fit to our requirement.

20

Okay. So that dealt with the handle.---Yes.

And then you see you've written "Opt temp," and next to it, "4.5.2?"---Yes, yes.

The number relates to the specification set out in the request for proposal scope of works section?---Yes.

30

And then you've said, you've set out some further notes, and then you see under the word Total?---(No Audible Reply)

The black line and the word Total in it?---Where, where?

You see there's a big blue line?---Yeah, yeah, yeah.

And it says Total?---Yes, yes.

And under that it says, "4.3.1."---Yes.

40

And then you've written some words.---Yes, "Partially, partial only."

THE COMMISSIONER: Partial only.

MS WRIGHT: Partial only?---Yes.

And open brackets, "(Risk of not getting OIML)"?---Yes.

Was that a reference to certification?---Yes.

Because specification – sorry, I withdraw that. The performance requirement numbered 4.3.1 was that the portable weigh scales shall be certified to OIML 76 class 4.---Yeah.

And so that note there, did that relate, which company did that relate to?
---To AccuWeigh.

10 Then you've got another number but you don't have any words next to it.
---Yeah.

At 4.4.5.---Yeah.

And is the word next to that "failure?"---Yes, yes.

4.4.6 is the word "failure?"---Yes.

4.5.1, "No evidence?"---Yes, yes.

20 And so are those notes also relating to AccuWeigh?---Yes.

And then could I just ask you, above that blue line where you've written 5.1.3.---Yep

Could I just take you to volume 12 at page 20. Now, that's the second page of the performance requirements. See that?---Yes.

30 And you see there's no 5.1.3 there, do you see there's a five deliverables and a 5.1?---Yeah.

Do you agree, there's no 5.1.3 there?---Yeah.

And then if I could take you to page 40. You see it says, "5.1.3, information requested. Please provide examples of successful delivery of 100 plus scales in the last 24 months," et cetera?---Yep, yeah.

And then going back to your annexure O, where you said 5.1.3 and you said, it's at page 169, you wrote the word, "No"?---Yes

40 Am I right in thinking that you've said no, that it didn't meet the requirement in 5.1.3 to provide an example of successful delivery of 100 plus scales in the last 24 months?---Would you be able to bring up the, return to schedule 5 which AccuWeigh submitted?

I'm not taking you to what AccuWeigh submitted but I took you to, would you like to see 5.1.3 on the form?---Which submitted by AccuWeigh?

THE COMMISSIONER: You're requesting the actual AccuWeigh tender document?---Submission.

Or submission, I'm sorry. I think, look at the moment we'll confine ourselves to what you can recall with annexure O and also volume 12, page 20.

MS WRIGHT: Mr Lee, I could take you back to volume 12, page 40. ---Yes. This, this is the, this is Novation's submission.

10

Yes. And you see Novation's answered that they were successful in a tender to procure 125 scales in January 2018?---Yes.

So did you consider that they'd met that requirement in 5.1.3 of providing an example of successful delivery of 100 plus scales in the last 24 months? ---Yes. For Novation Engineering, yes.

20

Then going back to your score card where you wrote "5.1.3," arrow, "No." Do you think that note, like the other notes I took you to, is a note about AccuWeigh's submission?---I think so.

It must be, mustn't it?---It must be, yes.

And is it the case that you haven't recorded any notes here to do with Novation's submission?---Yes.

So all your notes about the numbers are related to AccuWeigh's submission?---Yes.

30

Is that because you dealt with AccuWeigh's submission first?---First, yes.

And was it a process of eliminating the only other tender?---No. It's just the sequence.

Why didn't you make any notes about Novation?---I think when we going through Novation's submission most of the criteria is, is okay.

40

THE COMMISSIONER: The weighting, the 10 per cent, the 50 per cent and the 40 per cent, who determined that?---Mr Soliman.

And he informed you of that and then it was included in the relevant tender documents?---Yes, it's - - -

Or tender evaluation documents?---It's been sent out in the tender evaluation plan.

MS WRIGHT: Then if I could take you back to your statement, please, at paragraph 72. Do you recall that I asked you some questions, Mr Lee, about this paragraph?---Yes.

And that last sentence in the paragraph where you said, “The specification pushed the other scales out of this tender because not every scale can fit into that housing.”---Yes.

10 Isn't it the case that the specifications did push the other scales proposed by AccuWeigh out of the tender?---Because of the dimension?

So, well, my question is the specifications generally pushed AccuWeigh out of the tender?---I not agree with that.

Then I took you to your score card.---Yes.

And you've written that there's a failure by AccuWeigh?---Yes, yes, yes.

20 And you've said no about the requirement for an example of delivery of 100 plus scales and some other performance requirements you wrote failure?
---Yeah.

So doesn't that mean that the specifications pushed the scales proposed by AccuWeigh out of the tender?---No, because each point, each requirement is only contribute to a certain per cent of the overall rating. We cannot, you cannot – sorry, we cannot draw the conclusion because of the dimension requirement.

30 I'm not asking about the dimension requirement at the moment. I'm just asking you whether the fact AccuWeigh didn't meet the specifications - - -?
---When you say specification is a long list of specification. We can't just say - - -

The fact that – I take what you're saying.---Okay.

40 The fact that it didn't meet the specifications which you've noted that it failed to meet and of which there was no evidence, that pushed it out of the tender, didn't it?---No, because if the tender been pushed out then the score will be low. It depends on the scoring, the final score. We cannot say because he fail one of the specification then he will be out.

No, I'm not asking you whether if it failed one it was out.---Yeah.

All I'm asking you, Mr Lee, is whether the fact AccuWeigh didn't meet the specifications of the tender meant it was pushed out, to use your words in paragraph 72, it was excluded as an option?

THE COMMISSIONER: It really wasn't competitive overall?---Mmm.

Could we get page 169, annexure O to the statement up again.

MS WRIGHT: Yes.

THE COMMISSIONER: See, if you look at that, AccuWeigh – this is very basic – they actually score better on the first item price?---Price, yeah, because they are cheaper.

10 Equal with manufacture and delivery program, 8, 8?---Mmm.

Where they fail is 2, which is primarily the specifications, item 2.---Mmm.

MS HOGAN-DORAN: Commissioner, I object to the characterisation of the word fail.

THE COMMISSIONER: I'll ask the question, thanks, Ms Hogan-Doyle [sic]. Can you see item number 2?---Yeah.

20 I used the word fail. Failing in - - -?---Item number 2?

Sorry. Can you see the Reliability - - -?---Oh, yeah, yeah, refer to 4.4.5, yes, yes.

They get 2 compared with 8?---Yes, yes.

And that's where I said fail, but if you want to characterise it as where Novation streaks ahead, isn't it?---Ah hmm, ah hmm, yes.

30 And, Ms Wright, do you want to - - -

MS WRIGHT: So 2, the item 2, which is Reliability and Durability, that's where the performance requirements were relevant?---Yes, yes.

And you've only scored AccuWeigh as getting 2.---Yeah.

So it hasn't met the performance requirements to a significant extent.---Yes.

40 And so your statement where you said the specification pushed the other scales out of this tender – no, I withdraw that. Now, Mr Lee, was there any discussion about price during the Tender Evaluation Committee meeting?
---(No Audible Reply)

Comparing prices?---Yeah, comparing prices, yes.

There was?---Yes, there was.

And what was the discussion?---I think AccuWeigh, AccuWeigh proposed 1.1 or 1.2, the total price, and Novation proposed 1.9 million.

Yes, they were the submissions.---Yes.

But I'm asking you was there a discussion between committee members about price?---I think the only, only discussion is regarding to which one is higher, which one is lower.

10 THE COMMISSIONER: So you just compared the monetary value, which one was the cheapest?---Yes.

MS WRIGHT: Is it fair to say it wasn't a criteria which was important in the evaluation, it wasn't an important matter in your assessment?---It, it is, because of the weighting it's only 10 per cent, yes.

Now, you referred to getting the USB the day before, on 3 September?
---I cannot recall the day before, this should be before 4 September.

20 Was there any scheduling of the meeting for any day before and then it was postponed, or that is the tender committee evaluation meeting, do you remember if it was ever postponed or was it always set for the same day?
---I, I cannot recall that.

Now, you informed Novation of its successful tender?---Yes.

That's at volume 12, page 236B.---Yep.

30 And you've said, "You can now confirm customised PWS order to manufacturing arm IRD."---Yeah.

And you asked Mr Thammiah to forward you a delivery program.---Yes.

Did you have any contact with Mr Thammiah in person or over the phone during the tender process?---I telephoned him to let him know that there's a RFT coming up which I done to the rest of the panel contract member as well. So I make five phone call to each of them, same content, that's the only time I come across with, with, with Stephen.

40 Then at page 251, you signed an agreement between RMS and Novation with Mr Soliman and Mr Thammiah, who also signed on page 252?---Yes.

Did Mr Thammiah then provide you with a delivery program for the scales?---Yes by, by email.

At page 237?---Yep, that's the one.

Is that the email that he sent to you with the delivery program?---Yes.

And you sent the dates to Mr Soliman on 14 September?---Yes.

Were the scales delivered, to your knowledge?---No.

No. At page 240, you and Mr Soliman were asked how many scales were delivered and ready for use for the 3.5 million first milestone payment?
---Yes.

10 To your knowledge, that payment was made?---Yes.

And then at page 244, did you, on 30 October – sorry, I’ll just take you to page 245 first. Just under halfway down the page, you say, “I approve your invoice,” to Mr Thammiah.---Yes.

What process did you follow to get that approval or to give that approval?
---So I get the email from TSS asking me to do the good receive, so I tick yes, then the invoice should be paid by TSS to Novation.

20 Did you need to seek any approval to approve that invoice?---No because the system is setting like that, you, I raise the purchase order, then my manager or senior manager would get the delegation to approve that purchase order and then the purchase order gets sent to TSS. TSS will send us the request for good received, we then say yes, then the invoice will be paid to the vendor.

THE COMMISSIONER: And who was the manager who approved the raising of the purchase order?---Mr Soliman.

30 MS WRIGHT: Then at page 244, did you receive an email from Mr Thammiah on 30 October, 2018?---Yes.

“Hi Alex. Unfortunately, the manufacturing arm of IRD have said in no uncertain terms said that they cannot complete this order on time and as such I have to terminate this contract.” What was your response upon receiving that, Mr Lee?---Because we know that, I think on 18 October, 2018 - - -

40 Mr Lee, if I could just stop you there. When you received that email saying that the manufacturing arm of IRD can’t complete, before that, had you considered or expected Novation to be able to deliver upon the contract? Did you expect that Novation would be able to deliver the scales?---Yes, yes, because they, yes, yes.

And Mr Thammiah is telling you in this email that the manufacturing arm have said they can't complete the order.---Yes.

Was that a surprise?---Yes, of course.

THE COMMISSIONER: And that was after you had put in motion the payment of the first invoice of about 3.7 million?---Yes. I think 3.5 I think it is.

MS WRIGHT: Including GST it came up to 3.7.---Oh, yes. Yes, yes.

And you then asked, you see the email, “Hi, Saurav”?---Yes.

10 “Could you please advise how I should reply.”---Yes.

And was Saurav in Finance?---No.

THE COMMISSIONER: He’s your new manager, isn’t he?---Yes.

MS WRIGHT: I see.

THE COMMISSIONER: Replaced Mr Soliman?---Yes.

20 MS WRIGHT: And Saurav said, “Please don’t reply. I’ll look at it tomorrow.”---Yes.

THE COMMISSIONER: So no scales were received?---Yes, yes, as I am aware of.

On what basis was the 3.5 excluding GST approved?---That’s because of as we said set it out on the procurement strategy. This is the milestone payment which mean if they set it up in the procurement strategies say if the vendor accepted then we will send the first milestone payment to them.

30 By this date?---Yeah.

Even though they hadn’t performed at all?---Yeah, after the contract been executed.

MS WRIGHT: Commissioner, I have no further questions although there is one matter. There may be some additional material which may require further questions.

40 THE COMMISSIONER: Mr Young?

MR YOUNG: Commissioner, Mr Lonergan did ask me whether - - -

THE COMMISSIONER: No, no, no, Mr Young. Next.

MR YOUNG: If it please. Mr Lee, who was your manager in 2018?---My direct manager is Guido Zatschler.

No, sorry, who was your manager?---My direct manager is Guido Zatschler.

Sorry, who was your manager?

THE COMMISSIONER: Mr Young, I think the problem with your question is that I anticipate there's a bit of ambiguity in what is meant by manager.---Yes.

10 And I will let Mr Lee answer in the way that he wants to answer if you can take it further from there.

MR YOUNG: Thank you. But who was your manager?---My direct manager in RMS structure is Guido Zatschler.

Yes. And he is your manager?---Yes, which I directly reporting to.

20 THE COMMISSIONER: What do you mean by directly reporting to?
---Mr Zatschler approve all my timesheet, my leaves so in the RMS structure he is my direct manager.

So he approves your timesheets. If you want to go on leave - - -?---Yes.

- - - would he approve it, things like that?---Yes.

MR YOUNG: In ordinary common English parlance your manager is Mr Zatschler?---Correct.

30 Mr Soliman was not your manager?---He is my manager but he is the Sydney manager within the Heavy Vehicle Program.

Mr Soliman was simply a person who was senior to Mr Zatschler?
---Correct.

And he did not in any relevant sense manage you, did he?---Yes.

You agree.

40 THE COMMISSIONER: Sorry, he did manage, he did or didn't manage you?---He didn't directly.

MR YOUNG: And this concept of direct manager is something which has been used for the purpose of this inquiry, hasn't it? I mean, it's not a term that is normally used, is it?

THE COMMISSIONER: Sorry, what term?

MR YOUNG: Direct manager. You don't talk about direct - - -?---If you are talking about the hearing, the hearing is all about - - -

THE COMMISSIONER: No, no. Mr Lee, the terminology direct manager, is that used within RMS?---Yes.

MR YOUNG: Well, I suggest to you that you simply talk about your manager and you would talk about your manager being Mr Zatschler. ---Can you repeat again?

10

Well, if somebody asked you prior to this inquiry who your manager was in 2018, you simply would have said Mr Zatschler.---Yes, that's the case, always up until now.

Now - - -

20

THE COMMISSIONER: When you describe Mr Soliman as the senior manager within the Heavy Vehicle Program, what do you mean by senior manager?---He actually is the manager of the Heavy Vehicle Program and we're all under, under him.

Under him.---Yeah.

If you drew one of those diagrams, that really helps, doesn't it, a diagram, but you know how often you've got an organisational structure?---Yeah, yeah, that's in, I can't remember it's in volume, I forgot to bring my notes, that's in volume - - -

30

There's an organisational structure in the brief, is there?---Yes, yes.

And is the organisational structure basically you with a line going up to - - -?---Guido, Guido is here - - -

Yes, and then a line from him?---Yes, yes.

And where does that line go?---Go to Mr Soliman.

MR YOUNG: Eventually it goes up to Mr Constance?---Mr who, Mr who?

40

Constance, the Minister.---Yes, you can say that.

THE COMMISSIONER: You could say that. Okay.

MR YOUNG: So you don't refer to everybody along the line as a manager, do you?---I do not understand your question here.

In terms of your qualifications, you've talked about you hold a degree in civil engineering, you also talked about other qualifications that you held.
---Yes.

Tertiary qualifications. What are they?---Master of Commerce majoring in Finance.

From?---University of New South Wales.

10 And when did you get that?---2007.

So you had that prior to your obtaining the particular position as a project engineer with the Heavy Vehicle Unit?---Yes.

And that was known to Mr Zatschler?---Yes.

And was that relevant to the duties which you performed from time to time?
---In some, in some aspect, yes.

20 Now, you've been asked you understand many questions about a statement that you made on 2 August, 2019 [sic], a 21-page statement.---August 2019?

I'm sorry, 2 April, 2019.---No, it's my - - -

THE COMMISSIONER: 2 April.

THE WITNESS: Okay, all right.

MR YOUNG: You've been asked questions about that?---Yes.

30

Now, have you recently looked at that statement?---Yes, last night.

All right. And that, and when you answered questions today, were you satisfied that that statement was accurate?---Yes, yes.

You've no qualifications about that?---Yes. By the time Adam Griffith asked me what my qualification I say civil engineering, I got a Bachelor of Civil Engineering degree, and he didn't further ask me.

40 More generally were you satisfied when you looked at this statement recently, last night, that it was accurate?---Yes. But is that important because I missing one information regarding to my qualification?

THE COMMISSIONER: No, no, no, I think we've moved on from the qualification.

MR YOUNG: We've moved on from the qualification, I'm asking you - - -

THE COMMISSIONER: I think what Mr Young's saying is you said that you had a read through your statement last night.---Yes.

When you were reading through did you look at something and think that doesn't accord now with my recollection or - - -?---Yes, I can, yes, yes.

Were there some things that you didn't or were you happy with your statement?---Regarding to the qualification?

10 MR YOUNG: Regarding anything, qualifications, anything.

THE COMMISSIONER: Yes. Forget your, sorry, forget just focussing the qualification. You read your statement last night?---Yes.

Did anything strike you as, oh, I don't think that is right, it doesn't accord with my recollection now or anything like that?---No.

MR YOUNG: Now, you've given evidence in the statement and to some extent further today about being approached by Mr Soliman in late June
20 2018 about procurement of weigh scales.---Yes.

Now what was, to the best of your recollection, the conversation that you had with Mr Soliman?---I cannot recall exact wording but he had come over, verbally talked to me, and order me to do that procurement exercise for him.

You cannot be ordered to do an exercise such as that, can you?---He is my manager above my manager.

30 THE COMMISSIONER: He's your senior manager, you said.---Yeah, senior manager or you can say he's Manager of the Heavy Vehicle Program. So if he ask me to buy coffee, I would go there, I would go for that.

Sorry, if he asked you to buy?---A coffee.

Oh, a coffee, you'd buy him a coffee?---Yes. If he ask me to photocopy something, I will do that. So if now he is asking me to do a task for him, then I can't see any reason why I will say no.

40 MR YOUNG: There is a considerable difference by being asked to do something by a person senior to you and being ordered to do it, isn't there? ---The can I withdraw the order, that wording?

THE COMMISSIONER: All right. What did he say to you?---He asked me.

MR YOUNG: What did he ask you?---To helping him doing that procurement exercise.

Well, what are the words he used?---As I mentioned before, I cannot recall the exact wording.

Well, you can't recall anything really, can you?---This is your suggestion.

THE COMMISSIONER: Mr Young.

10 THE WITNESS: This is your suggestion only.

MR YOUNG: I'm sorry, well, can you recall anything he said?---He, he ask me to do the procurement exercise for him.

To do the procurement exercise for him about what?---About the portable weigh scale.

And was there a number of weigh scales mentioned?---No.

20 Well, have a look at – if the witness could be shown paragraph 13 of his statement - - -

MS WRIGHT: Commissioner, I object to this. I've already canvassed all of this at some length with the witness.

MR YOUNG: Oh, no, sorry - - -

THE COMMISSIONER: Ms Wright, your objection is, please, I didn't hear it all?

30 MS WRIGHT: That's I've been through this with the witness and I'm not sure if it's fruitful for my friend to be canvassing the same issues in respect of – it was dealt with in some detail, that's my objection.

THE COMMISSIONER: Where are you going with it, Mr Young?

MR YOUNG: Where I am going with it is that, what I am putting is that he does not have a good recollection in relation to matters which are in the statement.

40 THE WITNESS: That's only your suggestion.

THE COMMISSIONER: No, no. Hold on, Mr Lee.

MR YOUNG: The Commission's being asked to accept this statement on the basis that he gave evidence that everything said in that statement is true.

THE COMMISSIONER: But isn't your role that if there's part of it that, your instructions are, aren't correct to go to those and challenge them? Are

you challenging that Mr Soliman said to him something along the lines of, “You can help me do this procurement of portable weigh scales”?

MR YOUNG: What I am putting is that there are a number of aspects of what he says in relation to what Mr Soliman said which are simply incorrect.

THE COMMISSIONER: Okay, take him to them.

10 MR YOUNG: Well, with great respect, I’m entitled first to explore whether he does in fact have a good recollection or not because there’s a difference between a person who is giving evidence in relation to something about which they don’t have a good recollection as to what’s put to them and somebody who says, well, I do have an extremely good recollection. Now, I’m entitled firstly to test that.

THE COMMISSIONER: Well, no. I would prefer you to move directly to the matters where you have been instructed, that Mr Soliman has instructed you something contrary.

20

MR YOUNG: You said today, and it is the fact, isn’t it, that Mr Soliman stated that he wanted an open tender process?---Yes.

Now, that remained his preferred option throughout, did it not?

THE COMMISSIONER: Do you agree with that or not?---No, because there always three option here available. Open tender is only one option, we still got closed tender and the procurement exception (not transcribable), so there’s three option here.

30

MR YOUNG: And do you agree that at the outset Mr Soliman said to you that he wanted an open tender process?---Can you repeat the first bit of the question?

From the very first time that Mr Soliman raised the question of your involvement, he said he wanted, he, Mr Soliman, wanted an open tender process.---I agree, I’m agree with you.

40 And what I want to suggest to you is that as far as what he said he wanted, that never changed?---That’s only your suggestion.

THE COMMISSIONER: No, sorry, Mr Lee. Mr Young has to put to you propositions like that and you can sit back and you can think I agree with that, or I don’t agree with that, or I can’t remember. So he put to you a proposition that the first time you spoke to Mr Soliman about this procurement process, Mr Soliman said he wanted an open tender process, and you said yes.---Yes, yes.

So I assume that accords with your recollection?---Yes, yes.

He then said to you, and Mr Soliman, his position was, throughout the whole procurement process, that he wanted an open tender process.---Yes.

10 Now, do you agree with that or you don't agree with that or you don't know?---I should say I don't know because he keep saying that can be, this can be going to the open tender and, but go to the open tender we will be losing our fund because we can't match the deadline, so during that procurement exercise he told me and he mentioned to be closed tender may be a good option because it can fulfil our, our funding commitment.

And the funding commitment was to pay for it by the end of the financial year?---And get everything delivered to Australia.

MR YOUNG: Now, you said in your statement that Mr Soliman said on a number of occasions, I think you've said 10, at least 10, that the IRD scale was the best in the market.---Yes.

20 May I suggest to you that he never said that.

THE COMMISSIONER: Do you agree with that or not?---I don't agree with that.

MR YOUNG: He did refer you to the previous tender and IRD.---Yes.

And you obtained material from Mr Singh in relation to that?---Yes.

30 But I suggest to you that he never expressed a personal opinion about the IRD scale being the best in the market.---I do not agree with your suggestion.

Now, you also say that at the tender evaluation panel that Mr Soliman expressed, which I'll take you to a little later, but you say that he expressed a very firm view about favouring a particular tender during the tender evaluation process, the meeting that was held of that committee.

THE COMMISSIONER: The meeting on 4 September?

40 MR YOUNG: In September.

THE COMMISSIONER: Yes. Do you remember that meeting on 4 September?---Yes. That's the committee, they what's - - -

And sorry, Mr Young, can you repeat what you were putting?

MR YOUNG: You say that Mr Soliman at that committee meeting expressed a very firm view as to him, that is Mr Soliman, favouring a

particular tender?---He favouring a particular brand of portable weigh scale. He keep saying, "PAT scale is the best."

Now, who was present there?---Alex Lee, Guido Zatschler, Paul Walker and Samer Soliman.

And there was no period there where Mr Walker wasn't present during the deliberations?---What, what do you mean?

10 THE COMMISSIONER: Was Mr Walker in the room the whole time?
---Yes, yes.

MR YOUNG: So whatever you heard would have been also heard by Mr Walker?

THE COMMISSIONER: Do you assume that's the case or - - -?---I, yes, I assume.

20 You know, for example, Mr Walker didn't - - -?---Not go for a toilet or something?

Or, you know, was over in his other, you know, was on the telephone or anything like that?---That's maybe - - -

Your recollection is he was there for the whole time?---Yes.

30 And you assume that if you heard somebody say something in the room that Mr Walker would also have heard it?---Yeah, but that's also because some situation maybe Walker and Zatschler is talking to each other and he didn't listen clearly to what Mr Soliman say.

So at times people might have been chatting?---Yeah, exactly.

You might have been chatting to Mr Walker or you might have been chatting to Guido or something like that?---Yes, yes, yes.

40 MR YOUNG: Well, are you saying that this just happens by a number of conversations, it's not some sort of formal process by which you're evaluating the tender submissions, that people are just chatting away to each other? Aren't you doing things on a screen for people to look at?---So people still allowed to talk to each other regarding to that requirement, right?

On the question of Mr Walker, do you say that he asked you to do an ABN search to find out who Novation was?---Yes.

And you reported something back to him?---I'm not agree using a report, using the word report, I just talked to him regarding that issue.

And you had a conversation with him about him - - -?---Yes.

Just wait. You had a conversation with him about him telephoning the company IRD?---Yes.

And you know IRD to be a world market leader in terms of ITS based in Canada?---Yes.

10 And they supply not just Canada but the whole of North America and other places as well?---Ah hmm.

Do you agree?---Yes.

Now, Mr Walker reported back to you about that conversation?

THE COMMISSIONER: Did he, I don't think he likes the word report, did he tell you about it?

20 MR YOUNG: Did he tell you?---Yes.

And he told you, is this right, that IRD had told him that they only used Novation within New South Wales?---Yes.

And that he should speak with Mr Soliman if he had any questions?---Yes.

So your understanding was that IRD had told Mr Walker about Mr Soliman and that if he had any questions about the role of Novation, he should speak to Mr Soliman?---Yes.

30 Now, you were asked about paragraph 21 of your statement.

THE COMMISSIONER: Could we bring that up, please.

THE WITNESS: Yes.

MR YOUNG: Now, is this something that you said or was this something that was drafted for you?---Which, which sentence?

40 Paragraph 21. If you just read to yourself what it says there about paragraph 21 and the reference to HAENNI weigh scales.---Ah hmm.

Just read the whole paragraph to yourself.---Yeah.

Now, the statement there that you assumed you would need to purchase 425 IRD PAT branded scales, just is not right, is it?---It's right. That's what I assumed at the time.

Well, where did the number 425 come from?---That's what Mr Soliman told me.

Right at the outset he told you 425?---What? I, I - - -

Do you say right at the outset he told you 425?---What do you mean right at the outset?

10 The first conversation.---No, I told you that before, that, no, no, sorry, I mentioned it before, it's 300 before and then it's go up to 425.

But you see you say, "When I was given the project I assumed that I would need to purchase 425 IRD PAT branded scales."

MS WRIGHT: Commissioner, he did make a correction in his evidence-in-chief which I took him to and he gave evidence when I asked him questions that the 425 wasn't a factor at that point.

20 MR YOUNG: Part of it, part of it. I'm interested in the second part of it. The number, I accept there was, there were questioned asked in relation to the number but there's another part of that as well.

THE COMMISSIONER: All right. So you agree that a concession was made by, or Mr Lee clarified where the 425 came from during - - -

MR YOUNG: Well, he said he accepted that what he, what he says he assumed at the outset when he was given the project cannot be right in terms of the number.

30 THE COMMISSIONER: Yes.

MR YOUNG: That was as far as it went. Now, I want to take it - - -

THE COMMISSIONER: All right.

MR YOUNG: Do you agree that when you were given the project you did not assume that you would need to purchase 425 anyway.---I agree.

40 You also did not, when you were given the project, assume that you would need to purchase any number of IRD PAT branded scales.---Agree.

Well, why does it say in your statement that you assumed that you would need to purchase 425 IRD PAT branded scales?---Because this is the statement I've given to ICAC after all the procurement exercise finish, that's why I know that there's a 425 scale need to be purchase.

THE COMMISSIONER: I'm sorry, Mr Young, are you now concentrating more on the fact that a brand was nominated in that sentence?

MR YOUNG: Correct, correct.

THE COMMISSIONER: Forget the 425.---Yeah.

Mr Young's asking you about this, the statement here, "Therefore when I was given the project I assumed I would need to purchase IRD PAT branded scales based on the conversations I had with Mr Soliman."---Ah hmm.

10 So forget the number. Mr Young's now focussing on the fact that you nominate a brand. Do you - - -?---Yeah, yep.

And sorry, Mr Young, your question is how could have you assumed that
- - -

MR YOUNG: Assumed that.

THE COMMISSIONER: - - - at the beginning?

20 MR YOUNG: At the beginning?---Because the background information provided by Mr Soliman to me is, is saying that PAT scale is the best. That's, that's put in the email in early June 2018, that's the background information he provide to me and he mentioned, he did mention PAT scale is the best.

So if Mr Soliman says, "I think X is the best," you have to use that product even though you're on an evaluation process to determine which scales to buy?---And he got, in that email trail he also got the expert, subject expert, subject matter expert comment, comment on the, on the later part of the
30 email.

You said, look, what you said is when - - -?---It didn't come from nowhere.

"When I was given the project," and that you say is of that first conversation with Mr Soliman, when you gleefully took on this job, didn't you? Do you agree, you did not have to take on this job?

THE COMMISSIONER: Well, do you agree that, could have you said no to Mr Soliman, I'm not going to do this?---Of course I can but I knew the
40 consequences.

And what would the consequences be of saying no to a senior manager?
---The bad, bad reputation on me, say you are lazy.

Not great for job prospects or promotional prospects?---Exactly.

MR YOUNG: You took on the role because you saw it as an important part of career development and advancement, didn't you?---No, I did not initiate it.

I didn't say you initiated it, I said you were happy to take it on?---Yes.

And you understood that a tender evaluation process would involve picking the best product and the best tender?---Yes.

10 And Mr Soliman's views about whether or which was the best scales would be irrelevant to that?---Yes.

So you did not, when you were given the project, assume that you would need to purchase IRD PAT branded scales?---Correct.

This is not your statement, is it? Somebody has drafted this statement based on conversations that you've had and you simply signed it?---No. That's what's handed to me by ICAC and I read that and I agree with that. That's only your suggestion.

20

Well, you've agreed that what is recorded there is not correct?---That's a, that's a, I think that's electronic record, there's a voice recording doing the interview with Adam.

THE COMMISSIONER: So there was an interview with an investigator at ICAC?---Yes.

And then a statement was drafted?---Yes.

30 That statement was sent to you?---Yes, yes.

And you reviewed it?---Yes.

Made changes?---Yes.

And then ultimately it was finalised in the version that you've signed and part of it's up on the screen?---Exactly.

40 MR YOUNG: Now, I wonder if the witness could be shown volume 11, page 247. Now, do you recall earlier today you were asked many, many questions about this?---Yes.

And eventually you changed your evidence from what it had been before and said that RMS preferred the two brands which are mentioned there, PAT brand and HAENNI? Do you see that? You said that the document conveyed that RMS preferred those two brands.---Yes.

After you initially said that you did not think it conveyed that.---Yeah.

Now, when you look under Important Note, for category B only, it's crystal clear, isn't it, that brands other than PAT and HAENNI will be considered -
- -

THE COMMISSIONER: Well, it doesn't say will.

THE WITNESS: May.

10 MR YOUNG: Can be considered.

THE WITNESS: May.

THE COMMISSIONER: May be considered.

MR YOUNG: If the tenderer can demonstrate equal or superior performance.---Yes.

20 So the bar is equal or superior performance.---Life expectancy and serviceability.

But equal or superior.---Yes.

Now, how does saying that if you can demonstrate that another product has equal or superior performance, life expectancy and serviceability to another suggest to anybody that one is preferred over the other?---(No Audible Reply)

30 THE COMMISSIONER: And one over the other, you're referring back to the - - -

MR YOUNG: To PAT and HAENNI.

THE COMMISSIONER: The reference to PAT brand and HAENNI in the second dot point.

MR YOUNG: That's correct.

40 THE WITNESS: I, I, this panel contract's not prepared by me.

MR YOUNG: No, and I understand.---And that's not written by me.

You made that very clear, but you ultimately said - - -?---I'm just the one using that panel contract. I'm not create it, I'm not reading, I'm not written that, I am just the, asked to use that panel contract, and now you're asking me how it's going to be demonstrate if equal of superior.

But you see, you were prepared to say this morning that it indicated that the RMS preferred those two brands.---Yes, because it's mentioned above, the second point.

And that's the basis of it?---Yes.

Even though, if you can show, if you can demonstrate equal or superior performance, life expectancy and serviceability - - -?---Ah hmm.

10 - - - that the RMS may consider those brands?---Yes, yes, yes.

So do you agree that equal or superior performance, life expectancy and serviceability is hardly a high bar, is it?---It depends on how you're going to quantify the, the, the equal and superior performance.

Now, during the course of your involvement, Mr Soliman directed you to Mr Singh.---Yes.

20 And Mr Singh cooperated with you in giving you all of the material from the previous tender process.---Yes.

Did you sit down and have any discussions with Mr Singh about how he conducted the process?---No.

Did you have any discussions with Mr Singh about any conclusions that they had arrived at?---No. He just present those information to me as requested from Mr Soliman.

30 Now, did you consider that there may be some commonality in relation to decisions that you might be required to reach in relation to what had been previously decided?---Yes, I agree.

All right. So is there any particular reason why you didn't have a detailed conversation with Mr Singh?---No.

Now, did you have a detailed conversation with anybody at RMS about any of the, any of the technical issues that you might be required to consider?---No.

40 Well, did you ever have, for example, a conversation with Mr Jones?---No.

Did you consider that Mr Jones was a person who, as far as you were aware, would have some detailed knowledge of matters?---Yes.

And Mr Soliman told you, didn't he, that Mr Jones had simply said that he didn't want to be involved in the process.---Yes.

You didn't have any discussion with him yourself? With Mr Jones, that is.
---No, no, because I don't, I did not know him at the time.

You said that you received outside material for which 10,000, 10,000, an amount of – I think this might be at volume 11, page 173. There was an amount of money paid for information during the course of the tender process, is that right?

10 THE COMMISSIONER: Hold on.

THE WITNESS: I don't know what you're talking about.

THE COMMISSIONER: I don't think - - -

MR YOUNG: Well, to get information to assist with the evaluation.

THE COMMISSIONER: Are you talking about WSP?

20 MR YOUNG: Yes, WSP.---Oh, yes, yes, yes, yes.

THE COMMISSIONER: I think that's pages 171-172.

MR YOUNG: Just get those up.---Yeah, I recall that.

Now, do you see there that this is an email addressed to you?---Yes.

And what it says is that it understands that certain issues are of paramount importance to Roads and Maritime in relation to the tender.---Yes.

30 And then WSP proposes a certain methodology.---Yeah. Yes.

And if we could go over to page 172. Prepare certain documents.---Yeah.

And the last sentence of it is, "We would be happy to discuss any aspect of the proposal as needed."---Yes.

Now, did you have any discussion with them?---Because discussion of - - -

40 Well, it says, any aspect of the proposal, did you have – the paragraph before that is we further to carry out these services on a time and expense basis, with an upper limit of \$10,000 using the rates of 300 and \$180 for the two named persons.---Ah hmm.

Now, on receiving this proposal, did you, as discussed in the last paragraph there, have any discussion with them about the proposal?

THE COMMISSIONER: The proposal of WSP to do the work?

MR YOUNG: The proposal that WSP have put in this letter, yes.

THE COMMISSIONER: Did you talk to anybody at WSP and say this is a good idea or you're too expensive or anything like that?---No, I accept it because - - -

You accept it.--- - - - this is what, this is what Nathan proposed to Mr Soliman during our meeting, and after the meeting (not transcribable) draft of this proposal to us.

10

MR YOUNG: But just go back - - -

THE COMMISSIONER: Who did?---Nathan. Nathan.

Yes, okay.

MR YOUNG: Nathan Chehoud?---Yeah, Chehoud, yes, correct.

20 Go back to page 171, though. The request is directed to you, isn't it?---Yes, yes.

And the decision maker in relation to whether, well, the initial decision maker at least was you.---Because I am the person, because I am the RMS person to look after that procurement exercise.

Yes. So it was your decision as to whether to accept this proposal.---No, this - - -

30 THE COMMISSIONER: Who decided it, then?---Mr Soliman.

MR YOUNG: Well, see, it's addressed to you.---Yes. The email not addressed to (not transcribable) CEO. It was addressed to the very bottom of the line of the people doing the (not transcribable) work. Nathan will not, will not send this email or this email to Roger because Roger has got no idea what's going on.

THE COMMISSIONER: Is the reference to Roger to Mr Weeks?---Yes, sorry.

40 Just got to work out which Roger it is.---Yeah.

MR YOUNG: And what do you say was produced by WSP under this? Somebody accepted the proposal, did they? As far as you're aware, somebody accepted the proposal to use WSP during the course of the tender evaluation.---Yes.

You don't know who?---I think it's Soliman, Mr Soliman, because - - -

Well, did you ever see any email? Did you pass on this email to Mr Soliman?---I cannot recall but I should, I must cc it to him because he, WSP is his idea to get engaged. It's not my idea. So he ask me at the very first beginning to do the procurement exercise and he suggest that Nathan from WSP can help us with the procurement exercise. And during the meeting we discuss what WSP can help us. That's the reason why Nathan draft that proposal and send it to RMS. And because I am the person running that procurement exercise, that's why he address that proposal to me. That's not necessary I am the one to approve that.

10

Now, what do you say that Mr Chehoud produced for your committee?
---Can you repeat again?

You talked about some material that was on a laptop.---Which, which, which, which incident?

THE COMMISSIONER: There was a spreadsheet that you - - -

MR YOUNG: An Excel spreadsheet you said.---Which incident you talking
20 about now?

Well, just if you can answer the question generally then. What material, if any, was produced pursuant to the acceptance of this proposal?

THE COMMISSIONER: What work did Mr Chehoud or his associate do?
---To provide the professional service.

No, no, no, but what did they actually do?---They, so Nathan will help me to
30 do the procurement, to do the tender evaluation plan, and, and RFT, and also those procurement, what should I say, the, yeah, helping me with the procurement exercise.

MR YOUNG: Well, how did he do that? Did you have meetings or what did you do?---Yes.

Well, how often did you have meetings with him?---At the beginning I think it's weekly.

And with the RFT documents, how did that get done? You said he helped
40 you with the RFT document. How did that get done?---So he draft RFT and send it to me, review.

So does this go through a number of drafts between the two of you?---Yes. There's, there's a couple of version.

So, what, he would send you a copy and you would - - -?---Have a look, yes, yes.

- - - have a look and send it back to him with comments?---Yes, yes.

Did you involve anybody else in that process?---No.

So you felt sufficiently - - -?---Oh - - -

Sorry.---Okay.

10 THE COMMISSIONER: Sorry, did you - - -?---Given that Soliman will have some input in that.

MR YOUNG: Well, how is he going to have some input? You're not involving him?---He is always kept in the loop.

Well, you just said that he was not involved in that, that you and Mr Chehoud were involved in sending back drafts to each other.---Mr, he must be in the email, he, I have cc to him.

20 THE COMMISSIONER: Could be go to volume 11, page 219 please. See the comment section in the pink?---Yes.

Who provided that?---Nathan, so Nathan draft up that tender evaluation plan and send it to me and ask me to fill in some information. That's why he said, "Alex, please populate the four highlight cell on this page."

And could we go to page 174. Those documents follow – oh, sorry. Those documents are the attachments to that email?---Yes, yes. This should be the last one.

30 And who are you forwarding the email to?---To Soliman, Mr Soliman.

MR YOUNG: Now, can you go back to page 219.---Yes.

Now you said that he draft was by Mr Chehoud and the comment are by Mr Chehoud, aren't they?---Yeah.

So aren't they Mr Chehoud's comments about your draft?---No. The, that's the other way around.

40 Well, if the comments are Mr Chehoud's, why would he be commenting on his own document?---He - - -

THE COMMISSIONER: I think – go on.---He needs more information.

Can I just ask you, I can't find it but when you were taken through the chronology earlier today, there came to a point where you received advice from somebody, I think it might have been Donna, that this type of tender didn't require the external?---Yeah, yes, yes.

When you were told that, did Mr Chehoud's involvement then cease?---Yes.

But up until then he was doing some work?---Yes.

MR YOUNG: In terms of the Tender Evaluation Committee, if there was anybody who was inappropriate on that committee, you would have said so?---Yes.

10 Did you regard it, for example, as appropriate that you should be the convenor of a panel which included Mr Zatschler?---I don't understand what - - -

I'm just asking you whether you considered there was any issue in relation to Mr Zatschler, who was your manager, being on a committee which you were convenor of?---No because Mr Zatschler and Mr Walker and me was told to be into the committee by Mr Soliman.

20 If you had any issue in relation to that, to Mr Zatschler you would have raised it?---Yes.

Now, I want to ask you about the attendance of Mr Soliman.---Yes.

You sent him an invitation, didn't you - - -?---Ah hmm.

- - - to attend at the meeting?

THE COMMISSIONER: The one on 4 September.

30 MR YOUNG: Yes. You sent him before the first meeting, you sent him an invitation by your Outlook Calendar to attend the meeting.

THE COMMISSIONER: Sorry, the meeting on 4 September?

MR YOUNG: Well, the first meeting. Before you'd met you sent him an invitation by Outlook Calendar?

THE COMMISSIONER: And sorry, whose meeting is it?

40 MR YOUNG: The first meeting of the Tender Evaluation Committee. ---Oh, okay, yeah, yeah. So I, when I make up the day to have our first meeting I, first I need to book a room in our Outlook, so I find there's available room there, then I press Guido, Paul name there. I think I maybe create Mr Soliman name as well because he is my manager at that time, so I better keep him in the loop, tell him we have a meeting coming up.

Well, you asked him to be there.---No.

And on the day of the meeting you actually waved him to the meeting, didn't you? As you were going - - -?---That's your suggestion.

Well, do you disagree with it?---Yes.

And what I suggest to you is that he didn't arrive for about half an hour after the meeting started.---I cannot recall that.

10 Now, do you agree with this, that Mr Soliman's contribution was that he pointed out where certain things met certain requirements and where they didn't?---Ah hmm. He explained to us some of the, some of the, some of the issue as well, such as those wheels that's going to be weld into the bracket. He do explain some of the - - -

And he certainly expressed no view whatever as to whether he favoured any particular tender.---No, all he keep saying IRD that the PAT scale's the best.

See, that, sir, is just an outright lie, isn't it?

20 THE COMMISSIONER: Do you agree with that or not?

MR WITNESS: I do not agree what you are saying to me. This is just, you just put my great integrity - - -

THE COMMISSIONER: No, no, no, you don't agree with it?---I don't agree with that.

30 MR YOUNG: If somebody had said that at a meeting of which you are the head of a Tender Evaluation Committee, you would have said, "That is completely inappropriate."---Can you repeat again?

If somebody had expressed, who was not a member of the committee, had expressed any view during the course of that committee meeting, you would have said to that person, "That is quite inappropriate."---Yes, but he is my manager at the time, he can have his own will. I can listen or don't listen, that's my own preferences.

40 And you would have had a discussion with your other committee members, Mr Zatschler and Mr Walker - - -?---Walker, yeah.

- - - about what had happened.---About what had happened what?

Well, if Mr Soliman has expressed a view during the meeting - - -?
---Yes.

- - - would it not be important to you to have a discussion separately with Mr Walker and Mr Zatschler saying we are not going to be influenced by

Mr Soliman?---But he is the manager of our program, of our Heavy Vehicle Programs.

So for you, though, this was a most startling event that he should be expressing that view at the committee meeting?

THE COMMISSIONER: Was it a startling event?---What's that mean?

10 MR YOUNG: Well, it was something that made a great impact on you.

THE COMMISSIONER: Did it make a great impact on you when - - -?
---I believe that, yes.

MR YOUNG: It just didn't happen, did it?---Didn't happen what?

It didn't happen that Mr Soliman said what you say he said at the other meeting.

20 THE COMMISSIONER: On PAT scales are the best.---He did say, he did say that all the time as I mentioned before.

MR YOUNG: He was there because you asked him.---No.

And he was there for about half an hour just - - -?---As I mentioned, I did not recall what time he coming, but I pretty sure he come in after three of us already in the room.

30 Did you ever report this to anybody in RMS, that this had happened?---No.
No.

Well, you've agreed just a moment ago that it was something that you thought was startling.---Did I?

THE COMMISSIONER: Yes, startling was defined as big impact. Was that how you - - -

MR YOUNG: Yeah, it had a big impact on you.---Okay.

40 Big impact on you.---All right. Yeah.

So it's had a big impact on you because you think that it is grossly improper.---Ah hmm. Yes.

And yet you don't have a discussion with either of your committee members about it, correct?---Regarding to Mr Soliman (not transcribable)

There was a time that you discussed things afterwards without Mr Soliman there.---In that meeting?

Did you have discussions after Mr Soliman was there?

THE COMMISSIONER: What, when they went back to their desks or - - -

MR YOUNG: Before you finished the process, did you have further discussions with - - -?---What process we talking about now?

10 I'm talking about the process of tender evaluation up to the point where you sign off on the whole process?---That's, so you're not talking about the meeting now?

I'm talking about the whole of the process, including and after that meeting.---So right after the meeting, you mean?

Any time after that meeting.

20 THE COMMISSIONER: Up until the time that the three of you sign the report.---The tender evaluation report?

Yes. Did you have a discussion about "That Mr Soliman was there talking about PAT scales are good"?---No, no, no.

MR YOUNG: And you didn't discuss it with anybody else outside of the committee, even though you thought that it was such a significant matter? ---No.

And is there any particular reason why that is the case?---There's no reason.

30 Now, you recall that you were asked a number of questions about paragraph 72? I wonder if that could be brought up.---Yeah, 72.

What is the meaning which you are trying to convey with the last sentence of that paragraph?

THE COMMISSIONER: "The specification pushed the other scales."

MR YOUNG: Pushed the other scales out of the tender.

40 THE COMMISSIONER: "Because not every scale can fit into that housing."---Yes.

So that sentence.---Yes. Yes.

MR YOUNG: What are you saying, what are you intending to say by that sentence?---Did that question been asked before?

THE COMMISSIONER: Yes, it has but I'll let Mr Young ask you again.

MR YOUNG: It's been asked but it hasn't been answered. What are you, I'm asking you, when you read this last night or when you said it, if you did say it to the in those terms to - - -

THE COMMISSIONER: Mr Young - - -

MR YOUNG: I'm sorry but - - -

10 THE COMMISSIONER: It's in a signed statement, just please proceed on the basis of what did he mean by that sentence.

THE WITNESS: And I believe this is your tactics to just challenging my, my, my, my - - -

20 THE COMMISSIONER: No, no, no, no, no. Mr Lee, you've got to - Mr Young is representing Mr Soliman and he has a right to ask you questions. Now, he's asked you about that last question and I realise Ms Wright asked you some questions about it and you've answered them but I'm letting Mr Young go back and revisit it at this stage.---Okay.

I know you're probably tired but if we can get through this. So you've got that last sentence and you're being asked what did you mean by including that sentence in your statement which you signed?---Yes. It's because of the dimension of the housing.

30 MR YOUNG: What is the specification that you're talking about?---That's the specification regarding to the dimension which given to me by Mr Soliman.

THE COMMISSIONER: But the dimension of what?---The housing.

Where you put - - -?---Oh, no, sorry, the, the, yeah, yeah the housing.

Where you put the portable weigh stations?---Yeah, yes, yes.

40 MR YOUNG: Well, how do you say that that pushed other scales out of the tender?---Because we set out certain dimension, so if the tenderer propose the scale is greater than that, then it's been push out. They must propose a scale that fit into the existing housing. That's why we specify the dimension of the, of the, of the scale.

Well, if what you're saying that there was a specification that was needed by RMS and that had the effect that if the scales weren't the right size they just couldn't be accepted?---Correct.

Well, that's just sheet logic, isn't it?---What logic?

Just logical that you would not accept scales that did not fit into the housing?---Yes, yes.

So it's not a question in particular about specifications, it's simply a question about the suitability of the scales for the available housing?---Yes.

Now, could the witness be shown volume 11, page 240, please. You recognise that document there?---Yes.

10 And if we could now go to page 247.---Yep, yep.

Now, in terms of the dot points under category B, who was it who drafted those?---I got no idea.

Were they matters which you considered in relation to the suitability to the tender?---(No Audible Reply)

I mean did you look at those and say, well, they seem to be sensible?---Yes.
20 As I told you before, there's three option, the open tender, procurement exception and the closed tender using the existing panel. That was suggested by Mr Soliman. And now you're asking me whether it's reasonable to use it or not?

THE COMMISSIONER: Sorry, this is part of the closed tender documentation?---Yes, yes, yes.

And the reason for using the closed tender results was that you wouldn't have to scan the market, you'd just identify who was successful and invite them to submit a tender?---Yeah, yeah, propose, yes, propose.
30

MR YOUNG: You made no review yourself of any of the requirements or statements in relation to category B?---No.

Did you seek any advice from any outside person about those matters?
---That never have been, have been mentioned to RMS procurement team.
If there's any question they will raise that.

Now, who were the people in the RMS procurement team who you're talking about here, to your knowledge?---(No Audible Reply)
40

THE COMMISSIONER: Is Donna one of them?---Yes, Donna, Mark and Albert.

Albert you said?---Albert, sorry, definitely mentioned this morning.

Albert Bass?---Albert, Albert Bass, yes.

MR YOUNG: And the other person that you mentioned?---Mark Chiu and Donna Willis.

And Ms Willis had had a previous involvement in relation to the matter in terms of the emails that we've seen.

THE COMMISSIONER: Wasn't she the one who said you don't need an independent expert or - - -?---Yes, yes, yes.

10 MR YOUNG: Now, could the witness be shown volume 11, page 165. Now, you recall being asked questions about this?---It's 165?

THE COMMISSIONER: Have you got that?

MR YOUNG: Have you got that in front of you?---Did you say 185?

THE COMMISSIONER: No, I thought it was 165.---65.

MR YOUNG: 165.---Okay, yeah.

20

Have you got that in front of you?---Yes.

Now, you recall being asked questions about this?---Yeah, this morning, yes.

Now, you just need to look at 166 as well.---Yeah.

30 All right. Now, you were asked a question, I want you to read it to the bottom, to be fair to you, all right, so that if you look under Option 2 you'll see that you may not have been taken to this in particular, so if you just read under Option 2, there's just a couple more lines there.---From, start from where?

THE COMMISSIONER: See Option 2.---Option 2.

I think you were taken to this by Ms Wright. "Six-month time frame to award contract. Run an open tender."---Yeah.

40 "This is my preferred option. However, I understand the need to procure these scales quickly due to the risks mentioned above."---Yes.

MR YOUNG: Now, you were asked today which option you thought that Mr Soliman preferred.---Yes.

And you said that you thought he preferred option 1.---Yes.

Now, it's quite clear on the face of that document, when you look at it, that he is saying he prefers option 2.---He kept changing his preferences during the procurement exercise.

Well, is there ever a document from Mr Soliman where he says anything other than exactly what he says there? That is, that the open tender is his preferred option.

10 THE COMMISSIONER: Can you recall any document?---(not transcribable)

I think what Mr Young says is on page 166.---Yes.

Mr Soliman has written that "The open tender is my preferred option."---Ah hmm.

And then you've given some evidence that he changed his mind and that his preferred option was, I'll call it the closed tender.---Yes, yes.

20 And what Mr Young is asking you is, can you recall any document where Mr Soliman wrote something along the lines of "My preferred option is the closed tender"?---The, the email is, he send it to me this morning regarding the draft letter. He, he, Mr Soliman sitting next to me drafting together that email, what, what Ms Wright ask me this morning.

MR YOUNG: Just go back to the previous page there, page 165. That refers to issues in relation to - - -?---No, no, can you put up that email first?

30 THE COMMISSIONER: 165?---No, no, the email Ms, Ms Wright asked me this morning when I'm saying Mr Soliman's sitting next to me and we typing together and send it out to, I can't recall who.

MS WRIGHT: Sorry, I'm just looking for the - - -

THE COMMISSIONER: I know the one you're talking about. It's just find the page.---Yes.

MS WRIGHT: 230.

40 THE COMMISSIONER: I'm sorry?

MS WRIGHT: Page 238, volume 11.

THE COMMISSIONER: Could we have volume 11, page 238, thanks.

THE WITNESS: Yes, that's the email, that's the, I believe that's what you're asking me. That's what Ms Wright asked me this morning. That's not exactly my wording there. That's what Mr Soliman typing using my

laptop. And after that I have read that and I agree with that, and then we send it out to Ms Willis, Donna Willis.

MR YOUNG: And where does that say anything about not preferring the open tender process?---You didn't say - - -

10 It commences by saying, "I think you are after the documents showing the open tender panel requirements." It's based upon the assumption that there will be - - -?---No, no, just now you're asking me whether he prefer the closed tender process.

THE COMMISSIONER: Yes.---This is in section 2, point B. That's what the closed tender.

"The category B vendors which can supply vehicle weight management hardware."---Yeah. That's what closed tender - - -

20 MR YOUNG: Well, you see, this is an email sent at 1.08 requesting appropriate direction for the procurement at our 2.00pm meeting, isn't it? You see the bottom?---Can you read 1.08? You did mention 1.08.

Look at – if you look at the top of it, 13.08, 1.08, on Monday, 30 July, 2018. "Can you please review," at the bottom of it, "Can you please review so you can advise regarding the appropriate direction for this procurement at our 2.00pm meeting."---Yeah.

So you are seeking urgent advice from Ms Willis?---Yes.

30 Where does that suggest anything about a changed view by Mr Soliman? ---Again, I am not him, I cannot comment on that.

But there's nothing in that email, is there, that suggests that Mr Soliman had changed his view about an open tender.

40 THE COMMISSIONER: You were asked about whether there was a document that you could recall where it was stated that Mr Soliman preferred now the closed tender, not the open tender and you said, oh look, it was that email that we drafted together that Ms Wright took me to this morning. And we've identified volume 11, page 238 and your evidence this morning was, my recollection is that that top email, you sat and drafted with Mr Soliman and I think Mr Young's point is, well, where does it say that the closed tender is now the preferred option?---In section 1 and section 2.

That's your understanding of the document?---That's my understanding, yes.

MR YOUNG: And can you just explain how that is a suggestion that there should not be an open tender?---Section A say refer to category B. Section

2 say point B, category B. So section 1 and section 2 is referring to the closed tender option.

And section 1 is dealing with the open tender panel scope requirements?

THE COMMISSIONER: But I think it's referring back to the provision of the previous panel, isn't it?---Yes. Because the panel contract, they set to it up, when they set it up as, as the panel contract, they do, I believe they do using the open tender. They say now or to send the RFT to all the supplier.
10 That's why that say this open tender panel.

MR YOUNG: Go back to volume 11, page 165 and now to 166 and do you see there the open tender is Mr Soliman's preferred option?---As I mentioned before, he keep changing his preference.

That is his preferred option given in writing?---Yes, by that time, by the time - - -

Well, at that time?---At that time when he send out that email but it's not
20 necessarily he keep that preference all the time, isn't it.

And there is not a single piece of writing that you can identify where he ever says anything contrary to that?

THE COMMISSIONER: Do you agree with that or not?---I agree.

MR YOUNG: Yes, thank you.

THE COMMISSIONER: Thank you. Mr O'Brien.
30

MR O'BRIEN: Nothing, thanks, Commissioner.

THE COMMISSIONER: Thank you. Mr Lonergan.

MR LONERGAN: Yes, Commissioner. Do you want to stand up and have a, wiggle your legs for five minutes or for a minute or two?---Yes, I'm fine.

You're okay?

40 THE COMMISSIONER: You're fine? Mr Lonergan, who do you represent?

MR LONERGAN: Novation, Mr Thammiah. Sorry, did I say – Novation. Let's start at your statement, paragraph 17, if I may. You see paragraph 17 there on the screen?---Yes.

The checks that you did, you say there, "I completed some checks on Novation." Were the checks that you did limited to doing the ABN search on Novation?---Yes.

Were there any other checks or searches that you did?---I just type in Novation in Google search engine and I also do the ABN check on the ABN check website.

10 Did you pay for the ABN check?---No.

So you just did the online one?---Yes.

And the online one only shows the post office – sorry, I withdraw that – only shows the suburb of the company and the postcode, does not show the address. Do you agree with that or not?---I agree.

Right.---I agree.

20 So you did not know from your checks that Novation was at a residential address.---I think I got that information from the invoice.

From the invoice?---From the Novation invoice, there's a - - -

Well, Mr Lee, I just asked you before what checks you did on Novation and your answer was the Google search and the ABN search online.---Yes, yes, yes.

30 And based on that I'm putting to you that you could not have seen the address. And you agree with that?---Ah hmm.

And now you're giving evidence that you actually found that from an invoice. And that's your answer, isn't it, and that's what you're saying?

THE COMMISSIONER: Well, hold on. Do you need to think about it?
---(No Audible Reply)

All right. Have a think.

40 THE WITNESS: Okay. I withdraw that Novation invoice. I cannot recall.

MR LONERGAN: Okay. And the second aspect is that you found out from presumably the same searches that Novation was just a one-man band. Is that right?---Yeah.

And was that presumably also from the same ASIC ABN search?---Yes.

All right. And you agree that that search does not show who the directors of the company are?---I cannot recall the exact word of director but did you say director?

Directors, yeah.---I just remember there's the name there.

So the only thing that you saw on your search was the name of the company. Is that what you're saying?---The name of the, the name of the company, the ABN number, I can't quite remember what else there.

10

It didn't show the number of employees either, did it?---No, no.

So really what you're putting here in paragraph 17 of your statement is false?---No, no. That's what I, that's what I, that's what, that's what I think at that time because when I doing the check I find out the address related to Novation and I pop into Google Map and find out this is a residential address. So with the company - - -

20

All right. So now you're putting in Google Maps, are you?

THE COMMISSIONER: Hang on, let him finish his answer.

THE WITNESS: With a company registered is in ABN with his own residential address, that can't be a big company. If they have, if they (not transcribable) big company, they will have a standard office address and standard website domain as well.

30

MR LONERGAN: None of which you knew at the time you actually did this search, Mr Lee.---What do you mean?

Well, your evidence was that you've accepted that you withdrew the comment about the invoice.---Yes.

And you accepted that the only search that you did in relation to this company is the ABN search online.---Yes.

And you've accepted when you did that - - -

40

THE COMMISSIONER: You also said you googled it.---Yes.

MR LONERGAN: And you've accepted that the only information in relation to the company that you saw online was the postcode and the suburb. Yes or no?

THE COMMISSIONER: Was that from the ASIC search or - - -?---As I told you just now, I do an ABN check and a Google search. So when I pop in Novation Engineering on Google search, that may come up the residential address.

MR LONERGAN: May?---Yes.

Right. So you don't know?---I don't know.

Exactly.---I can't recall.

Right.---But I definitely remember what - - -

10 But you could, you could - - -?---Let me finish.

MS HOGAN-DORAN: Objection. Let the witness finish his answer.

THE COMMISSIONER: Let him finish.

20 THE WITNESS: But I definitely remember when I doing that search there's a residential address coming up and I pop into Google Map and I find out this is the residential address related to this ABN. That suggests me if this is a big company they should have a proper business office address rather than a residential address.

MR LONERGAN: Can we move on to page 157 of your statement.

THE COMMISSIONER: Sorry, which paragraph, Mr Lonergan?

MR LONERGAN: Sorry. Page 157. So it's into the annexures, Commissioner.

30 THE COMMISSIONER: Okay.

MR LONERGAN: That's the tender evaluation plan.---Yes.

See that?---Yes.

And if we go over to page 168, I just wanted to show you the front page of the document (not transcribable).---Yeah.

And that's the blank weighting criteria.---Yes.

40 And page 169, if we could go over. You recall being shown this document by Counsel Assisting?---Yes. This morning, yes.

Now, do you have a physical copy of your statement? It may just be easier.

THE COMMISSIONER: I'll see if we can provide one. Have we got a hard copy of the statement?

MR LONERGAN: It's just we might flick back and forth, and it just becomes cumbersome.

THE COMMISSIONER: No, sorry. You'll have to be at the ready.

MR LONERGAN: Do you recall you were asked by Mr Young some questions about paragraph 72 and your last sentence in there of your statement? And I'll read it to you, and if you want to go to the page, we can. But paragraph 72 - - -?---It would be great if can pop it up on the screen.

Yes, okay. Let's go to 72.---72.

So we'll be toggling between 72 and 169, unfortunately.---Yeah, yeah.

And your evidence was that, well, the statement says that (not transcribable) pushed that scale out of this tender because not every scale can fit into the housing.---Yes.

20 And the housing, you mean the - - -?---Storing rack.

- - - storing racks in the trucks - - -?---Yes.

- - - that are around the state that carry these scales?---Yeah. Yes.

So I'll just take you back. So just have a good look at that paragraph because we are going to refer to it.---72.

30 Yeah. Just read it so it's fresh in your memory.

THE COMMISSIONER: Hold on. I'll provide a copy from my brief. So you've got, what was it, paragraph 72?---72, yes.

MR LONERGAN: Now if we go to page 169 of your statement. And your writing at point 1 there. "AccuWeigh no mention of modification." That's right, isn't it, the wording?---Yes.

40 And your evidence, if I understand it from earlier, was that it required the handle to be of a certain dimension.---Yes, yes.

And that AccuWeigh would need to propose the scale, they should modify the handle or something to that effect? Sorry, let me withdraw that. Just repeat what you meant by that handwriting there under point 1.---I recall, that should be related to the handle.

And what about the handle? That the handle was too big, too small or something like that?---Yes.

And that was at criteria 4.4.5 that failed, do you recall that?---Can you bring that up?

We'll come to that. I'll withdraw that question and we'll move onto the next point but I will come back to it. And if we go to page 226 of the statement, and you recognise this as being the returnable response by AccuCorp?---Yes, yeah, AccuWeigh, yes.

10 And if we go over to page 228, you see those negative signs, minus signs on the side there?---Ah hmm.

You go to the second one and it says the LP788's quoted in this RFP have been designed to specifically meet the RMS size requirements?---Yes.

Do you agree with that?

THE COMMISSIONER: Sorry, you agree that it's written?

20 MR LONERGAN: No. Do you agree that that statement is true?---Yes. Has been decided, it didn't say have been fabricated, have been modified. It say it have been decided, so - - -

THE COMMISSIONER: Designed.---Yeah, designed. So AccuWeigh can pick whatever brand or whatever model of scale, they can propose whatever they want. They can say this have been designed to specify the met, to, to, to specific - - -

To specifically meet the RMS size requirements?---Yes.

30 MR LONERGAN: So are you saying that the scales that were being proposed by AccuCorp, whilst being designed, did actually meet the RMS requirement, is that your evidence?---Can, can you repeat again?

40 Yes. So what this says is the scales, the LP788s have been designed to meet the RMS requirements specifically but is your evidence that they, in fact, did not meet the RMS requirements?---From what I am understanding, AccuWeigh proposed LP788 model. That LP788 is made in US, so literally AccuWeigh is just picking item off the shelf to propose it to RMS and this is their proposal to propose LP788 and he mentioned that had been decided to, to RMS specification.

So Mr Lee, just take me to the where in your report, or otherwise, it says that these scales did not meet the criteria?

MS WRIGHT: Which criteria?

THE COMMISSIONER: Any particular one or - - -

MR LONERGAN: Well, the size requirements.

THE COMMISSIONER: And when you're talking about the size requirements, that's the ones to house them in the racks or - - -

MR LONERGAN: Yes. Sorry, just before we go off that page, I'll come back to that question so I'll ask you that again but if you just go down to the, you'll see the one where there's a gap and it says AccuWeigh halfway down the page?---Yes.

10

And above that there's the minus sign and it says, "It is understood," do you see where I'm referring to there?---Yeah, yep.

The last two lines of that paragraph, I'll read them to you. It says, "It is believed that the LP788s will fit into this carrycase however AccuWeigh are willing to offer their engineering and design resources to look at alternatives if required." Now, were you aware of that when the tender panel met? ---Yes.

20 Did you agree that the LP788s would fit into the carrycase?---Yes, it's within the dimension, 788.

Well, within what dimensions, Mr Lee?---The, in the, in the requirement, in the specific requirement. The, the, the - - -

So the LP788s were within the specific requirements of the tender?---Yes, yes, the size in terms of dimensions.

30 Right. So you accept that both the design and the product, being the LP788s fit the dimensions of the tender requirements?---Yes.

So if then we go to page 169 of your statement, so did you take any marks off or not assign marks in this evaluation for size of the LP788 scales? --- (No Audible Reply)

THE COMMISSIONER: Sorry, could you say that again?

40 MR LONERGAN: Yes, Commissioner. In this evaluation at 169 did you withdraw any marks or not give any marks to the tender proposal of AccuWeigh based on the size of the scales?---To, to refresh my memory would you be able to bring up which point is regarding to the size?

Yes, of course.---From, from AccuWeigh proposal. It should be 4 point something.

THE COMMISSIONER: Sorry, the actual proposal?---From AccuWeigh.

I think it's at page 235.

THE WITNESS: Yeah. Can you go to the next page?

MR LONERGAN: Do you need 237 is it maybe?

THE COMMISSIONER: I think I'd try 235.

THE WITNESS: 236.

10 MR LONERGAN: Oh, well, split the difference.---236. 4.4 the physical requirement.

Yes, that's right, that's there.---Yeah.

That's not my question.---Yeah.

So I mean obviously let's take that one step at a time. You accept that there are physical requirements in the evaluation criteria that you were to engage in?---Yes.

20

Now, going back to page 169, my question was, based on those criteria did you give or take any marks away from AccuWeigh because of the size of the scales?---I think I will give some mark because that fulfil the dimension requirement.

So let me just summarise that for you. So AccuWeigh fulfilled the dimension requirements of the tender and you assigned positive marks because of that.---In term of the dimension.

30 Yes.---Yes.

Now turning to the weight of the scales. The criteria was that the weight of the scales was less than 18 kilos. Do you accept that?---Yes.

And do you accept that the AccuWeigh scales were 16 kilos?---Yes.

So they satisfy that criteria as well?---Yes.

40 Go to your statement, page 218. And before you look at that, you've got paragraph 72 of your statement there, don't you?---Yes.

So the last sentence in paragraph 72. You've just agreed with me that the scales satisfied all the dimension requirements of the tender, yes?---Yeah, yeah.

And you accept that the scales would fit into the housing.---Yes.

Were there any other scales in the tender evaluation process that would not fit into the housing?---Can you bring up the AccuWeigh submission?

No, no.---To refresh my memory.

Mr Lee, you've refreshed your memory. It's - - -

10 THE COMMISSIONER: No, no, no. If he wants to refresh his memory again, he can. Are you talking about the AccuWeigh - - -?---Submission.
Page 236 or 235?

MR LONERGAN: 236.

THE WITNESS: Can you go to final page? Sorry, page, page 235. So here AccuWeigh is only proposing LP788. So in that tender evaluation meeting, we only have been given LP788 and the PAT scale.

20 MR LONERGAN: That's right.---Yes.

And you've accepted, so just following on from that, so you accept that the PAT scales fitted the dimensions of the tender requirements?---Both of them.

So both the AccuWeigh and the PAT scales fit the dimensions of the tender?---Yes. Yes.

30 So just coming back, then, to my question. There were no scales that did not fit the housing?---Yes. Yes.

THE COMMISSIONER: You agree with that?---I agree with that.

MR LONERGAN: Now, then going on to, we were at 218, weren't we? Sorry, 235 of your – sorry, no, I withdraw all that. It's late in the day.

THE COMMISSIONER: True.

40 MR LONERGAN: We were at 218 before you wanted to go. So if we go back to 218. And this is the criteria again, Mr Lee, and you'll see there 3.1.1.---Yes. Yes.

And you've been asked about the 10 highway agencies.---Ah hmm.

Now, the agencies or the 10 highway agencies that are referred to there, they could be from separate countries and they could be within, from different states within the same country, i.e. 10 different states within the United States of America. Is that your understanding of what that criteria is?

THE COMMISSIONER: Is your view that would be - - -?---No. No.

Okay.---State and country is different.

MR LONERGAN: State and countries are different. I think I agree with you there. But the wording there is “agencies from around the world”. So are you saying that they need to be from separate countries or they can be different states within the same country?---They can, they can say whatever they want and put it here.

10

THE COMMISSIONER: But for you to be satisfied that 3.1.1 was satisfied - - -?---Yes.

- - - did they, you know, for example, did they have to be highway agencies from 10 different countries? Or could somebody put in a submission and say United States, Texas, North Carolina, you know, and refer to 10 states within the United States? Did you have a view on that?---No, no.

20 Did you turn your mind?---To be honest, I didn’t really think about that in that detail.

MR LONERGAN: If we go to volume 11, page 163. Down the bottom, Mr Lee.---Yes.

Now, this is an email from Mr Soliman that was dated 20 June, 2018, and was subsequently sent to you, 29 June, 2018. You see that?---Yeah, yeah.

30 Now, small writing, but right down the bottom under the bold heading Durability.---Yes.

See there it says, “Tenderers must,” so this is the last, well, the last sentence in that paragraph immediately following Durability.---Yeah, yeah.

It says, “Tenderers must advise at least 10 states/countries around the world which have used the tendered scales for 10-plus years.”---Ah hmm, ah hmm.

And that was subsequently sent to you.---Yes. Yes.

40 So do you agree that the criteria incorporated the idea that 10 states within the same country could satisfy the requirement of the tender?---So again this is the information provided by me, provided to me by Mr Soliman, and we incorporate it into our RFP document. And the RFP document that have been published in the eTender website. I, I, I don’t have any idea why are you asking all those draft information before we produce our final RFP document.

Well, it's not really for you to figure it all out. Just answer the questions if you don't mind.---Can you repeat your question again?

I'm just asking you there, well, firstly, did you see it and that you agree that the incorporation of the concept in 3.1.1 of the tender allowed for states within the same country, 10 states within the same country, to satisfy the requirement of the tender 3.1.1?---Yes. Yes.

10 And then if we go to the statement, page 233. And you'll see there that's AccuWeigh's tender response, and you'll see 3.1.1 response.---Yes.

And they put in, well, at least 10 states within the United States.---Yes.

And you accept that that satisfies the criteria as set out in 3.1.1?---Where you, where you come up - - -

20 THE COMMISSIONER: Have you got page – can you see there 3.1.1?
---Yeah, yeah, I, I, yeah, I am asking, where you come up the idea, I accept that.

MR LONERGAN: No, I'm asking you if you accept that the input – so, sorry, let's - - -?---But that's your suggestion, say I am - - -

Mr Lee - - -

THE COMMISSIONER: Hold on, Mr Lee. You - - -?---I know I been a bit, a bit - - -

30 You can see there that, what's this, AccuWeigh's referred to American states.---Yes. Yes.

But it says up the top 10 highway agencies from around the world.---Yes.

Now, Mr Lonergan took you to that email from Mr Soliman where he was giving you feedback from the inspectors.---Yes.

And there was a reference to, I think something like 10 different states or countries.---State/countries, yes.

40 Now, when this was provided by AccuWeigh, you can see that they're all within America, they're relying on 10 different states. Was it your view that AccuWeigh had then satisfied 3.1.1 requirement or was it in your mind it had to be America, England, France, Italy, Singapore? Can you recall whether you were satisfied with that or not?---To me, 3.1.1, I did not satisfy.

But not looking at it now, when you were in the room with Guido and Mr Walker did you turn your mind to that or did you discuss it?---We, we do have discussed it. We point out that, oh, this or US.

And can you recall was your view, did it satisfy 3.1.1 or not?---Will you be able to bring up the handwritten, the scribble I do on that scoring sheet?

Which is page 169.

MS WRIGHT: Commissioner - - -

THE COMMISSIONER: Excuse me, Mr Lonergan.

10

MS WRIGHT: Just concerned it has been an extremely long day for the witness and it's past 4.30. I'm just wondering if we're not going to finish him today, if it might be in the interests of the witness's welfare if he come back?

THE COMMISSIONER: Mr Lonergan, how much longer do you anticipate being?

MR LONERGAN: I should be, like, 10/15 minutes.

20

THE COMMISSIONER: Okay. Mr Boatswain, do you think you'll have any questions?

MR BOATSWAIN: I know I will not have any questions.

THE COMMISSIONER: Ms King, I take it you're not interested and I see Mr Tyson.

30

MR TYSON: Yes, Commissioner. I won't have any questions but can I formally seek leave to appear on behalf of Mr Brett Patterson?

THE COMMISSIONER: Yes. You've been given that authorisation.

MR TYSON: Thank you, Commissioner.

THE COMMISSIONER: Ms Hogan-Doran.

MS HOGAN-DORAN: I may have a few.

40

THE COMMISSIONER: All right. Look, Mr Lee, I'm keen to get you finished today so you don't have to come back tomorrow.---Of course.

I'm going to put it at about 15 minutes. Do you think you can last that long?---Yeah, sure.

MS HOGAN-DORAN: Commissioner, might I enquire, I take it then that Counsel Assisting's not proposing to re-examine?

MS WRIGHT: I have a couple of questions. They won't take long, five minutes, 10 minutes.

THE COMMISSIONER: All right. I propose to continue. Mr Lonergan and everybody else, if we can expedite it, it would be terrific. And sorry, I don't want to put pressure on you but often witnesses would prefer to finish and not have to come back tomorrow.---Of course.

Are you happy with that?---Yep, yep.

10

MR LONERGAN: So your answer that was you didn't think that they met the criteria of the 10 states because they were all states within the United States of America, is that your answer?---Yeah.

And you've got page 169 up there. Where is that reflected in that scoring sheet, Mr Lee?

20

THE COMMISSIONER: Yeah, the considerations of demonstrated ability to perform the services and compliance with the scope of works, where did you include that?---I didn't put any scribble here.

MR LONERGAN: So by your answer you didn't put any scribble, does that mean you didn't take that in as a negative consideration?---You can't draw that.

Well, I'm asking the question, Mr Lee.

THE COMMISSIONER: Did you take it into account?---Yes.

30

And in which if these three boxes, 1, 2, 3, did you take it into account? ---The second one.

MR LONERGAN: And you accept that there's no scribble there in relation to that?---Ah hmm.

If we go to page 234 of the statement, about halfway down in 2017 you'll see there AccuWeigh sold over 130 units of Intercomp wheel pads to Australian Department of Defence?---Yeah.

40

Currently in progress to supply 100 units of Intercomp LS630 to an Australian government department.---Yes.

Now, did you accept that AccuWeigh had provided the 100 plus scales that were required under the tender 3.1.3?---Yes.

THE COMMISSIONER: Mr Lonergan, can I ask, where is this leading?

MR LONERGAN: Commissioner, it's leading to the point, well - - -

THE COMMISSIONER: Are you disputing the scoring or - - -

MR LONERGAN: No, I'm not disputing the scoring at all.

THE COMMISSIONER: Okay.

10 MR LONERGAN: I am rebutting in a sense the, if I understand where Counsel Assisting's questions were pointed in relation to the nature and criteria set out in the tender as leading to a foregone conclusion of only one scale being able to meet it.

THE COMMISSIONER: All right. Don't you come across the big problem that AccuWeigh wasn't OIML certified at that time?

MR LONERGAN: We do.

THE COMMISSIONER: And we can't - - -

20 MR LONERGAN: That is a, well, it's question for submissions but I'll certainly ask Mr Lee - - -

THE COMMISSIONER: Are there any other points that you've got to take Mr Lee to with that?

MR LONERGAN: Only on, well, I'll deal with the OIML, but I've dealt now with all of the discrete criteria within the requirements.

30 THE COMMISSIONER: Okay. Good.

MR LONERGAN: Now, Mr Lee, if we can just bring back up page 169 of your statement.---Yep.

You've got the three criteria there and you've scored a 7, a 2 and an 8 for AccuWeigh, a 6, an 8 and an 8 for Novation.---Yeah, yeah.

And the scoring scale, do you see that down the side there?---(No Audible Reply)

40 Yes. And you see 2 to 3 and it says poor?---2 to 3?

Yes. So on the right-hand side down the, halfway down the page.

THE COMMISSIONER: Scoring scale.---Yeah.

MR LONERGAN: And score, and then it's got 10, 8 to 9, 6 to 7, 4 to 5, 2 to 3, 0 to 1.---Oh, yeah, yeah, yeah.

And 2 to 3, next to it, it says poor?---Yes.

And that says, “Does not meet requirements.”---Yeah.

“Success is possible but not assured.”---Yes.

So your understanding is that with a score of 2 the scales still could be purchased or the tenderer still could be successful.---Yes.

10 Yes. Is that correct?---Yes, yes.

So there was no score that you gave in this tender evaluation process that meant that AccuWeigh’s scales could not be purchased or AccuWeigh could be successful in its tender with RMS.---Again we need to look at the overall scoring, not just particular that requirement.

Yes, that’s for who is successful ultimately between two competing products.---Yes.

20 Yes. But in terms of, just putting aside Novation for a minute if you may, Mr Lee.---Ah hmm.

There is nothing here that prohibits the AccuWeigh scales or the AccuWeigh tender being accepted by RMS based on the scoring criteria. ---It do, it do because they don’t have the OIML certification.

Yes. Sorry, you’re right. Putting aside the certification. If they were certified scales - - -?---Yes.

30 - - - then there is nothing in your scoring that would disentitle the AccuWeigh - - -?---But that’s your suggestion again. You say if they got the certification.

Yes. Yes, Mr Lee. I’m, I’m - - -?---So you’re leading me to thinking - - -

No, no. Mr Lee, just let me ask. I will explain it. Take the hypothetical situation, that the OIML certification was in place.---Yeah.

40 Then there is nothing here that stops the AccuWeigh scales from being successful or AccuWeigh being successful in its tender for the provision of the AccuWeigh scales to RMS.---Yes. I, I agree.

So it is only the - - -

THE COMMISSIONER: You’ve made the point.

MR LONERGAN: Yes. So it is only the OIML certification issue that stopped - - -?---Yes, that, that’s the biggest hurdle.

Yes. So - - -

THE COMMISSIONER: That's the biggest problem.---Yes. Biggest problem, yes.

MR LONERGAN: So, and the OIML was what, in effect, prohibited in your mind AccuWeigh being, well - - -?---That's one of the reason that I have been (not transcribable) into the tender evaluation report. That's one
10 of the point. I put it there.

Yes. Okay, moving on. The, you gave evidence in relation to the tender evaluation meeting regarding how the individuals within the meeting scored the, well, put the scores onto their sheets.---Yes, yes.

Now, you accept that you individually scored and wrote down your scores on your own sheets?---Yes.

Was it the case that you made that decision independent of each of the other
20 two people who were on the tender?---We make our decision independently.

But you may have had discussions before you - - -?---Yes.

- - - made your independent decision?---I agree. I agree.

If we can bring up volume 12, page 244.

THE COMMISSIONER: Have you finished with the statement?

30 MR LONERGAN: Yes, Commissioner.

THE COMMISSIONER: May I retrieve my page, please? Thank you.

MR LONERGAN: You recall you were asked some questions on this before.---Yes.

And you mentioned 18 October, 2018 something happening.---Yes.

Is that something that happened, to your mind, something that would affect
40 the ability of Novation to deliver IRD scales?---I don't have the knowledge to answer your question. I do not know whether - - -

Well, you understand what happened on 18 October, 2018.---Yes, yes.

And to your understanding of what happened there, that would have an impact on the ability - - -?---I don't - - -

MS WRIGHT: I object to that. He can't answer that question.

THE WITNESS: Yeah.

MS WRIGHT: That's requiring the witness to put himself in Novation or Stephen Thammiah's mind. That's not a fair question in my submission.

THE COMMISSIONER: I don't think it's going to assist me, Mr Lonergan.

10 MR LONERGAN: Withdrawn, Commissioner. Volume 12, page 237, please, if that could come up.---Yeah.

You see that was from Novation to you, Mr Lee?---Yes.

And you see there that was the timeline for the delivery of units?---Yes, yes.

So that's when you understood that RMS would be receiving the units that had been ordered from Novation?---Yes.

20 Just give me a second, Commissioner. Sorry, if we go to volume 12, page 240. You'll see that there from Josephine de Guzman and to yourself. ---Yes, yes.

Now, capitalisation of, "We were asked to capitalise the assets." Can you explain what that means?---(No Audible Reply)

THE COMMISSIONER: Can you see in the top one? "The portable weigh scales are ready for use, the asset accounting will chase this up to capitalise the assets."---Capitalise, I - - -

30 Does that mean that they move from being maybe a liability or a debt and actually is it something to do with a different accounting treatment of - - -? ---I think that's a term of accounting, just accounting term.

Do you know?---I don't know what's that mean.

I think we might need an accountant, Mr Lonergan.

40 MR LONERGAN: So putting it on the balance sheet wouldn't be your interpretation of that?---(No Audible Reply)

THE COMMISSIONER: Do you know?---I don't know.

MR LONERGAN: No further questions, Commissioner.

THE COMMISSIONER: Thank you. Ms Hogan-Doran?

MS HOGAN-DORAN: Nothing from me.

THE COMMISSIONER: Ms Wright?

MS WRIGHT: Mr Lee, you were taken to AccuWeigh's tender submission. Could I take you to volume 12, page 234.---Yes.

You were asked about the requirement that tenderers provide an example about use of scales by at least 10 highway agencies around the world.

---Yes, yes.

10

Page 234 of the Tender Evaluation Committee report says in relation to AccuCorp at about the middle of the page, "The tenderer supplied evidence of previous models having a useable lifespan of 10 years and greater, however all the highway agencies were located in only one country."

---Yeah.

Did that mean that AccuCorp was considered not to meet the requirement to demonstrate use by more than 10 highway agencies?---I agree on, that regarding to 3.1.1.

20

I'm asking you, does that sentence in the Tender Evaluation Committee report mean that AccuCorp was considered by the committee not to meet the requirement to demonstrate use by more than 10 highway agencies?

---Yes.

Yes. And you signed this report?---Yes.

You were asked about the certification of the scales proposed by AccuWeigh. Staying on page 234 of the Tender Evaluation Committee report, "AccuCorp had indicated in their submission that the certification was in progress and expected in October 2018." Do you recall that?---Yes.

30

And AccuCorp in its submission in respect of that performance requirement said that it had partially met that requirement?---Yes, yes,

Certification, did you regard as an important issue?---Yes, of course.

But this was in September 2018, wasn't it, this Tender Evaluation Committee decision - - -?---Yes, yes.

40

- - - not to accept AccuCorp's submission?---Yes.

October 2018 was only a month later?---Yes.

Was there any discussion about the ability to wait and see if AccuCorp would get their scales certified?---Because the, because AccuWeigh said it's expected. So that's not a hundred percent which pose the risk to RMS. If

you purchase that scale then what if they can't, they eventually cannot get the certification.

You didn't have to wait long to see though, do you agree?---Yes.

Was there any discussion about waiting and seeing whether they would?
---No.

AccuCorp said that they expected to get it, didn't they?---Yes.

10

So it wasn't a huge risk?---This this a, this this a huge risk to RMS of eventually they cannot get that certification which mean we purchase 425 scale and we can't use it for law enforcement.

Wasn't it the case that you, and which you noted on your score sheet, took into account a range of matters which you thought that AccuCorp scales didn't, a range of requirements which you thought it didn't meet?---Yep.

20

It wasn't only the certification requirement?---That's right, yes, yes. That's only the minor, I shouldn't say minor, it's just only one, one requirement.

And one of them was its failure to demonstrate use by more than 10 highway agencies around the world?---Yes, yes.

Because it couldn't show that in more than one country?---Yes.

30

You were asked by Mr Young some questions about the preference of Mr Soliman for either an open tender process or a select process. Do you recall those questions?---Yep.

And Mr Young asked you whether you could identify any piece of writing where Mr Soliman expressed a preference for something other than an open tender?---Yep.

Could volume 11, page 297 be brought onto the screen. If I could just go back to 296 briefly.---Yep.

40

This is the email that Mr Soliman sent to you when he said he completed and polished the procurement strategy. Do you recall that? I already took you to that.---Yes, yes, yes.

And then at page 297 is a memo to Ms Bailey, Mr Weeks and Mr Bass. Who drafted the memo?---Me.

Then over the page all right 298 is the procurement strategy and I took you to page 299 and you gave evidence that the last two paragraphs were drafted by Mr Soliman. Do you maintain that Mr Soliman drafted those paragraphs?---Ah hmm.

And those paragraphs refer to the Heavy Vehicle Programs Maintenance Panel?---Ah hmm.

And that that tender successfully scanned the market for scale suppliers? ---Yep.

And that there was very high confidence that all relevant suppliers in the niche market were available on the panel?---Yep.

10

Did you regard that as a piece of writing where Mr Soliman had preferred a select or closed tender process?---Yes.

And then at page 301, down the bottom of the page there's a recommendation that RMS issue a request for proposal via the select tender?---Yes.

That is via the Heavy Vehicle Maintenance Panel?---Ah hmm.

20

Who drafted the recommendation?---I think me.

Did you base that on what Mr Soliman had - - -?---Told me, yes.

Told you. Thank you. Nothing further.

THE COMMISSIONER: Now, you raised Ms Wright, that there may be something else that we need to ask Mr Lee about.

30

MS WRIGHT: I think it's very unlikely but could I consider that.

THE COMMISSIONER: Now, Mr Lee, this is hopefully not bad news. I'm not going to excuse you. Counsel Assisting wants to consider whether there was just something else she needed to deal with with you.---Mmm.

If she comes back and says, no, there's nothing, through your legal representatives I will formally excuse you and you don't have to come back.---Okay.

40

But there is a possibility that you might have to come back and ask a couple more questions.---Tomorrow morning.

No, not tomorrow morning.---Okay.

Do not come back tomorrow morning, please. So on that basis, can I thank you very much for coming to give your evidence, and you will either hear through your legal representatives you've been excused or you might be told come back and there's a couple more questions.---So I should be waiting outside?

No, no, no, no, no. Go to work tomorrow as per normal.---Oh, okay.

Yes.---Okay, okay.

All right?---Yes.

MS WRIGHT: Commissioner, we'll make sure that Mr Lee is appraised as to what is going to happen.

10

THE COMMISSIONER: Thank you.

THE WITNESS STOOD DOWN

[4.56pm]

THE COMMISSIONER: All right, everybody. We are adjourned until tomorrow morning. Oh, no. Mr O'Brien.

20 MR O'BRIEN: I'm sorry, Commissioner.

THE COMMISSIONER: That's okay.

MR O'BRIEN: I've been in discussion with those assisting you as to some issues I've had regarding Mr Singh tomorrow. As I understand it, he will not be the first witness called tomorrow morning, and I won't be here for the morning due to some commitments that I've alerted those assisting you about. Ms Tolley will be here in my stead. If my client is resumed in that time, I'll just simply notify you that I'll be back at 2 o'clock and it would be my preference to re-examine him myself. But if it happens that Ms Tolley's here, she's well equipped.

30

THE COMMISSIONER: Look, I'm going to have a discussion with those who assist me about the order. I know Mr Jones has been here, I understand, and also - - -

MS HOGAN-DORAN: Mr Everson is here too.

THE COMMISSIONER: And Mr Everson as well. Can I apologise for the inconvenience to you, but we'll have a discussion. If there's any change, everybody will obviously be notified, but I'll take into account that you should be back at 2.00.

40

MR O'BRIEN: Yes. I may be back earlier, but certainly by 2.00.

THE COMMISSIONER: All right. Thanks, Mr O'Brien.

MR O'BRIEN: Thank you, Commissioner.

THE COMMISSIONER: We're adjourned until 9.30.

AT 4.57PM THE MATTER WAS ADJOURNED ACCORDINGLY
[4.57pm]