



QUEENSLAND HEALTH PAYROLL SYSTEM
COMMISSION OF INQUIRY

Statement of Witness

<i>Name of Witness</i>	John Swinson
<i>Date of Birth</i>	Known to the Commission
<i>Address and contact details</i>	Known to the Commission
<i>Occupation</i>	Partner, King & Wood Mallesons
<i>Officer taking statement</i>	Jonathan Horton
<i>Date taken</i>	25/02/2013 (amended and signed 13/03/2013)

This statement is provided without any knowledge of other evidence that is held by the Commission, or that will be adduced in its Hearings, or any knowledge of the submissions that have or will be made to it. I am prepared to supplement this statement with addendum statements if further matters are raised that are not already canvassed in this statement.

I, John Swinson state;

1. I am a partner of King & Wood Mallesons. I have been a partner of that firm (previously known as Mallesons Stephen Jaques) since 1999.
2. I make this statement in response to a request from Mr Jonathan Horton, junior counsel assisting the Queensland Health Payroll System Commission of Inquiry ("the Inquiry"). This statement has been initially drafted by Mr Horton on the basis of an interview with me on 25 February 2013 at the Inquiry offices in South Brisbane ("the Interview"). The Interview lasted just under 2 hours. I have considered the contents of the statement as drafted by Mr Horton and amended where it was necessary to explain further what had been asked of me at the Interview. Where necessary I have sought to clarify my answers from the Interview, particularly as I did not have access to my files at the Interview and I was asked about matters of which I had neither warning nor time to prepare nor

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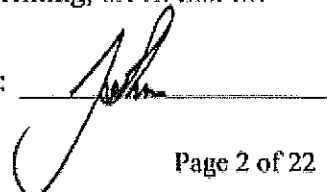
seen documents presented to me at Interview. I have only dealt with topics that were discussed with me at the Interview in this statement as I have assumed they are the only topics of interest for the Inquiry. I have not been asked to undertake a comprehensive review of my files and I have not done so. This statement is based on my recollection, although I have been assisted by documents. Where that has occurred I have referred to the documents – generally they are emails. I was informed by Crown Law before the Interview that the State had waived legal professional privilege in relation to my work with the State on this matter but subject to conditions, which Mr Horton accepted at the Interview. Subsequently, on 8 March 2013, I was advised by letter from Crown Law that all restrictions on the waiver of privilege were lifted by the State.

3. Mallesons was one of the firms on the Queensland Treasury legal panel as at mid-2005 and mid-2007 (and for some time before then). I have carried out legal work for Queensland Treasury on a variety of information technology projects since at least 1998.
4. For example, I assisted Queensland Treasury in contractual arrangements in relation to its whole-of-government system used for preparing the State's budget. I provided legal services to Queensland Treasury in 1999 on a project that was preparing Queensland Treasury for issues that may have arisen on 1 January 2000 due to what was commonly known as the Year 2000 bug.
5. I had involvement with negotiations for two contracts between the State and IBM. The first was entered into on 30 November 2005 and the second was entered into on 5 December 2007. In both these contracts, IBM was engaged by the State to provide services to the State. Additionally, in the 30 November 2005 contract, IBM agreed to provide licensed software to the State. For example, IBM licensed the WorkBrain software to the State pursuant to the 30 November 2005 contract. The 30 November 2005 contract came to be known as the HRBS contract.
6. These contracts, in a broad sense, related to what was then known as the Shared Services Solution program which the State was implementing, albeit that the

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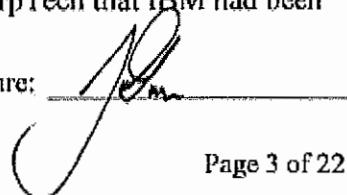
contracts adopt different models for delivery of that initiative. I recall that in 2005, CorpTech employees (whom I cannot now identify) informed me that CorpTech itself was carrying out the various projects, and had engaged contractors (such as Accenture and individual contractors) to perform discrete items of work, and for the most part, CorpTech managed the contractors and assigned priorities. I was engaged by the State to provide legal services to CorpTech in 2005 whereby IBM was to be engaged by CorpTech as one of the contractors providing software and services to CorpTech. In mid-2007, I was told by Keith Millman of Queensland Treasury that this approach was not leading to results, and so the State had decided explore whether a "prime contractor" model, in which CorpTech would appoint a single contractor (the prime contractor) who would take responsibility for the outcome, would be more beneficial. A "prime contractor" model is a well-known IT contracting model. Under a "prime contractor" model, CorpTech would only manage one contractor, who would do some of the work, appoint subcontractors to do other parts of the work, and who would take responsibly for the work of the subcontractors and the day-to-day management of the project.

7. Thus, the 2005 contract with IBM was for discrete pieces of work while the 2007 contract appointed IBM as the prime contractor.
8. There were different engagement processes for my services for the two contracts I have mentioned. My engagement for the 2005 contract followed a selection process which CorpTech established. That agency conducted an RFO (Request for Offer) process in about July 2005. I submitted an offer to CorpTech on behalf of Mallesons Stephen Jaques. I was interviewed by CorpTech as part of that selection process. On 10 August 2005, I received an email from Bruce Roworth, Principal Contract Management Officer at CorpTech, that stated that Mallesons Stephen Jaques had been selected as the preferred supplier of services under that RFO.
9. For the 2005 contract with IBM, I was first engaged by CorpTech to do work in mid-August 2005. I was told by Murray Watt of CorpTech that IBM had been

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shortlisted for the HRBS contract and that I was to provide services as requested by CorpTech relating to the negotiation of a contract with IBM. I was instructed by CorpTech that the contract with IBM was to be a GITC contract. The services that I provided included preparing a risk analysis, preparing a negotiation plan, leading the contract negotiations with IBM, and reviewing schedules to this contract prepared by IBM and CorpTech. The negotiations with IBM were protracted, starting in late August 2005 and ending at the end of November 2005.

10. After completing work on the HRBS contract in November 2005, I was not engaged by CorpTech again until July 2007.
11. For the 2007 contract, I was contacted by Mr Keith Millman from Queensland Treasury Legal Services Unit on 26 July 2007. He asked if I would come to a meeting. After that call, also on 26 July 2007, Keith Millman sent me an email stating that:

"Treasury Department wishes to engage you pursuant to the Legal Services Panel Arrangement 435/000026, to advise on the proposal to engage a "Prime Contractor" to manage the external service providers that provide support to the Shared Services Solutions (SSS) program."

12. I attended a meeting on 27 July 2007 to be briefed about this, and provided oral advice to Keith Millman. I discuss this further below.
13. I have been asked by Mr Horton about an agreement dated 28 July 2005 between the State and IBM. This agreement is what is commonly called a Deed of Variation. I was not involved in its preparation. It looks to me to be variations to the Government Information Technology Conditions (GITC) which IBM had negotiated with the State (through what was then called the GITC branch), although that is an assumption by me.

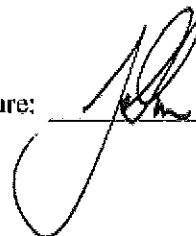
Events before December 2007

14. On 27 July 2007, I was asked by Mr Millman to advise whether the State could appoint a prime contractor to deliver services to CorpTech, as distinct from the previous model it had been operating under.

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15. Up until this stage (mid 2007), the State had been, in effect, its own contract manager. It had contracts with IBM, Accenture, SAP, LogicaCMG and some smaller IT providers for the provision of services to the State, but the State managed the work and perhaps did some of its own programming.
16. I was informed by Mr Millman that that model was not working particularly well.
17. My engagement in July and August 2007 was limited, but later expanded. In general terms, my engagement was to provide legal advice on the prime contractor model, also to assist in the negotiations with the contract, to draft the contract, and to assist with any legal questions that came up during the procurement process.
18. In my interview, Mr Horton asked me about a Request for Information or a Request for Proposal which it has been suggested to me, by Mr Horton, preceded the ITO's issue in July or August 2007. In my interview, I said that I had no knowledge of a Request for Information or a Request for Proposal.
19. I have since reviewed my files in relation to this question. On 7 and 8 August 2007, I was provided with four proposals, from IBM, Accenture, LogicaCMG and SAP. These were provided to me by Marc Blakeney by email, who was a manager in the "Fin Business Admin & Contracts" section at CorpTech. Ms Blakeney also provided me with an overview document of a procurement process that I understood she had prepared, that informed me that these proposals were in response to what was called a "Request for Information" (or "RFI").
20. I did not review these proposals in great detail, which is the reason that I did not remember them in my interview with Mr Horton. I did not review these proposals in great detail because, on 8 August 2007, I was contacted by Ms Blakeney by email and asked to attend a meeting the next day at CorpTech. I was told that Terry Burns and Barbara Perrott (CorpTech Executive Director) and Joanne

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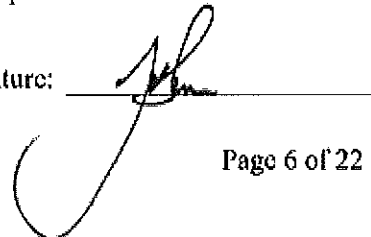
Bugden (Director, Finance, Business Administration and Contracts), were to attend that meeting.

21. I attended that meeting on 9 August 2007, and advised that a formal tender process was necessary, rather than amending the existing contracts to change the services being provided. I also advised that the proposals received in response to the RFI were varied, vague on key elements and had many carve-outs, and could not be treated as offers capable of acceptance by the State. My notes of that meeting (that I provided to Mr Millman and Mr David Ford shortly after the meeting) are attached and marked **JVS1**.
22. On 13 August 2007, I was contacted by Mr Keith Goddard by email, who I believed was a contractor then engaged by CorpTech, who invited me to a meeting with him the next day, and informed me that the purpose of the meeting was to discuss the available strategies for cessation of the current contracts and rapid movement to a prime contract scenario.
23. I attended that meeting with Mr Goddard on 14 August 2007, and again advised that a formal tender process should be used to select the prime contractor. My notes of that meeting are attached and marked **JVS2**.
24. On 22 August 2007, I became aware that CorpTech was preparing what was called an RFO (Request for Offer) document that was later renamed an Invitation to Offer (ITO), and I was provided with a draft of the RFO via email on that date. (I will use the term ITO to avoid confusion.) Over the next 3 weeks, I was engaged by the State to provide legal input in relation to the wording of the ITO document. The ITO document went through at least 17 drafts, and I was informed by Ms Blakeney by email that the final version of the ITO was provided to a group of selected vendors on or about 12 September 2007.
25. My involvement during this period in which the ITO was being prepared, at a general level, was assisting in preparing the legal aspects of the ITO, such as drafting questions to be included in the ITO that were directed to legal issues, and helping the State with its strategy in relation to this procurement and what was

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going to later be negotiations to make sure that the State did not lose leverage and so that the State's legal position could be protected as far as could be negotiated.

26. I drafted what I believe became Response Schedule E (or Response Schedule 5 in earlier drafts) of the ITO. The questions in Response Schedule E were directed to the legal response part of the tender invitation. I did this in the 3 week period discussed above. I made suggestions in relation to other parts of the ITO document where I believed legal input was required.
27. I helped draft questions for the ITO concerning compliance with the bidder's ability to contract quickly because I was instructed orally on a number of occasions this was an urgent project. This was set out in Response Schedule E, under the heading "Timing".

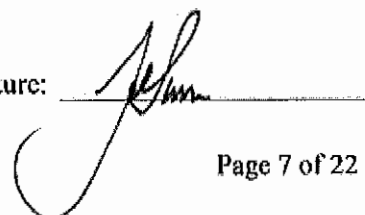
Mr Burns

28. In 2007, I had the understanding that the Under-Treasurer had engaged Mr Terry Burns as a consultant to review the then current operating model of CorpTech. This was my understanding because it appeared to me that Mr Burns was reporting to the Under-Treasurer (Mr Bradley) or an assistant Under-Treasurer (Mr Ford). I recall that I was told that Mr Burns produced a report which said that it would be more advantageous for the State to have a prime contractor so the State could deal with one entity and because the prime contractor could then take responsibility and subcontract where needed to third parties. I do not recall seeing this report, and I cannot remember who told me this information or when it was told to me.
29. The first time I met Mr Terry Burns was at a time after Mr Millman had called me and asked me to come to the meeting to which I referred above. That would have been shortly after 26 July 2007. Prior to 2007, I had previously worked with Mr Millman, Mr Goddard and Mr Darrin Bond on other projects and contracts (unrelated to the ones the subject of this Inquiry) but not with Mr Burns.

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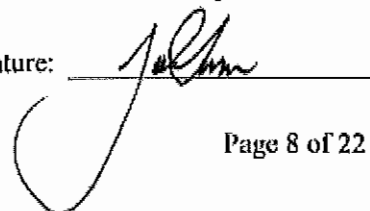
My role in the ITO Evaluation – September/October 2007

30. My attention has been drawn by Mr Horton to the Evaluation Report for the ITO which mentions my role as “Legal Review and Probity Advisor”. It is incorrect to describe me as probity advisor. I was never retained by the State to be probity advisor on the project nor ever asked to do so. I was not aware of who was probity advisor. The issue did not concern me because I considered that an external probity advisor was not required on the project because government procurement officers carried out tasks to ensure probity, and in some other similar government IT procurements prior to this time there was no external probity officer. My role is best summarised in a sign off letter that I gave to Treasury in December 2007 about the time that the final draft of the contract was prepared. That letter sets out what my role was and what I did and did not do. That letter is attached and marked JVS3.
31. I am not aware of anyone else on the tender evaluation panel who could properly be classed as an external probity adviser. As far as I am aware, there was not an external probity auditor for this tender. There were people like Maree Blakeney, (whose role was a contract and procurement manager), who was following what I understood to be standard State government procurement processes and using standard government documentation. There is no legal requirement of which I was aware at the time that there be an external probity adviser.
32. I did give legal advice on a probity issue in the course of the ITO evaluation in or late October 2007. On 19 October 2007, Victoria Atlas from the Accenture Legal Group sent me an email that she said was received by Accenture on 10 October titled “IBM Costing”. I was invited by Ms Blakeney to a meeting with Barbara Perrott and Jan Dalton from CorpTech and Simon Porter and Marcus Safouk of Accenture at 5pm on 22 October 2007. At that meeting, I was advised I believe by Mr Porter that an Accenture contractor (working at that time for the State) had accessed IBM pricing. Accenture raised this matter themselves with the State. Shortly after that meeting, I reported to Mr Millman (who did not attend that meeting) that Accenture were prepared to swear an affidavit that they did not use

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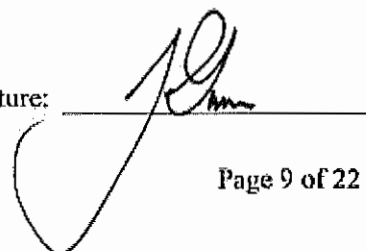
the information that the contractor had accessed, and that Accenture would dismiss the contractor, who was on an Accenture sponsored visa (from Italy). I said that QG is still investigating. A question which I was asked by Mr Millman was whether Accenture was in breach of any contract with the State arising out of this conduct.

33. Related to this issue (but arising before the ITO was issued), there was a concern raised (I do not remember who raised this concern) that events like this could occur with bid documents because of the large number of contractors working within CorpTech. As a consequence, I recommended to CorpTech that the original bid documents could be delivered to Mallesons offices instead of being lodged through the typical government tender box process or government online system, where a contractor for a bidder may be able to access another bidder's offer.
34. After the bids had been submitted, I provided them to CorpTech, and more and more people had access to these bid documents, as part of the evaluation process.
35. The probity issue I first mentioned above at [32] was the subject of emails between Mr Millman and me. I do not recall giving formal written advice on that issue.
36. Mr Horton has asked if I was aware of any suggestion that IBM ever had access to Accenture's pricing at the time of the preparation of the bids. I do not currently recall any such suggestion.
37. I have been asked by Mr Horton if there was a conflict of interest register for members of the evaluation panel. At the present time, I cannot remember if there was such a conflict of interest register. I was asked by Ms Blakeney in an email dated 7 August 2007 to sign a conflict of interest declaration. I did not do so because I was already under an ethical duty to the client and, in addition, the

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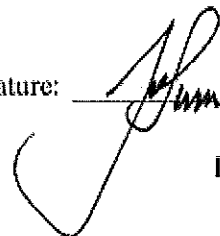
Legal Services Panel Arrangement 435/000026 already imposed confidentiality and conflict of interest obligations on me.

38. I attended some meetings of the evaluation panel during the period of 8 October to 18 October 2007.
39. My role in the evaluation was, in a general sense, to do an evaluation of the legal responses to the tender. A draft contract (GITC) and draft contract outline questions (Response Schedule E) had been included with the tender responses. I had to look at the contract outline questions and check how the bidders had responded to them.
40. One of the evaluation sub teams was "Legal and Procurement". A copy of the report of the group on that issue is attached and marked **JVS4**. The team lead on that sub-issue was Marce Blakeney. I provided input into that report and a part of the report is my drafting. My recollection is that Ms Blakeney's role in the preparation of the document marked JVS4 and in the evaluation process generally was wider than mine. I looked at legal issues and she looked at issues such as vendor management; broader business issues which were related to legal and procurement.
41. Mr Horton has advised me that Clause 7 of the ITO established a process for bidders making inquiries. I edited and added to Clause 7 of the ITO when the ITO was being prepared. My understanding of the intention of Clause 7 was to prevent the Offerors communicating with the State outside of the official tender and negotiation process.
42. In response to a question from Mr Horton regarding the offers submitted by IBM and Accenture, I recall that there was a difference in architecture proposed between IBM and Accenture. A major technical difference between them was whether one function (awards processing) should be external to the SAP program or alternatively, whether this function should take place within the SAP

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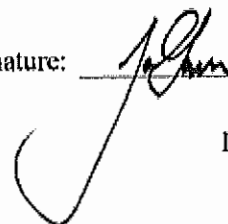
environment. IBM's proposal was to build externally, using software known as WorkBrain that the State had licensed from IBM for this project in 1995, pursuant to the HRBS contract referred to above. Accenture's proposal was to do the awards processing within the SAP environment. There were technical discussions between the project team as to which model was best. I was aware of those discussions from my attendances at the meetings referred to at [38] above, but I did not contribute to them in a material way because they related to technical issues. However, I considered that I had to be aware of such issues, as they may impact the negotiation or drafting of the contract. (In fact, as it turned out, this issue was explicitly covered in the contract with IBM in clause 5.3 and in Schedules 26 and 46.)

43. I recall that the WorkBrain issue was one of the key issues when looking at the differences between the Accenture and IBM bids from a technical point of view between the two proposals.
44. At some time during the process (I cannot recall exactly when, but I believe it was after IBM had been shortlisted), IBM made a presentation to the State regarding WorkBrain Scalability. The IBM presentation was included as Schedule 46 of the contract between IBM and the State. Mr Horton has identified that on sheet 6 of that presentation, that scalability testing of WorkBrain as the awards engine for rostering agencies is mentioned. I was not involved in relation to these tests. My vague recollection is that I was told the tests were not positive but I cannot now recall in what way they were not positive. I was not involved in the testing at all.
45. Mr Horton has asked me if I decided the weighting of the various evaluation criteria. I did not.
46. I have been shown by Mr Horton, a document titled "Preliminary comments on key issues and roadblocks". That document is attached and marked **JVS5**. This document is the preliminary report of the legal and procurement evaluation team to Maree Blakeney. Ms Blakeney was the team lead of that stream.

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47. Attached to document JVS5 is a spreadsheet. The handwriting on that document is not mine. I do not recall having any involvement in preparing this document.
48. There is a note at the foot of the spreadsheet to the effect that legally, Accenture and IBM were on par. I had not seen this comment before but I agree with it. I did not write the comment. The comment is consistent with the sub-team report observation that the difference between Accenture and IBM was minimal on the legal issues. This conclusion was largely based on the answers that Accenture and IBM gave to Response Schedule E included with their tender responses.
49. At the end of the evaluation process, I recall writing to CorpTech saying that this was one of the one best Government tender processes I had seen, in terms of effort trying to get to the best decision for the State. Mr Horton has asked me if I recall saying that to Ms Perrott. I do not so recall specifically, but I did send an email to the project team on 6 December 2007 after the contract was signed saying words to the effect that this was one of the best contract processes I had been involved in.

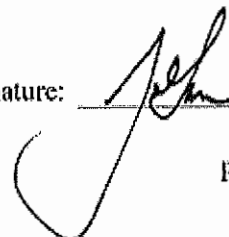
Contract negotiations with IBM

50. IBM was ranked as the preferred supplier by the project evaluation team and contract negotiations were entered into with IBM. The start date for contract negotiations was delayed slightly, and I was told by Terry Burns on 24 September 2007 that this was because the Treasurer was to be briefed prior to negotiations with IBM commencing.
51. As is typical in tendering processes of this nature, the contract negotiation period with the preferred offeror was an extension of the procurement and selection process. During the contract negotiation period, Accenture's bid was kept in abeyance, in the event that contractual terms could not be agreed with IBM. A purpose of the negotiation process was to try to improve the State's position when compared with the offer that had been submitted.

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52. I was the lead legal negotiator, and drafted part of the contract, supervised other lawyers from my firm who drafted other parts of the contract, and reviewed all parts of the contract (whether drafted by Mallesons or IBM). Mr Burns informed me and Mr Millman on 24 September 2007 that he had the position of "Lead negotiator, high level contract review and strategist" and that my role was "Legal advisor and contract compilation". The Contract and drafts of it were prepared by Mallesons. Some parts of the contract annexures/schedules were prepared by others. The contract included standard GTC terms, which were not drafted by Mallesons.
53. Three Statements of Scope were annexed to the Contract at the time it was executed. These were included in the DVD version of the contract, but not in the printed version of the contract, as set out in clause 4.4 of the contract.

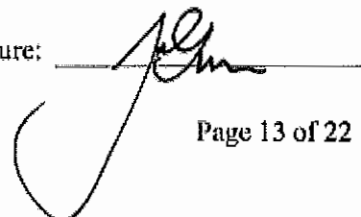
Mr Burns

54. As stated above, I understood at in 2007 that Mr Burns had undertaken a review at CorpTech and suggested the prime contractor model. He had a leading role in that review process and, as far as I was aware, he was reporting to Gerard Bradley, the then Under-Treasurer, and did not report to CorpTech in relation to the review. Once his report had been considered by Treasury, I believe that Mr Burns took on a different role, which was to implement recommendations in his report. In this role, I cannot remember who Mr Burns reported to.
55. As far as I was aware, Mr Burns was contracted to the State, not employed by it, although I am unaware of the terms of such engagement and have never seen his contract.
56. My recollection is that Mr Burns was also a key person in the evaluation process.
57. My recollection is that Mr Burns attended contract negotiations with IBM and played an advisory role to employees of the State in them. I recall that questions

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would come up in such discussions about business issues, such as how to deal with pricing where the scope was not yet fully defined. He was, in effect, my communication back into CorpTech, along with others who attended the negotiations on behalf of CorpTech.

58. I met Mr Burns only after he had been appointed. As far as I am aware, I had not met him before that time.
59. In November and December 2007, Mr Burns was looking to buy an apartment in Brisbane to live in during the week, as he told me that his primary residence was near Noosa. During this period, I recommended some apartment buildings that Mr Burns should consider. Mr Burns did not like my recommendations of apartment buildings, and he told me he purchased an apartment in Spring Hill. I vaguely recall that Mr Burns asked for my recommendation for a conveyancing lawyer, and I recommended Michael Drummond and his wife Lisa Drummond, who were then on the Mallesons list for use by Mallesons staff.
60. When Mr Burns was at Queensland Health after he left his position with CorpTech, Mr Burns introduced Mallesons to Mr Peter Douglas at Queensland Health. I provided two written advices to Mr Douglas at Queensland Health in August 2008 regarding the IBM contract. We were engaged directly by Queensland Health and we billed Queensland Health directly. Mr Burns also arranged for me to brief Mr Adrian Shea of Queensland Health in July 2009 regarding the IBM contract.
61. After leaving CorpTech, I understood that Mr Burns ran a number of businesses and had other IT engagements. At one time, I believe after leaving CorpTech, Mr Burns told me he had obtained a real estate agent's license, and he was considering purchasing a business broking business located on the Sunshine Coast (as discussed below). Another time, again I believe after leaving CorpTech, Mr Burns told me that he was going to be doing IT project work in India and I think Singapore.

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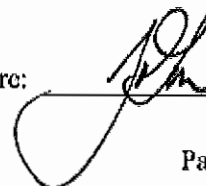


62. From time to time, after he left his position with CorpTech, Mr Burns asked me for legal advice in relation to some of those businesses. For example, when Mr Burns (through his company, Cavendish Risk Management) was negotiating to purchase part of a business broking business, he told me that he was not getting prompt responses from his then solicitor. He asked me to look at the contract and shareholders agreement prepared by the vendor's solicitor, which I did, and I provided Mr Burns with some comments for him to discuss with the vendor's solicitor. This was in about October 2009.
63. Mr Burns told me that he had an interest in a company that distributed a product in New Zealand that had been developed by Minter Ellison. I remember that the company or product was named SafeTrac or similar, and that it did compliance management training. Mr Burns asked me, I think in late 2009, to look at the distribution contract concerning this, but my present recollection is that I was unable to be of much assistance to him because it involved New Zealand legal issues.
64. At the Interview, Mr Horton drew my attention to my name appearing on the Cavendish Risk Management ("Cavendish") website, a company I understand to be associated with Mr Burns. This was the first time I had seen this page on this website. Mr Horton (nor anyone with the Inquiry) did not raise Cavendish with me before the Interview. Both my details and that of Kirsten Bowe, a special counsel at King & Wood Malleons, who works with me, were listed on the website. I have no involvement with Cavendish and, as far as I am aware, neither does Ms Bowe. I recall that in 2009, Mr Burns had a proposal that he discussed with me. He wanted to go out and propose to people the idea of doing risk assurance on IT projects; and wanted Malleons to be on his team, to provide legal advice to his clients as part of his services. I agreed with this. I remember that Mr Burns produced a brochure or Powerpoint presentation in about July or August 2009 that discussed this service offering of Cavendish, which Mr Burns called a "Program Assurance" service, and that included my name as a person

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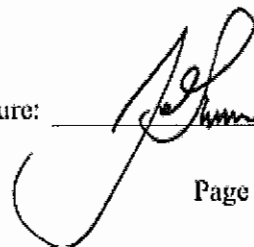
who could provide legal advice in this area to Mr Burns' clients. I was not aware of the web page that has been put to me or of my name being on it.

65. I was never a partner of Cavendish and I did not authorise my name being used in the manner that it has on that website.
66. I did not receive any legal work from any of Mr Burns' clients, and as far as I can remember, I did not participate in any pitches or presentations to any of Mr Burns' clients.
67. On 13 November 2009, as part of Mallesons usual CLE client seminar series, I invited Mr Burns to be a guest speaker at a presentation in Mallesons' offices in Brisbane, to talk about lessons he had learnt in relation to large IT projects. It is not uncommon for Mallesons to invite guest speakers, including clients and consultants, to participate in CLE client seminars. This seminar was titled "Project Implementation Breakfast Seminar".
68. At the Interview, Mr Horton showed me a company search for Training Dynamics Pty Ltd. It shows me as a former shareholder. Mr Horton (nor anyone connected with the Inquiry) had not raised this matter with me before the Interview. Subsequently, I examined my personal records and recalled that in late October 2009, Mr Burns approached me with a proposal.
69. As discussed above, I recall that, in October 2009, Mr Burns was a consultant to or agent or distributor for a Minter Ellison company (SafeTrac) that was providing compliance management training solutions to clients. I remember Mr Burns discussing with me various plans and options he had for this business. At the Interview, when asked by Mr Horton, I said that I thought that perhaps Mr Burns was in partnership with Minter Ellison and wanted to set up a company to provide legal or compliance training to people and he asked me whether I wanted to be involved or whether Mallesons wanted to be involved instead. I told Mr Horton

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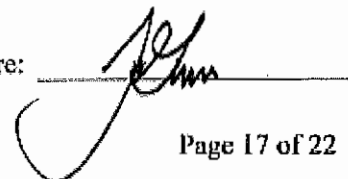
that I went and consulted with people in Mallesons and said, "Yes, we want to be involved".

70. At the Interview, I told Mr Horton that I cannot remember being a shareholder of Training Dynamics Pty Ltd.
71. Having now reviewed my records I recall that in October 2009, Mr Burns asked me if I wanted to be involved with a new company that would do compliance training. This company was to be different to the business that Mr Burns was involved in with Minter Ellison, in that the intention was that the new company would source and own its own content. The ASIC records for Training Dynamics Pty Ltd have me listed as a shareholder with 10 \$1 shares (out of 100 shares, with Cavendish Risk Management having 50 shares and another company Rainbow Consultants having 40 shares) when the company registered in November 2009. The shares were issued to me as trustee of a family trust. I refer to an email exchange with Mr Burns and an associate of his, Mr Paul Feng of HMW Partners between 28 – 30 October 2009, a copy of which is attached and marked JVS6. I have reviewed my files and recall that the shares were issued, on the understanding that I would have to make a capital contribution at a later time to cover operating expenses. I did make such a financial contribution in about March 2010, which was about \$1,000. In late 2009 and early 2010, I provided input to this company about the selection of the company name, trade mark registration, domain names and the like. I spoke with some people who were prospects to write some of the content, and I looked at software that was intended to be used by the company, and provided my thoughts about this, and I prepared a draft contract to be used with authors. I did not take an active part in the operations of the company. By the time the company was actually formed, Mallesons was less interested in getting involved directly, and I recall that my interest was really as a possible venture for my family at a later stage if the company succeeded. The company did not do anything, and I learnt at the Interview that the company was deregistered in February 2012. My last involvement with the company was in about March 2010. I believe that all people

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involved lost interest in progressing this business within about 3 to 4 months of when the company was established.

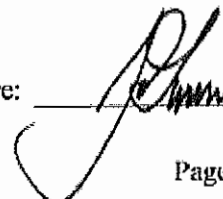
Advice on the contract

72. I gave some written preliminary legal advice to the State on 24 July 2008. It was requested urgently, I believe by Chris Bird of CorpTech. The draft statement prepared by Mr Horton attached a copy of a draft advice dated 23 July 2008 as annexure "JS3". I have removed this annexure. A copy of the finalised advice of 24 July 2008 is attached and marked JVS7. That advice dealt with two major issues: the Housing HR solution (which had already been rolled out, with Accenture as the implementation partner, and this system had a known problem being the time it took to process a payroll run); and the other is whether schedule 22A of the 2007 IBM Contract was legally binding. Schedule 22A was the governance schedule. Mr Horton did not discuss this advice with me at the interview.
73. My recollection was that this was the first time I had been asked to give formal advice about the contract since it was entered into in December 2007. By then, I was told (I believe by John Beeston or Chris Bird) that there had been over 100 agreed contract variations. I was not provided with them at the time of the advice nor had I advised on them. I had, however, seen some Change Requests concerning the contract in 2007, but I cannot remember when I was first provided with such Change Requests.
74. From about mid July 2008, difficulties were being expressed to me by State employees with IBM's performance under the contract. Three people in particular expressed to me such difficulties: Malcolm Campbell, John Beeston and Chris Bird. Those communications were sporadic and for the most part informal, but at times resulted in formal instructions to me, for example, to prepare a written advice or to review or draft a proposed letter to IBM.

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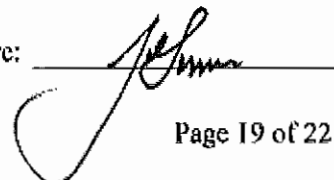


75. On 14 August 2008, I was provided by Terry Burns with a delay notice sent by IBM to CorpTech dated 8 August 2008. I was asked by Chris Bird to provide legal advice in relation to this delay notice.
76. I was asked by John Beeston to review a response prepared by CorpTech that was to be sent to IBM in response to the 8 August 2008 delay notice. On 22 August 2008, I provided a mark-up of the CorpTech letter to be sent to Bill Doak of IBM.
77. On 25 August 2008, I provided legal advice to CorpTech regarding IBM's performance under the contract. A copy of that advice is attached and marked JVS8. I was informed by John Beeston by email that this advice was reviewed by Barbara Perrott of CorpTech and Boyd Backhouse, Director of Legal Services at Department of Public Works.
78. From July 2008 until 2010, I had a number of dealings with Malcolm Campbell, John Beeston and Chris Bird about real worries they had about IBM's performance.
79. For example, in March 2009, Chris Bird asked me to help prepare a formal notice to IBM, along with a briefing note to CorpTech. On 23 March 2009, I provided to Chris Bird a draft notice titled "Schedule S17 Notice to Remedy".
80. As far as I am aware, this notice was not sent to IBM. On Monday, 30 March 2009, I received an email from Chris Bird that stated:
- On Friday Senior Health and CorpTech Management met with IBM and made an offer of an extra 5 Million Dollars (Healths to pay) to complete the Solution by September, but excluding some scope items. Can you therefore please pause on the briefing note (unless of course you have nearly completed it). Bill Doak apparently seemed to accept the offer in the meeting, so we will see when we formalise the CCD.
81. As far as I am aware it was not until 12 May 2010 that a notice was served on IBM by the State alleging a breach of the contract by IBM. I recall that, at that time after the notice had been served, Chris Bird or John Beeston invited me out for a beer because they said, in words to the effect that, "We've been trying to get a letter to IBM saying that there's been a breach for years now and we finally got

Witness signature:



Officer signature:



permission to send them a notice that said "breach", and they wanted to celebrate the notice. I cannot remember if we actually ever went out for a beer or not.

82. Generally, I had limited or sporadic involvement in relation to the contract with IBM between when it was signed and 2010. I can say, however, that some people (such as Malcolm Campbell, John Beeston, Chris Bird and Terry Burns) were expressing certain concerns to me about IBM's performance under the contract, but I could not see anything was being done by the State in a formal sense to exercise the State's contractual rights against IBM.

83. I also recall Malcolm Campbell, John Beeston and Chris Bird saying to me, during 2009, that their managers had told them that the approach to IBM that these men were recommending was too aggressive. I recall that Malcolm Campbell, John Beeston and Chris Bird were agitating to take formal action against IBM under the contract. At one stage, I understood from discussions that I had with Barbara Perrott, Malcolm Campbell, John Beeston and Chris Bird that IBM complained to senior executives at CorpTech about John Beeston's behaviour, and I believe that he was removed from the project.

84. At the request of Chris Bird, I was asked to prepare a letter from Barbara Perrott, executive director of CorpTech, to Bill Doak of IBM, to protect the State's position. I sent a draft letter to Chris Bird, copied to John Beeston and Malcolm Campbell, on 23 December 2009. The letter included the paragraph:

Moreover, IBM is now in material breach of its obligations under SOW 8, and in particular, IBM has failed to meet the 18 November 2008 date set out in SOW 8.

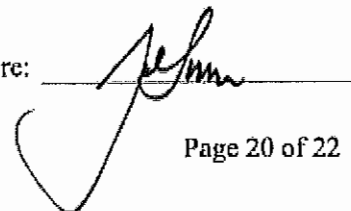
85. On 15 January 2010, I was informed by Chris Bird that this letter was not sent to IBM, and that CorpTech did not want to issue a breach notice at this time because it would commit the State to a course of action.

86. I had meetings with Barbara Perrott and James Brown about these matters in 2009 and 2010. Mr Brown said to me on occasions during this period that he wanted to have a more cooperative relationship with IBM than would result if we sent a

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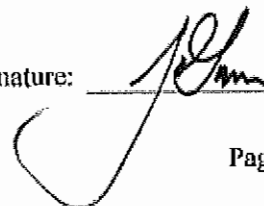
breach notice. I do not recall Barbara Perrott expressing any views to me on this matter. I recall that it was my impression and no more, that she seemed to listen to advice from Mr Brown. Mr Brown reported to Ms Perrott.

87. I attended a meeting on 29 January 2009 with John Beeston, Malcolm Campbell, Chris Bird, Lynelle Adams, Terry Burns, Boyd Backhouse, Leasa Crisp (all representing the State) and Bill Doak and Paul Ray (both from IBM), as well as Kirsten Bowe of our office. Ms Bowe's file note of the meeting is attached and marked **JVS9**. I recall that Mr Beeston expressed the view that the State was unhappy with IBM's performance and had missed deadlines and he wanted to know what was going to get done and by when. Bill Doak tried to reassure the meeting that things would happen.
88. I remember two things about that meeting: Mr Campbell was quite aggressive towards IBM. I could see he was quite frustrated; and I remember saying in that meeting that IBM had missed a date (I cannot remember which date). I said to Bill Doak that IBM was in breach of the contract for missing the date. Mr Doak proposed a new schedule and I said that that should not be a contract variation because a contract variation would remove the breach and set a new date. I said words to the effect that, "The State would want to hold you to the contract and that IBM can remedy the breach through the usual process, and so no contract amendment was necessary".
89. Mr Doak wanted the matter the subject of the breach to be removed by a contract variation and I said that it was not acceptable to the State.
90. I recall that Mr Doak threatened to stop work if the State 'went legal' and that IBM would walk off the job. The threat was, in my view at the time, in breach of the contract. I can remember saying to the CorpTech representatives at the meeting in words to the effect that "IBM is in breach, but we're not going to talk about the breach because if we do that, he's going to walk out, so let's just park that issue and try to get resolution".

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91. My recollection is that there were meant to be subsequent meetings after this meeting with IBM. As far as I know, they never happened. I was told by John Beeston that Mr Doak went to see the Director-General of the Department of Public Works on 30 January 2009.

92. I recall it being reported back to me by John Beeston that IBM informed CorpTech that we had been too threatening in the meeting. As far as I recall, the approach to move forward that I thought was agreed with Mr Doak at the 29 January 2009 meeting did not progress.

Declaration

This written statement by me dated 13 March 2013 and contained in the pages numbered 1 to 22 is true and correct to the best of my knowledge and belief subject to the matters identified in the preamble and second paragraph of this statement.

Signed at BRISBANE Signature this 13 day of MARCH 2013

Witnessed:

Name Rebecca Slater Signature Rebecca Slater Rank Solicitor Reg. No. _____

Witness signature:

Rebecca Slater

Officer signature:

[Signature]



**QUEENSLAND HEALTH PAYROLL SYSTEM
COMMISSION OF INQUIRY**

Annexure(s) to Statement of JOHN SWINSON

Items to be annexed to the statement of John Swinson signed on 13 March 2013:

Annexure	Description
JVS1	Notes from meeting of 9 August 2007
JVS2	Notes from meeting of 14 August 2007
JVS3	Letter from John Swinson to Keith Millman dated 5 December 2007
JVS4	Team Evaluation report for "Procurement and Legal" dated 19 October 2007
JVS5	Document titled "Preliminary Comments on key issues and road blocks"
JVS6	Chain of emails between John Swinson, Terry Burns and Paul Feng titled "Registration for Trading Dynamics" dated 28-30 October 2009
JVS7	Mallesons Stephen Jaques Memorandum of legal advice re IBM Contract dated 24 July 2008
JVS8	Mallesons Stephen Jaques Memorandum of legal advice re IBM Contract dated 25 August 2008
JVS9	File note from meeting of 29 January 2009

Witness signature:

R. Slater

Officer signature:

[Signature]

JVS1

**Notes for Meeting
SSS Program
9 August 2007**

- 1 This is a big, strategic project. Whoever is selected will make millions of dollars profit over the next few years and, if successfully, will be in the driving seat for future work.
- 2 The existing contractors are keen to have a decision made quickly, so that they can "start work" under the new arrangements without a proper negotiation. If so, they will get entrenched and leverage will be lost.
- 3 The proposals were varied, vague on key elements and had many carve-outs. They cannot be treated as offers.
- 4 The new proposed "prime contract" model is significantly different to the current contractual model. The current contracts cannot be amended to cater for a new arrangement along the lines proposed by the existing contractors.
- 5 A formal tender process will be needed. This process can be a closed (invitation only) tender, and can be more tailored and faster than a full public tender.
- 6 It is very important to specify exactly what is required, as best as possible, in the tender. Key issues are:
 - what is the best pricing model?
 - is a risk/reward component appropriate here?
 - what is the governance model?
 - can scope be defined now, and if not, how can it be defined as the project goes on?
 -
- 7 Prior to going to tender, the internal governance model must be decided and explained in the tender documents.
- 8 The potential bidders must be given enough time to put together a considered and careful binding response.
- 9 A new contract must be prepared and negotiated.
- 10 GITC can be used as a basis for the new contract, but much work will be needed. GITC is not really suited for this kind of arrangement, but it can be made to work. Careful thought needs to go into parts of this contract, to ensure that the project progresses smoothly and that value is obtained. Typically, negotiation of a contract for this type and scale of project will take at least one month.

JVS2

Notes from SSS Program Meeting
14 August 2007

- 1 If CorpTech decides that SAP and Logica do not have a realistic chance of winning the prime contract, it would be best to so inform them -- and to begin to work with them and the remaining bidders to determine their role going forward.
 - The substance of any letter to SAP and Logica should be carefully worded, though the substance of any verbal communication will be equally important
 - Careful thought should be given (from both a practical business perspective, as well as a legal perspective) as to any steps that CorpTech might take to end the relationship with Logica
- 2 There is some real benefit from going through the scoping process with the remaining bidders
 - It will help CorpTech better define its goals and preferences
 - It will result in formal proposals from the remaining bidders that are in-line with CorpTech's goals and preferences
- 3 The ongoing scoping discussions should not focus on pricing, but rather on resource allocation, structuring and approach.
 - As part of this process, CorpTech should ask the remaining bidders how they would propose to work with the unsuccessful bidders
- 4 As previously mentioned, though a formal tender process should be used (especially considering the high cost and potential risk of the project), the process can be closed and can be more tailored
 - The ability to tailor the process will depend on CorpTech's ability to clearly define its goals and preferences to the remaining bidders
- 5 While there are benefits to moving quickly at all steps along the process, there are also potential negative consequences that should be con
 - If the scoping process is cut too short, CorpTech's goals might not be as clearly defined as would otherwise be the case, which could result in proposals (and ultimately a contract, a structure and a program) that does not meet CorpTech's needs
 - If the tender process is shortened too much, the bids from the remaining bidders might not be well considered and thorough, which can result delay during the contract negotiation process and beyond
 - If CorpTech is too quick to select a winning bid, and starts early work with the winner, it can result in the winning bidder becoming quickly entrenched and a loss of leverage for CorpTech
 - In the meantime, while the process is continuing, CorpTech can continue to work with the remaining bidders under the existing contractual arrangements
- 6 Once a final decision is made regarding the award of the prime contract, CorpTech and the winning bidder will need at least 4 weeks to negotiate the prime contract
 - Considering the size and scope of the project, both sides -- CorpTech and the winning bidder -- will likely have a large number of people involved in connection with the final contract
 - While discussions with the winning bidder are ongoing, CorpTech should try to retain as much leverage as possible by keeping the unsuccessful bidder on stand-by in case the negotiations with the winning bidder stall or break-down

JVS3

Mr Keith Millman
Queensland Treasury
GPO Box 611
BRISBANE QLD 4001

5 December 2007

John Swinson
Partner
Direct line
+61 7 3244 8050

Dear Mr Millman

Customer Contract between IBM Australia Ltd and State of Queensland for the appointment of a prime contractor for the Shared Services Solutions Program for the Queensland Government

The purpose of this letter is to provide our legal certification to the State of Queensland in relation to a proposed contract between the State of Queensland with IBM Australia Ltd ("IBM") titled "Customer Contract between IBM Australia Ltd and State of Queensland for the appointment of a prime contractor for the Shared Services Solution Program for the Queensland Government" ("the Agreement").

The Agreement results from a competitive tender process and subsequent negotiations with IBM. We have acted as legal adviser to the State in connection with this process.

The Agreement is a GITC version 5 contract, and includes all the usual GITC protections (subject to IBM's Deed of Variation with the Contract Authority). In addition, IBM have agreed to include a number of further contractual provisions in favour of the State that go beyond those set out in the GITC framework.

Pursuant to the Agreement, IBM is taking on the role of prime contractor in relation to an existing shared services project. Work has been done by others that IBM will take over. During the negotiations, IBM started work on an interim basis, pursuant to a pre-existing contractual arrangement, to ensure that time and resources were not lost during the negotiation period. As such, this situation is different to a normal technology contract. Accordingly, the Agreement deals with a number of issues and risks that do not normally arise in a usual procurement process.

Although the contract negotiation team has aimed to deal with all identifiable risks in the Agreement, some risks still remain. We have provided you with a list of risks that are not fully covered in the Agreement or relate to internal behaviours that are not usually dealt with in a contract such as this. Accordingly, it is extremely important to the success of this project that the Agreement and relationship with IBM is properly managed.

As legal advisers, we have reviewed and commented on the tender process and negotiation strategy. We have also taken a leading role in the negotiation process and in drafting relevant contractual provisions and schedules.

Based on the information provided to us by the State and IBM, we are not aware of any material legal issues relating to the Agreement that should cause the State concern.

The State has also engaged consultants to provide assistance in relation to this Agreement and associated project. We have not provided any financial, audit, tax or technical advice to the State in connection with the Agreement. In particular, we have not advised on commercial aspects of the Agreement. We have relied on the State in relation to the preparation of the technical schedules (such as the Statements of Work) and the pricing schedules.

Based on our instructions, we are of the opinion that the Agreement is suitable for execution by the State.

Thank you for instructing Mallesons, and we look forward to hearing further about the State's successful implementation of the Finance and HR solutions.

Yours faithfully

JVS4

4.7.1



**Queensland
Government**

Treasury

TEAM EVALUATION REPORT
for
ITO No: 435 / 000334
for
Shared Services Program & Corptech

Date: 19 October 2007

Team: Procurement and Legal
Team Lead: Maree Blakoney

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1.0 INVITATION TO OFFER

CorpTech on behalf of Queensland Treasury invited offers for the supply of certain professional services relating to the Shared Service Solutions Program of work.

Title: Prime Contractor for the Shared Service Solutions program for the Queensland Government (ITO No. No: 436 / 000334).

ITO Issued: 12/09/2007

Date & Time Closed: 08/10/2007, 10.00 am

2.0 EVALUATION CRITERIA

The evaluation criteria, as defined in the ITO document and weightings used to assess the Offers are described in Appendix-A.

3.0 EVALUATION PROCESS

Staged evaluation process was adopted for the evaluation of the subject ITO as described below.

Overall Evaluation Process Objectives:

- Review Offers objectively and provide a score per category
- Highlight Strengths, Weaknesses, Issues and Risks of each Offer
- Document any contractual implications
- Provide Evaluation Report for Steering Group approval

Stage - 1

Objective - Review offers within each category, complete the Strengths, Weaknesses, Risks and Issues template, complete the Scoring template and provide a draft report.

Documentation

ITO report

Vendor Offers

Strengths, Weaknesses, Risks & Issues Template

Scoring Template

Evaluation Report template

Process

- Review offers within agreed teams
- Highlight Strengths, Weaknesses, Issues & Risks in the template provided
- Team members to provide their scores and justifications in the template provided
- Socialise team scores with whole Evaluation Panel
- Team Leads to moderate scores where appropriate
- Create draft Team report
- Document Questions for Offerors to answer in Q&A session
- Offerors to provide Q&A session

Deliverables

- Draft Strengths, Weaknesses, Issues & Risks spreadsheet
- Draft Scoring spreadsheet
- Draft Team Report

Stage - 2

Objective - Team Leads to review/refine Draft Team reports (in consultation with the select team members where required).

Documentation

ITO report

Vendor Offers

Draft Strengths, Weaknesses, Risks & Issues Template

Draft Scoring Template

Draft Evaluation Report

Process

- Review and moderate scores considering holistic evaluation.
- Team Leads to QA / Peer review other Team Reports
- Refine Team deliverables

Deliverables

- Refined Strengths, Weaknesses, Issues & Risks spreadsheet
- Refined Scoring spreadsheet
- Refined Draft report

Stage - 3

Objective - Team leads to finalize and sign-off Team reports.

Documentation

ITO report

Vendor Offers

Reviewed Strengths, Weaknesses, Risks & Issues Template

Reviewed Scoring Template

Reviewed Evaluation Report

Process

- Team Leads to finalize team reports (in consultation with the select team members where required) and sign off.
- Team Leads to submit final report

Deliverables

- Sign-off - Strengths, Weaknesses, Issues & Risks spreadsheet
- Sign-off - Scoring spreadsheet
- Sign-off - Team report

Stage- 4

Objective - Team leads to create final Evaluation Report.

Documentation

ITO report

Vendor Offers

Sign-off - Strengths, Weaknesses, Issues & Risks spreadsheet

Sign-off - Scoring spreadsheet

Sign-off - Team report

Process

- Collate team reports into final Evaluation Report
- Obtain Sign-off from Team Leads
- Review by Panel Chair
- Submit to the Steering Group for approval.

Deliverables

- Evaluation Report for Steering Group approval

4.0 RECOMMENDATION

The approach to Contract establishment from IBM is slightly more favourable than that of Accenture. IBM proposes that the current Agreement for the provision of HRBS licenses and ICT Contracting Services form the basis of the new contract. This provides a favourable base for the negotiations and contract establishment. Accenture have prepared draft form of the GITC Agreement clearly outlining their position, this is seen as a more difficult starting position for negotiations regarding some key issues, such as warranty.

The approach from IBM regarding the ongoing Prime Contractor management of current SSS Program third parties and sub-contracting relationships provides the SSS Program greater scope and continual involvement in these relationships. Accenture proposed to clearly define and limit the role of third parties, prior to undertaking management responsibilities for these relationships.

Risks and Issues with all the offerors are detailed and attached in Appendix B.

The team for the Procurement and Legal component recommends that scores provided in Appendix -C be considered for approval in the final evaluation matrix for this ITC.

As per the Treasury Delegation Policy, expenditure and contractor engagement approval shall be obtained.

Recommended:

Marc Blackney Date 31/10/07
Team Lead: Marc Blackney

Refer attached Report from Mallesons Stephens Jaques
Date _____

Panel member:

APPENDIX-A – REPORT MALLESONS STEPHENS JAQUES

**Preliminary Comments - Procurement & Legal
Shared Service Solutions Program**

Prepared by Mallesons Stephen Jacques
11 October 2007

- 1 We have been asked to provide preliminary comments on the responses to the Procurement & Legal requirements (Part E, ITO).
- 2 We have commented on the following for each response:
 - (a) key issues;
 - (b) anticipated negotiation difficulties; and
 - (c) likelihood of successful negotiations within a reasonable timeframe.
- 3 Our comments on these issues are contained in this document.
- 4 As all issues require negotiated agreement, we have commented only on:
 - (a) those non-compliant responses which may be particularly hard to resolve; and
 - (b) general issues which may cause problems.
- 5 The likelihood of successfully concluding negotiations within a reasonable timeframe will depend on each Offeror's approach to the negotiations. Commercial considerations will also influence their position on purely legal issues, e.g. the more generous the pricing, the more likely an Offeror is prepared to accept a legal risk.
- 6 We have limited our review to legal issues. In some cases, there is an overlap between legal issues and commercial issues. Although we have limited our report to pure legal issues raised in the responses provided to us, we have had regard to commercial and other considerations.
- 7 Each Offeror has signed up to GTCv5, and is prepared to enter into a contractual arrangement under GTCv5. However, it should be kept in mind that IBM and Accenture have signed deeds of variation with the State of Queensland varying the standard GTC terms as they apply to these suppliers.

Compliance Ranking

- 1 We rank each Offer with respect to compliance with the Procurement and Legal requirements in the ITO as follows (from best to least favourable):
 - (a) Accenture
 - (b) IBM
 - (c) Logica
- 2 In deciding these rankings, we have made a quantitative and qualitative evaluation of non-compliant responses given by each Offeror.
- 3 *In our view, focusing on legal issues, the difference between Accenture and IBM is minimal.* Both Offers raise a number of material legal issues. While the legal issues arising are not the same in each case, we believe on balance that IBM's Offer gives rise to a greater number of material issues and less thought has gone into IBM's Offer regarding contractual mechanisms that will assist the customer or enhance the working relationship between the parties.
- 4 Accenture undertook more preparation and detailed more comprehensive responses than either of the other Offeror's.
- 5 In relation to intellectual property, Accenture proposes GFTC option 1B (customer owned, licensed back to contractor) and IBM propose option 1C (contractor owned, licensed to customer). In theory option 1B is better than option 1C for the customer, but the practical result is often the same. For the purposes of this analysis, we have treated these as equivalent.

Preliminary Comments on Key Issues and "Road Blocks"

ACCENTURE

General Points

- Accenture provided a detailed proposal on most legal issues.
- Some of the detail is to carve out positions from the standard GITC arrangements in a way that is more favourable to Accenture than the customer.
- Other detail suggests that Accenture is prepared to step up to contractual commitments to ensure that Accenture works well with the customer and is accountable for results.

Key Issues

1 Cap

Accenture proposes a number of smaller caps, rather than one large cap. Each cap is per work order. Thus, if Accenture does \$10 million damage to the project pursuant to a work order for \$1 million, the cap on Accenture's liability will be \$1 million.

2 Liquidated Damages

Accenture proposes a risk/reward incentive scheme, rather than liquidated damages (but will agree to liquidated damages if it is a customer requirement).

3 Guarantee

Accenture does not believe that a parent company guarantee is necessary. There is an internal approval process for a parent company guarantee which Accenture has initiated and will continue if requested to do so.

4 Time

Accenture does not propose to make time of the essence under the contract with the State however will commit to key delivery dates and a risk/rewards system.

5 Third party software

Accenture has identified a number of third party software requirements which are to be paid by CorpTech and are not included in Accenture's price.

Negotiating difficulties

The tone of responses from Accenture suggests that it wants to meet Queensland Government requirements. From the material we have reviewed, we believe that Accenture's responses were comprehensive with a defined execution plan.

The following negotiation difficulties could arise:

- The general tone suggests that Accenture would like to clearly define and limit the role of third party providers, existing contractors and sub-contractors. This could lead to lengthy

and protracted discussions regarding the scope and role of Accenture in these arrangements.

- Defining the risk/reward scheme.
- Cap on liability.
- Accenture's warranties exclude liability for patent infringement by Accenture or by the system when implemented.

Likelihood of successful negotiations

Based on the material we have seen, we are relatively confident that a satisfactory agreement on legal issues could be negotiated within a reasonable timeframe. We also believe that agreement on commercial issues could be reached with a reasonable timeframe.

To speed up the process, Accenture proposes that the Queensland Government enter into a short term contractual arrangement, under the existing Accenture contract, so that work can start while negotiations take place. Although this will be efficient and useful, it reduces the Queensland Government's leverage in negotiations.

Preliminary Comments on Key Issues and "Road Blocks"

IBM

General Points

- IBM proposes using its existing GTC contract with CorpTech as the starting point for negotiations. The legal terms of this contract was carefully negotiated by each party, and is generally more favourable to the customer than a standard GTC contract.
- IBM has proposed the best position (when compared with Accenture) in relation to cap on its liability.

Key Issues

1 Insurance

IBM is not able to, or is not prepared to, make the Queensland Government an additional insured under any of its policies.

2 Guarantee

IBM does not believe that a parent company guarantee is necessary.

3 Damages

IBM does not propose any form of liquidated damages. (IBM also does not propose a risk/reward pricing arrangement.)

4 Relationship

IBM does not propose any favoured customer clause or any additional clauses to show that they value the relationship with the Queensland Government.

5 Benchmarking

IBM does not believe that the benchmarking its price or quality of work is appropriate.

Negotiating difficulties

The tone of responses from IBM suggests that it wants to meet Queensland Government requirements. We expect most of the negotiations will not focus on legal issues, but rather on price, scope, governance and solution issues.

Likelihood of successful negotiations

Based on the material we have seen, we are relatively confident that a satisfactory agreement on legal issues could be negotiated within a reasonable timeframe. We also believe that agreement on commercial issues could be reached with a reasonable timeframe. IBM's responses were not as considered or detailed as the Accenture proposal, because IBM relied on the existing negotiated contractual position as its starting point. But this may assist in moving to contract at a faster pace.

Preliminary Comments on Key Issues and "Road Blocks"

LOGICA

Key Issues

1 Assumptions

Logica listed a series of assumptions underpinning their answers to the legal questions which may not accurately reflect the commercial position.

2 Insurance

Logica is not able to, or is not prepared to, make the Queensland Government an additional insured under any of its policies.

3 Guarantee

Logica does not believe that a parent company guarantee is necessary but is prepared to consider a request on acceptable terms and conditions.

4 Relationship

Logica does not propose any favoured customer clause or any additional clauses to show that they value the relationship with the customer.

Negotiating difficulties

The general tone of responses from Logica suggest that it is willing to meet most Queensland Government requirements. The following negotiation difficulties could arise:

- Logica proposes only a partial solution, and as a result, another supplier will need to be engaged by the Queensland Government to undertake the other parts of the solution. On Logica's proposal, the Queensland Government will have to negotiate and enter into two "prime" contracts, with Logica and one other supplier. The interfaces and touch-points between, and responsibilities of, each supplier will need to be carefully considered and defined. This will make negotiations and the contractual arrangements much more complex and protracted.
- In addition to the issues out above, other "contentious" issues are likely to be payment terms, late invoices and liability caps.

Likelihood of successful negotiations

Based on the material we have seen, and our general experience, we believe negotiations with Logica are likely to be protracted, both on legal and commercial terms.

APPENDIX-B DETAILED ANALYSIS

Appendix -B to the ITO No: 435 / 000334

Team : Procurement and Legal
Team Lead : Maree Blakeney

Team Evaluation Objectives:

Review and score Offers in relation to the sub categories:

- Compliance
- Ability to contract quickly
- Subcontracting approach
- Vendor management

Evaluation Subcategories:

- Compliance
- Ability to contract quickly
- Subcontracting approach
- Vendor management

Recommendation:

Justification for Subcategory 1- Compliance:

Logica have submitted an offer for the Finance portion of the work. As the ITO did not mandate any requirements the offer is conforming. The impact of Logica's Offer on the ability to address key business issues and meet the requirements of the SSI be address by the Function, Governance and IR teams.

IBM and Accenture submitted an offer for the totality of the work.

All Offerors score the same.

Justification for Subcategory 2 – Ability to Contract quickly:

Accenture undertook a more comprehensive approach and have provided a very detailed and prescriptive GTC General Order and relating schedules. Accenture have proposed a "Mobilisation" phase under the current GTC ESP Contract, however the resource cost nominated with their proposal is 10-15% higher than the current agreed price. This poses a risk of reducing the Governments leverage during contract negotiation.

IBM have proposed to contract under the terms and conditions of the current HRBS agreement, which has been carefully negotiated between the parties. This however will require careful consideration regarding the contractual mechanisms that will assist the SSS Program or enhance the working relationship.

Both offerors raise a number of concerns in their ability to contract quickly:

- IBM require significant work regarding the provision of program plans and schedules, resource schedules, acceptance processes etc.

- Accenture have been proscriptive and pragmatic in their approach, they have nominated their position on many contentious issues that need to be clarified.
- Accenture suggests that they would like to clearly define and limit the role of third parties, contractors, sub-contractors. This will require careful review by both parties and could lead to lengthy discussions regarding the scope and role of Accenture in these relationships.

Logica have not scored favourably as their ability to contract quickly is reliant on the Government negotiating with another party for the supply of the HR solutions with compounds the effort.

Justification for Sub-category 3 – Subcontracting approach:

As mentioned above Accenture suggests that they would like to clearly define and limit the role of third parties, contractors, sub-contractors. This will require careful review by both parties and could lead to lengthy discussions regarding the scope and role of Accenture in these relationships.

IBM are open to work with third parties, contractors and sub contractors, subject to suitable arrangement being negotiation between the parties, IBM require CorpTech to assume the risk in managing these relationships.

Logica did not adequately address this section.

Justification for Subcategory 4 - Vendor Management:

Accenture propose that the Government amend current third party contracts to allow Accenture manage the relationship and their ability to review and amend Service Level Agreements. The Government however will carry the contractual risk in these relationships.

IBMs approach is that the Government will continue to manage the relationship with third party vendors, however they will assist in managing these relationships to meet demand.

Appendix A details the legal review of the Offers undertaken by Mallesons Stephens Jaques.

The Panel recommends that IBM be considered for this category.

As per the Treasury Delegation Policy, expenditure and contractor engagement approval will be obtained.

Risks:

Item No.	Offeror Name	Risk Category	Risk Description	Risk Mitigation	Risk Owner	Probability	Impact	Level	Status
1	IBM	Legal	Ability to contract quickly is dependant on the SSS Program thorough understanding and defined commercial requirements. Le Business structures in place as of the commencement of the contract, KPIs developed, understanding offered work packages, and the impact this has on Agency implementation schedules, etc.			5	3	H	B
2	IBM	Legal	Understanding the process for scoping, estimating and planning future work packages to enable benchmarking of cost and deliverables			3	3	M	B
3	Accenture	Legal	Ability to contract quickly is dependant on the acceptance of offered conditions. Accenture have proposes comprehensive conditions that favour the Contractor. le Insurance, warranty, vendor management etc.			5	3	H	B
4	Accenture	Legal	Ability to contract quickly is dependant on the SSS Program thorough understanding and defined commercial requirements. Le Business structures in place as of the commencement of the contract, KPIs developed,			3	3	M	B

			understanding offered work packages, and the impact this has on Agency implementation schedules, etc.						
5	Accenture	Legal	Understanding the process for scoping, estimating and planning future work packages to enable benchmarking of cost and deliverables			3	3	M	B
6	Accenture	Legal	Proposed cap on liability to the value of the work order. Insurance to remain at \$5M			2	5	H	B
7	Accenture	Legal	Third party contractors and existing contracts - Accenture would like to clearly define and limit the role of any third party.			4	3	H	B

Issues:

Item No.	Offeror Name	Issue Category	Issue Description	Issue Resolution	Issue Owner	Criticality	Status
1	IBM	Legal	Have proposed to contract under the existing HRES Agreement for PC model. The legal terms of this contract have been carefully negotiated by each party, however, detailed commercials will need to be developed for the agreement to work for the PC model.				B
2	IBM	Legal	IBM is not able to or is not prepared to make the QG an additional insured under any of its policies				B
3	IBM	Legal	IBM does not believe a Guarantor is required.				B
4	IBM	Legal	IBM does not propose any form of liquidated damages, however propose a 15% at risk portion of their fees.				B
5	IBM	Legal	IBM does not believe that the benchmarking of its price or quality of work is appropriate.				A
6	IBM	Legal	Understanding "At Risk" approach and determining its appropriateness.				B
7	Accenture	Legal	The use of the Mobilisation Agreement – (based on existing ESP agreement however pricing is higher)				B
8	Accenture	Legal	Accenture is not able to or is not prepared to make the QG an additional insured under any of its policies				B
9	Accenture	Legal	Accenture does not believe a Guarantor is required, however willing to initiate if requested to do so.				B

APPENDIX-C TEAM SCORING MATRIX

Evaluation Criteria Matrix

Criteria	Weight	Sub-Criteria	Weight	Sub-Criteria	Weight	Sub-Criteria	Weight
Financial Stability	30	1. Cash Flow	10	1.1 Cash Flow Statement	5	1.1.1 Cash Flow Statement	5
		2. Liquidity	10	2.1 Current Ratio	5	2.1.1 Current Ratio	5
		3. Solvency	10	3.1 Debt to Equity Ratio	5	3.1.1 Debt to Equity Ratio	5
		4. Credit Rating	10	4.1 Credit Rating	5	4.1.1 Credit Rating	5
Operational Efficiency	20	1. Project Management	10	1.1 Project Management	5	1.1.1 Project Management	5
		2. Resource Management	10	2.1 Resource Management	5	2.1.1 Resource Management	5
		3. Quality Management	10	3.1 Quality Management	5	3.1.1 Quality Management	5
		4. Safety Management	10	4.1 Safety Management	5	4.1.1 Safety Management	5
Customer Satisfaction	10	1. Customer Satisfaction	10	1.1 Customer Satisfaction	5	1.1.1 Customer Satisfaction	5
		2. Service Quality	10	2.1 Service Quality	5	2.1.1 Service Quality	5
		3. Delivery Time	10	3.1 Delivery Time	5	3.1.1 Delivery Time	5
		4. Complaint Resolution	10	4.1 Complaint Resolution	5	4.1.1 Complaint Resolution	5
Company Reputation	10	1. Company Reputation	10	1.1 Company Reputation	5	1.1.1 Company Reputation	5
		2. Industry Standing	10	2.1 Industry Standing	5	2.1.1 Industry Standing	5
		3. Awards and Recognition	10	3.1 Awards and Recognition	5	3.1.1 Awards and Recognition	5
		4. Client Testimonials	10	4.1 Client Testimonials	5	4.1.1 Client Testimonials	5
Risk Management	10	1. Risk Management	10	1.1 Risk Management	5	1.1.1 Risk Management	5
		2. Insurance Coverage	10	2.1 Insurance Coverage	5	2.1.1 Insurance Coverage	5
		3. Safety Record	10	3.1 Safety Record	5	3.1.1 Safety Record	5
		4. Environmental Compliance	10	4.1 Environmental Compliance	5	4.1.1 Environmental Compliance	5
Overall Performance	10	1. Overall Performance	10	1.1 Overall Performance	5	1.1.1 Overall Performance	5
		2. Financial Performance	10	2.1 Financial Performance	5	2.1.1 Financial Performance	5
		3. Operational Performance	10	3.1 Operational Performance	5	3.1.1 Operational Performance	5
		4. Customer Performance	10	4.1 Customer Performance	5	4.1.1 Customer Performance	5

C1 The Supplier Understands the Customer's functional and technical requirements in delivering effective business outcomes for the SSS program
 C2 Proven Program and Project Management
 C3 Ability to schedule and deliver on time to meet the requirements of the Workstreams and the overall Solution.
 C4 Proven ability to deliver work packages that meet defined quality criteria.

Recommendation:
 Provide a summary of the key points which distinguished the recommended offer from the other offers and indicate how the recommended offer align to the I/O requirements. Comment on any poor scores or failure to meet mandatory requirements.

Justification for Subcategory 1:
 Justification for Subcategory 2:
 Justification for Subcategory 3:
 Justification for Subcategory 4:

This evaluation was conducted in accordance with the agreed and signed-off Contractor Evaluation process.

Team Lead

Signature _____
 Date _____
 Panel Member
 Signature _____
 Date _____

JVS5

Preliminary Comments on Key Issues and "Road Blocks"

ACCENTURE

General Points

- Accenture provided a detailed proposal on most legal issues.
- Some of the detail is to carve out positions from the standard GITC arrangements in a way that is more favourable to Accenture than the customer.
- Other detail suggests that Accenture is prepared to step up to contractual commitments to ensure that Accenture works well with the customer and is accountable for results.

Key Issues

1 Cap

Accenture proposes a number of smaller caps, rather than one large cap. Each cap is per work order. Thus, if Accenture does \$10 million damage to the project pursuant to a work order for \$1 million, the cap on Accenture's liability will be \$1 million.

2 Liquidated Damages

Accenture proposes a risk/reward incentive scheme, rather than liquidated damages (but will agree to liquidated damages if it is a customer requirement).

3 Guarantee

Accenture does not believe that a parent company guarantee is necessary. There is an internal approval process for a parent company guarantee which Accenture has initiated and will continue if requested to do so.

4 Time

Accenture does not propose to make time of the essence under the contract with the State however will commit to key delivery dates and a risk/rewards system.

5 Third party software

Accenture has identified a number of third party software requirements which are to be paid by Corp'Tech and are not included in Accenture's price.

Negotiating difficulties

The tone of responses from Accenture suggests that it wants to meet Queensland Government requirements. From the material we have reviewed, we believe that Accenture's responses were comprehensive with a defined execution plan.

The following negotiation difficulties could arise:

- The general tone suggests that Accenture would like to clearly define and limit the role of third party providers, existing contractors and sub-contractors. This could lead to lengthy

and protracted discussions regarding the scope and role of Accenture in these arrangements.

- Defining the risk/reward scheme.
- Cap on liability.
- Accenture's warranties exclude liability for patent infringement by Accenture or by the system when implemented.

Likelihood of successful negotiations

Based on the material we have seen, we are relatively confident that a satisfactory agreement on legal issues could be negotiated within a reasonable timeframe. We also believe that agreement on commercial issues could be reached with a reasonable timeframe.

To speed up the process, Accenture proposes that the Queensland Government enter into a short term contractual arrangement, under the existing Accenture contract, so that work can start while negotiations take place. Although this will be efficient and useful, it reduces the Queensland Government's leverage in negotiations.

Preliminary Comments on Key Issues and "Road Blocks"

IBM

General Points

- IBM proposes using its existing GTC contract with CorpTech as the starting point for negotiations. The legal terms of this contract was carefully negotiated by each party, and is generally more favourable to the customer than a standard GTC contract.
- IBM has proposed the best position (when compared with Accenture) in relation to cap on its liability.

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Preliminary Comments on Key Issues and "Road Blocks"

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- In addition to the issues out above, other "contentious" issues are likely to be payment terms, late invoices and liability caps.

Likelihood of successful negotiations

Based on the material we have seen, and our general experience, we believe negotiations with Logica are likely to be protracted, both on legal and commercial terms.

ITO Issue Date:		ITO Closing Date:		Score Range is '0' to '5' : 0 - Fail, 1 - Minimal Response, 3 - Pass and 5 - Top Score.	
Team: Procurement & Legal		Team Lead: Maree Blakeney		Team Weighting: 5.0%	
Offeror Name : Logica					
Team	Sub Categories Q :64,65,66, 67,68,69,70,71,72,73,74,75,84,85,100 to 133	Moderated Score	Vendor Avg. Score	Team Weighting	Vendor Weighted Score
Lead : Maree Blakeney	Compliance	3 ⁵	5.00	5.0%	0.25
	Ability to contract quickly	2 ⁵			
	Subcontracting	1 ⁵			
	Vendor Management	1 ⁵			
Score Distribution					
		C3	C2		
		60%	40%		
		0.15	0.1		
Offeror Name : Accenture					
Team	Sub Categories Q :64,65,68, 67,68,69,70,71,72,73,74,75,84,85,100 to 133	Moderated Score	Vendor Avg. Score	Team Weighting	Vendor Weighted Score
Lead : Maree Blakeney	Compliance	3 ⁵	5.00	5.0%	0.25
	Ability to contract quickly	2 ⁵			
	Subcontracting	2 ⁵			
	Vendor Management	3 ⁵			
Score Distribution					
		C3	C2		
		60%	40%		
		0.15	0.1		
Offeror Name : IBM					
Team	Sub Categories Q :64,65,68, 67,68,69,70,71,72,73,74,75,84,85,100 to 133	Moderated Score	Vendor Avg. Score	Team Weighting	Vendor Weighted Score
Lead : Maree Blakeney	Compliance	3 ⁵	5.00	5.0%	0.25
	Ability to contract quickly	2 ⁵			
	Subcontracting	2 ⁵			
	Vendor Management	2 ⁵			
Score Distribution					
		C3	C2		
		60%	40%		
		0.15	0.1		
Advisory / Coordinating members: Terry Burns, Keith Goddard, Shaemin Shah, John Swinison					
ITO Criteria:					
C1 The Solution: Understanding the Customer's functional and technical requirements in delivering effective business outcomes for the SSS program					
C2 Proven Program and Project Management ability					
C3 Value for Money					
C4 Ability to schedule and deliver on time to meet the requirements of the work-streams and the overall Solution.					
C5 Proven ability to deliver work packages that meet defined quality criteria.					
Recommendation:					
[Provide a summary of the key points which distinguished the recommended offeror from the other offeror and indicate how the recommended offeror align to the ITO requirements. Comment on any poor scores or failure to meet mandatory requirements.]					
Justification for Subcategory 1:					
Justification for Subcategory 2:					
Justification for Subcategory 3:					
Justification for Subcategory 4:					
This evaluation was conducted in accordance with the agreed and signed-off Contractor Evaluation process.					
Recommended:					
Team Lead					
Panel Member:					

*legally - on par
commercially Accenture marginally ahead.
both either require cooperation further understand*

JVS6

----- Original Message -----

Subject:Fw: Fw: Registration for Trading Dynamics Pty Ltd

Date:Fri, 30 Oct 2009 13:59:56 +1000

From:Terry Burns <terry@cav-risk.com>

To:John Swinson Home <swinson@post.harvard.edu>

----- Original Message -----

From: Paul Feng

To: Terry Burns

Sent: Friday, October 30, 2009 1:58 PM

Subject: RE: Fw: Registration for Trading Dynamics Pty Ltd

Terry

Thanks for the E-mail.

Can you get back to John and let him know that I am after his residential address please? I can't use PO box address as the address for a trustee.

Regards

Paul Feng

Advisor - Business Services

Ph: (07) 3234 8988
Direct: (07) 3234 8917
Fax: (07) 3221 7431
Email: paulf@hmw.com.au

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You may not rely on this message as advice unless subsequently confirmed by fax or letter signed by a partner of the firm.

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From: Terry Burns [<mailto:terry@cav-risk.com>]
Sent: Friday, 30 October 2009 1:49 PM
To: Paul Feng
Cc: John Swinson Home
Subject: Fw: Fw: Registration for Trading Dynamics Pty Ltd

Details for John

----- Original Message -----

From: John Swinson
To: Terry Burns
Sent: Wednesday, October 28, 2009 10:22 PM
Subject: Re: Fw: Registration for Trading Dynamics Pty Ltd

John Victor Swinson as trustee for the Gill Swinson Family Trust.
PO Box 345
Sherwood Q 4075

I will not be a director.

Terry Burns wrote:

----- Original Message -----

From: Paul Feng
To: Terry Burns
Sent: Wednesday, October 28, 2009 12:13 PM
Subject: Re: Registration for Trading Dynamics Pty Ltd

Terry

I am preparing the form to register the above named company. Just want to confirm one thing with you, so the three trusts will be the shareholders for Trading Dynamics Pty Ltd, is that right? If this is the case, please advise on the following information:

1. Address for Principle Place of Business for Trading Dynamics Pty Ltd;
2. Name for Shaurin's trust that is going to own the shares in this new company and details for the corporate trustee. I need to know its name, A.C.N and registered office address;
3. Name for John's trust that is going to own the shares in this new company and details for the corporate trustee. I need to know its name, A.C.N and registered office address;
4. If Shaurin and John are going to be the directors for the company, please forward me their full names, residential addresses and dates/places/states/countries of birth.

Regards

Paul Feng

Advisor - Business Services

Ph: (07) 3234 8988
Direct: (07) 3234 8917
Fax: (07) 3221 7431
Email: paulf@hmw.com.au

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JVS7

MALLESONS STEPHEN JAQUES

Memorandum of legal advice

Private & Confidential

To Barbara Perrott and James Brown, CorpTech
From John Swinson, Mallesons Stephen Jaques
Date 24 July 2008
Subject IBM Contract

1 Background

The State of Queensland ("Customer") entered into a contract with IBM Australia Ltd ("Contractor") on 5 December 2007, appointing the Contractor as a prime contractor for the Shared Services Solutions Program for the Queensland Government ("the Customer Contract").

We were asked on 22 July 2008 for preliminary urgent advice regarding certain issues that have arisen regarding the Lattice Replacement Project and the Housing HR system.

In particular, you asked for advice in relation to the following:

- A. Is the Contractor required to use the Housing HR system as the basis for the solution for Queensland Health's Lattice Replacement?
- B. Does the Contractor have the obligation to remedy performance issues in the DOH HR/payroll system, and if so, when?
- C. Is Schedule 22A a binding part of the Customer Contract?

We answer each of those questions below.

As a preliminary point, we note that Mallesons assisted in the negotiation and preparation of the Customer Contract, but we have not been involved in any substantive issues after execution of the Customer Contract. We understand that there have been over 100 agreed contract variations, a number of Statements of Work have been prepared and added to the Customer Contract, and there have been many meetings between the parties and reports and other documents created. We have been provided with a selection of documents, and (because this is a preliminary advice only) we not been provided with, and have accordingly not reviewed, all contract variations, notices, reports and documents that may have bearing on the questions discussed below.

2 Health

Is the Contractor required to use the Housing HR system as the basis for the solution for Queensland Health's Lattice Replacement?

2.1 Background

- (a) The Contractor was well aware that QH was at risk of having to run an unsupported Lattice application. See SoW7, para 2.1.1., and SoS1 (e.g., "The risks and issues associated with the continued operation of a Lattice Payroll solution by Queensland Health, in our assessment are, unacceptable.")
- (b) The Contractor proposed a solution to the Customer to mitigate these risks, and to replace the Lattice application by the end of July 2008.
- (c) The solution that was designed and proposed by the Contractor was fully documented in SoS1 and SoW7. SoS1 and SoW7 are part of the Customer Contract.

2.2 SoS1 and SoW7

- (a) SoS1 makes it very clear that the Contractor's solution was to use the Housing HR system as the basis for Lattice replacement solution. We extract example sections from SoS1 below:
 - (i) "The Contractor proposes that the existing Queensland Health Lattice HR/Payroll system is replaced by a solution based on the SSS DOH solution."
 - (ii) "... it does address the current issues and maximises the value of the work completed to date and currently in production at DOH in pilot form."
 - (iii) "Our recommended solution is based on the currently deployed Customer SSS pilot HR/Payroll solution deployed at the Department of Housing. This will provide a well understood and manageable baseline to build the solution upon."
 - (iv) "Payroll - *Leverages the DOH Pilot implementation*"
 - (v) "Key activities planned for this stream include:-
 - Evaluate the DOH SSS"
- (b) SoW7 also makes it very clear that the Contractor's solution was to use the Housing HR system as the basis for Lattice replacement solution. Similar statements to those quoted above also appear in SoW7 (e.g., "The Contractor proposes that the existing Queensland Health Lattice HR/Payroll system is replaced by a solution based on the DOH solution.")
- (c) One advantage of this approach, as proposed by the Contractor, was stated as follows:

“Although an interim solution, our approach utilises high levels of core Customer solution functionality. For Customer this means that much of the solution set will be re-used in the final SSS.” (See SoS1 at page 6).

“Using this approach the Contractor will ensure that the work delivered is a sub-set of what is required for WoG rollout to Queensland Health in later releases wherever possible and practical.” (See SoW7 at page 4).

2.3 SoW8

- (a) SoS1 was replaced by SoW8 after the Customer Contract was executed. This was required by the Customer Contract. See, for example, Schedule 17.
- (b) We have been provided with SoW8, version 1.2 dated 16 June 2008, and we have been informed that this is the most current version of SoW8.
- (c) SoW8 should flesh out and expand on the requirements as summarised in SoS1.
- (d) SoW8 is said to be based on and consistent with SoS1. See paragraph 1 of SoW8.
- (e) SoW8 includes language that confirms that “this solution will utilise the existing woG HR/Payroll solution deployed at the Queensland DoH, a number of new Workbrain components and an amount of QH specific functionality.” (See paragraph 2.1.1; see also 2.2.3).
- (f) SoW8 also incorporates by reference a document titled “QHIC Project Scope Definition - Version 0.12”. This Project Scope Definition also confirms that the DoH HR/payroll solution will be utilized as part of the Lattice replacement. See paragraph 3.2.1.3.

2.4 Our Preliminary Opinion

- (a) The Customer Contract is clear that the solution proposed by the Contractor for the Lattice replacement is a solution that utilises the Department of Housing HR system as a base.
- (b) Accordingly, the Customer could rightfully insist that the Contractor utilises the Department of Housing HR system as a base for the Lattice replacement is a solution in Health.
- (c) If the Customer wishes, it may be willing to accept a different design. Doing so would require an amendment to the Customer Contract.
- (d) The intent of the Customer Contract is that the “interim” Lattice replacement solution includes a significant subset functionality of what will later become part of the complete solution for Health.

3 Housing

Does the Contractor have the obligation to remedy performance issues in the DOH HR/payroll system, and if so, when?

3.1 Background

- (a) The Contractor was well aware of the problems with the DOH implementation prior to and at the time of signing the Customer Contract. The evidence of this knowledge is overwhelming, and does not need to be repeated here. One of the known problems was the time it took to process a payroll run.
- (b) As stated above, it was the Contractor's proposal to use the DOH implementation as the basis for the Health Lattice replacement solution. This approach would only work if the DOH implementation was functioning correctly.
- (c) In SoS1, it was clearly stated that the Contractor would remedy the DOH implementation, and the cost to do so was included as part of the fees of the Lattice replacement project. For example:
 - (i) "We understand that there are a number of issues with the existing DOH SSS HR/Payroll solution and have allowed for their rectification in our estimates. This will be achieved in two ways. Firstly we will be re-engineering the solution which will in itself resolve a number of issues and secondly we have included a number of rectifications in the scope of the project itself."
 - (ii) "Payroll run times are too long and effectively lock users out of the system. - We will address this issue in two ways. Firstly our solution architecture reduces the processing overhead incurred in the current SSS scenario by the use of an external awards "engine. This engine processes much of the awards interpretation in realtime as timesheets are entered. Secondly our project team will conduct detailed sizing assessments in conjunction with CITEC to ensure that adequate production capacity is deployed to meet the payroll processing window timeframe."
 - (iii) "General - There are a number of outstanding issues (Defects) with the DOH SSS. We understand that most of these issues are now resolved. The remaining issues will form part of the scope of the interim solution design and build."
- (d) SoW7 includes similar statements.
- (e) As stated above, SoW8, which is the "Lattice Replacement Design, Implement and Deploy" statement of work, is intended to replace SoS1. Unfortunately, SoW8 does not include the helpful parts of SoS1 as quoted above. SoW8 is mostly silent in relation to correcting problems with the Housing HR solution. As stated above, SoW8 incorporates by reference a document titled "QHIC Project Scope

Definition - Version 0.12".¹ This Project Scope is also silent in relation to the Housing system. It unclearly states that "woG HR/payroll rectifications" are a related stream of work, presumably under another Statement of Work.

3.2 Our Preliminary Opinion

- (a) On balance, it is our opinion that the Contractor is required to fix the Housing HR system as part the Lattice replacement project, within the fixed price for the Lattice replacement project.
- (b) Moreover, it is our opinion that the Contractor is required to remedy the Housing HR system as much as possible, so as to be useful for the Lattice replacement project, and before the Lattice replacement project is complete.
- (c) The Contractor may argue that the intent of SoW8 was to replace SoS1, and as SoW8 is later in time and is intended to be more specific, it prevails over SoS1.²
- (d) As stated above, SoW8 does not include the helpful wording quoted in paragraph 3.1c above.
- (e) SoW8 is supposed to be based upon and consistent with SoS1. See paragraph 1 of SoW8. Accordingly, if there is doubt as to interpretation, and SoW8 is silent on an issue, one may turn to SoS1 for clarification. Accordingly, it is arguable that the parts of SoS1 that require the Contractor to fix the problems with the Housing system within the cost of the Lattice replacement project are still current requirements.
- (f) In our view, the correct position is that the Contractor is required to fix the Housing HR system as part the Lattice replacement project, within the fixed price for the Lattice replacement project. Although the Contractor will have contrary arguments as mentioned above, our opinion is consistent with the approach set out in Schedule 17 and the whole structure and philosophy of the Customer Contract.
- (g) The Contractor's design and approach, as reflected in many precontractual documents, and incorporated into SoS1, was to first fix the Housing system *as part of the Lattice replacement project* so that the Housing system could be used as part of, and to deliver suitable performance for, the Lattice replacement. It would be illogical for the Contractor to now insist that a broken Housing system should be used as a component to replace Lattice.

¹ The Project Scope document has assumptions at paragraph 3.2.1.3 that the Housing HR/payroll system will be operating and that rectification of defects are completed in a timeframe that allows their inclusion in the Lattice replacement solution. This statement does not specify who should correct the defects, and read in light of SoS1, one could readily conclude that it is the Contractor's obligation to correct such defects. In any event, we have been instructed that the defects referred to in paragraph 3.2.1.3 are different to the defects listed in SoS1 and have been fixed.

² We have been informed that the Contractor has replaced certain SoSs with more than one SoW. So it is possible that SoW8 only partially replaces SoS1 and that SoS1 is still binding in relation to the parts not replaced by SoW8.

- (h) We are not aware of any document, other than possibly SoS1 and SoW7, that sets out exactly how and when the Housing defects are to be rectified. In our view, SoS1 (if still binding) provides strong obligations on the Contractor to fix the defects. In any event, because the Housing system is to be used as part of the Lattice replacement as part of the Contractor's design, the Housing system must fixed and integrated with other components in such a way as to provide a suitable working system that is fit for purpose. See Customer Contract clauses 1.3c, 1.3d and 7.2; Schedule 1, C1.37, and importantly Schedule 26, as well as the standard GITC warranties.
- (i) If we are incorrect, there are other backup arguments that support our view. For example, SoW5 requires the Contractor to undertake priority core HR development. This would include fixing the Housing HR system. See, e.g., SoW5 at paragraph 4.1 (at bottom of page 10) and Schedule 45. (We have not considered timing issues relating to this argument.)
- (j) We also note clause 1.3c of the Customer Contract, that states that a high level objective of the parties is "to achieve speedier payroll processing times than previously being experienced on the Department of Housing SAP HR system." This statement can be used to assist in the interpretation of the Customer Contract in the event of any ambiguity or silence.

4 Schedule 22A

Is Schedule 22A a binding part of the Customer Contract?

4.1 Background

- (a) Schedule 22 is the Program Governance Framework. Schedule 22A is the Governance Schedule.
- (b) Pursuant to clauses 1.4(a) and 4.1 of the Customer Contract, and Schedule 1, C1.20 and C1.39 to C1.42, it is clear that Schedules 22 and 22A form part of the Customer Contract.
- (c) However, Schedule 22 (which prevails over most other terms of the Customer Contract -- see clause 1.4(b)) states that Schedule 22A is approved by the Customer but is non-binding on the parties. It sets out the Customer's expectation only.
- (d) The Contractor was under an obligation to consult with the Customer and provide a revised Governance Schedule based on Schedule 22A by 15 December 2007. We understand that the Contractor did not do so, and is therefore in breach of contract. However, we are not aware of any breach notice being issued to the Contractor in relation thereto or if the Contractor has attempted to remedy this breach.
- (e) After a revised Governance Schedule is provided, the parties were required to work together to refine and agree upon a final and binding Governance Schedule to replace Schedule 22A. We are not aware of these steps taking place.

- (f) From January to March 2008, the Contractor and Customer discussed at document titled "Program 42 Management System". That document stated in part:

"The objectives of the Governance framework is to facilitate the joint management of the Program 42 and the evolution of required services to be provided

The Governance structure by which the various stakeholders lead, manage and deal with the day to day operation of Program 42 is specified in detail in Schedule 22A (version 5 Agreement number Q-11) of the Customer Contract."

- (g) The "Program 42 Management System" was included into the Customer Contract by way of a signed change control document in March 2008, as a replacement for the "Program Charter".
- (h) The Contractor now states that the reference cited above to Schedule 22A was a mistake, and should have read Schedule 22. The Contractor states that Schedule 22A is not a binding part of the Customer Contract.

4.2 Our Preliminary Opinion

- (a) If the Contractor's view is correct, then the Contractor is in breach of contract for not providing a revised Governance Schedule based on Schedule 22A by 15 December 2007 (or for that matter any time in beginning of 2008.) The Contractor would also be in breach for not working with the Customer to provide and agree upon a revised Governance Schedule.
- (b) The clear wording of "Program 42 Management System" is that Schedule 22A has been agreed, and is now a binding part of the Customer Contract in relation to the day to day operation of the program.
- (c) As "Program 42 Management System" is a later document, agreed by both parties and that forms part of the Customer Contract, the statements quoted above have the effect of overriding the "non binding" language in Schedule 22.
- (d) The Contractor's view -- that the reference to Schedule 22A should have been a reference to Schedule 22 -- does not make sense in the context of the document. Schedule 22A is the governance structure, and Schedule 22 is the governance framework. "Program 42 Management System" clearly refers to governance structure (not framework) in the paragraph that incorporates Schedule 22A.
- (e) The Contractor has at least three possible arguments, as follows:
- (i) "Program 42 Management System" does not explicitly incorporate and make binding Schedule 22A. "Program 42 Management System" merely references a non-binding part of the Customer Contract, for cross-reference purpose, and

that the intent of the parties was still to follow the process in Schedule 22 before Schedule 22A becomes binding.

- (ii) Even though "Program 42 Management System" was negotiated, there was no negotiation or discussion of Schedule 22A itself, as required by the first page of Schedule 22. The clear intent of Schedule 22 is to put in place a process to revise Schedule 22A. This is clear from Schedule 22A itself, as that Schedule includes notes and missing sections (that we assume have not been completed.) The process to revise Schedule 22A as required by the Customer Contract did not take place.
- (iii) The Contractor did not intend to make Schedule 22A a binding part of the Customer Contract by signing the change control document that incorporated the "Program 42 Management System". If the effect of "Program 42 Management System" was to make Schedule 22A binding, it was a clear mistake. For the Customer to insist that Schedule 22A was now binding is contrary to the principles set out in clauses 2.2(c), (e), (h), (i) and (k) of the Customer Contract.
- (f) It is our opinion that, on balance, the "Program 42 Management System" document, when incorporated into the Customer Contract, made Schedule 22A binding on the parties.
- (g) This conclusion is not a "slam dunk" -- because there are arguments to the contrary as mentioned above.
- (h) We reach our conclusion for the following reasons:
 - (i) "Program 42 Management System" was drafted by the Contractor, was expressly agreed by the Contractor and was signed off by the Contractor as part of approved change control process.
 - (ii) The wording of "Program 42 Management System" is generally clear on this point.
 - (iii) The Contractor's view would result in the conclusion that the Contractor was in breach of contract, and is still in breach of contract.
 - (iv) Clearly, there is a significant issue if the program is operating (and has been operating for 7 months) without an agreed governance structure. This is unacceptable, and could not be the intent of either party.
 - (v) It is not clear that the Contractor made a mistake when agreeing to "Program 42 Management System".
- (i) **Caveat:** Our views above would change based upon the conduct of the parties since March 2008. For example, if from April 2008, the Customer has acted consistently and on the basis that Schedule 22A was binding, this would strengthen the views above. However, if the

Customer has not fulfilled all its obligations as set out in Schedule 22A, or only recently acted as if Schedule 22A was binding, this would weaken the views above.

- (j) It would not be helpful to assert that Schedule 22A has been binding from March 2008, if the Customer has been in breach of Schedule 22A since that date.
- (k) A word of caution: If the Customer takes a strict and literal view on this issue, it does not assist in relation to the issue discussed in Section 3 above. There, the Contractor could take a strict and literal view that SoW8 replaced SoS1, and so the obligations to repair the DoH system at the Contractor's cost no longer apply.
- (l) We give no opinion as to the impact of making Schedule 22A a binding schedule. It should be noted that Schedule 22A is a governance schedule, and the usual understanding is that a governance schedule does not change the substantive obligations of a supplier in relation to scope, timing and price.

5 General Points Regarding the Customer Contract

- (a) Time is of the essence in respect of delivery of the Deliverables and the Milestones. See Schedule 1, C1.19. This means that strict compliance is required with agreed timeframes.
- (b) The timeline in Schedule 23 forms part of the Customer Contract. See clause 4.1, and Schedule 1, C1.20.
- (c) We are not aware of the Contractor issuing a delay notice under the compulsory delays procedure set out in Schedule 24.
- (d) The Contractor was selected by the Customer as part of a competitive tender process. See clause 5.1.
- (e) The Customer Contract relates to completion of a project that had been on-going for a number of years, that was late and over-budget. The Contractor took over partially completed work. See clause 5.2 and Schedule 45.
- (f) The Contractor is required to proactively make recommendations to the Customer if it becomes aware of and technology, software, design, process etc should be changed, improved or updated, or if it becomes aware of a more efficient solution or design. See clause 5.9.
- (g) If the Contractor's Workbrain design does not work for non-rostering agencies, there are major impacts for the Contractor. See Schedule 26, paragraph 4.
- (h) It was agreed that unless a document is expressly incorporated into the Customer Contract, or referenced in Schedule 47, then a party must not rely on it. See clause 5.10. We express no opinion in this document as to whether pre-contractual representations made by the

Contractor (such as in the response to the tender) form part of the Customer Contract.

- (i) We are not aware of any breach notices being issued by the Customer.

John Swinson
Mallesons Stephen Jaques

JVS8

MALLESONS STEPHEN JAQUES

Memorandum of legal advice

Private & Confidential

To Barbara Perrott, CorpTech
From John Swinson, Mallesons Stephen Jaques
Date 25 August 2008
Subject IBM Contract

1 Background

The State of Queensland ("Customer") entered into a contract with IBM Australia Ltd ("IBM") on 5 December 2007, appointing IBM as a prime contractor for the Shared Services Solutions Program for the Queensland Government ("the Customer Contract").

The Customer Contract is owned and managed by CorpTech.

The Customer Contract requires that IBM build, implement and deliver certain computer systems. The base computer system is to be designed and built on a whole-of-government basis, but implemented on an agency-by-agency basis.

As a preliminary point, we note that Mallesons assisted in the negotiation and preparation of the Customer Contract, but we have not been involved in substantive issues after execution of the Customer Contract. We understand that there have been over 100 agreed contract variations, a number of Statements of Work have been prepared and added to the Customer Contract, and there have been many meetings between the parties and reports and other documents created. We do not have copies of all contract variations, notices, reports and documents that may have bearing on the issues discussed below. For this reason, this document should be treated as a preliminary advice.

2 IBM's Performance To Date

2.1 Overview

Based on oral briefings given to us, and from the contractual documents and correspondence that we have been provided with, it would appear that IBM's performance to date has been woeful.

There appear to be a number of significant issues in relation to IBM's performance. These relate to IBM's performance and management as a whole, as well as in relation to individual pieces of work.

For example, by way of background, one key deliverable under the Customer Contract is what is known as the Lattice Replacement Project for Queensland Health. According to the Customer Contract as and when signed, the agreed date for payroll go-live was July 2008. (The Lattice Replacement Project and July 2008 timeline was proposed and recommended by IBM as part of the tender process.) This software has not been delivered. The Customer Contract has been amended to that the new contractual go-live date is late in 2008. However, on current indications, IBM will not meet this revised date, and the new proposed go-live appears to be approximately April 2009.

Other issues include:

- (a) in testing, the software has failed, and is causing delays and rework;
- (b) IBM not being able to meet agreed milestone dates;
- (c) continuous requests by IBM to extend agreed milestone dates;
- (d) issuing delay notification with incorrect reasons;
- (e) blaming the Customer for delays;
- (f) not pro-actively managing the project;
- (g) not using a visible project management methodology;
- (h) not preparing an integrated project schedule;
- (i) trying to justify delays on past events, where IBM did not raise or manage the "past event" properly at the relevant time;
- (j) poor performance by IBM personnel;
- (k) replacing key personnel without permission;
- (l) insufficient resourcing by IBM;
- (m) not accepting accountability for acceptable performance of the Health payroll solution;
- (n) not providing the Customer with confidence that problems and issues will be resolved in a timely and satisfactory manner; and
- (o) taking a hostile and aggressive approach towards the Customer in meetings, including attacking Customer personnel individually.

We also note that the work that IBM has been contracted to do is not "rocket science". For example, IBM is implementing a payroll and HR system, using off-the-shelf software, according to a design that was proposed by IBM.

2.2 Discussion

The Customer Contract has strict and enforceable mechanisms to protect the Customer in the event of poor performance by IBM.

Each of the issues raised in paragraph 2.1 are serious issues that require proactive management of IBM by the Customer. If there was only one or two issues, the best approach would be to manage IBM so that the issues are resolved commercially, thus maintaining good working relationships between the parties. However, when considering all issues as a whole, and that IBM has had over eight months to "settle in", it would appear that more serious steps need to be taken by the Customer at this time.

Additionally, IBM has recently issued two "delay notices" under the Customer Contract. These are being addressed by CorpTech and the Departments involved.

Accordingly, we provide the following high level recommendations, for consideration by Queensland Health.

2.3 Recommendations

As stated above, we have been briefed at a high level, and have been asked for recommendations as to how the Customer could address this situation.

It is important to determine what the Customer wants to achieve. As IBM's performance is not satisfactory, and assuming that the Customer wants to continue with IBM, the Customer should determine where and how it wants IBM to improve. This may be a combination of strictly enforcing existing contractual rights and negotiating contract variations that improve the Customer's position, as well as seeking compensation from IBM. With the end goal in mind, the Customer can then determine a strategy to reach that goal.

IBM, as an organisation, is unlikely to take matters seriously or devote sufficient resources to solving the problems, unless a notice of breach is issued. Although this is a serious step, it is not unusual to do this in circumstances such as this. This also increases the Customer's leverage in any further discussions, and opens the door to discussions about compensation (rather than being on the backfoot and having discussions about additional payments to IBM).

If the Customer does not issue a notice of breach (or issues a defective or incomplete notice of breach), then the Customer's position downstream (if matters do not improve) will be much worse. It is always best to raise issues in a timely and appropriate manner.

If the Customer wishes to continue working with IBM, care must be taken not to be too hostile or act unreasonably, as IBM may then be less willing to work to solve problems and is more likely to go into damage control mode. To date, we see no evidence of the Customer acting unreasonably when dealing with IBM.

As CorpTech is the owner of the Customer Contract, these steps will need to be taken by CorpTech on a coordinated basis, with input from the relevant

Departments and Agencies (e.g., Health, DETA, Housing). We recommend that the strategy be signed off by the appropriate stakeholders, and executed in a coordinated and consistent manner. (IBM is likely exert political pressure, and try to play one group off against another.)

Broadly, we recommend the following course of action:

- (a) Review IBM's performance against the Customer Contract, and identify all material breaches by IBM.
- (b) Review IBM's performance generally, and identify other failings of IBM that are impacting the project, that may not necessarily be a breach of the Customer Contract.
- (c) Determine if there are genuine alternatives to having IBM complete the project.
- (d) If there are material breaches by IBM, issue a notice of material breach to IBM, and possibly, a demand for compensation for losses suffered by the Customer.
- (e) Have a very senior person from Government speak with IBM's Australian MD, to point out the seriousness of these issues.
- (f) Determine whether or not to terminate, in whole or in part, the Customer Contract for material breach by IBM.
- (g) If it is decided to proceed with IBM, then use the notice of material breach as leverage to negotiate a very tight new contract, new SoW or amendment.
- (h) If (g) fails, determine whether to seek compensation from IBM for its performance to date.

John Swinson
Mallesons Stephen Jaques

JVS9

FILE NOTE

SUBJECT CORPTECH - IBM MEETING

MATTER 04-5501-4946

DATE 9.10 AM - 29 JANUARY 2009

Commercial in confidence - not to be distributed outside Queensland Government

Prepared by: Kirsten Bowe and Leasa Crisp

Attendees:

CorpTech - John Beeston (JB), Malcolm Campbell (MC), Chris Bird (CB), Lynelle Adams (LA)

Health - Terry Burns (TB)

Legal - Boyd Backhouse (BB), Leasa Crisp (LC)

Mallesons - John Swinson (JS), Kirsten Bowe (KB)

IBM - Bill Doak (BD), Paul Ray (PR)

JB What we are endeavouring to do:

- Facilitate discussion;
- We would like to get this resolved as soon as possible;
- We would like to agree to a timetable as soon as possible; and
- Our intention to come up with workable agreement going forward.

BD IBM have a high burn rate and want to resolve this quickly too.

JS Lawyers for IBM are not here, so we need to focus on the project issues.

The customer is not happy and assume IBM is not happy either.

Looking for IBM to demonstrate that it can deliver:

- a robust solution;
- that meets the performance requirements;
- covering everything that is in scope (acknowledging there is some dispute as to what is in scope and what is out of scope); and
- Service management and abilities to hand over maintenance of the solution to CorpTech.

- BD • Concerned 'gulf' between the parties is too large
- Proposal IBM gave:
 - compromise position;
 - proceed with project on current "scope" and timetable;
 - with delivery end of Juneas per CR 129 timetable (in IBM's view).
- Parallel to proceeding with the project on this basis, negotiate on legal responsibility for:
 - cost allocation; and
 - finance integration.
- If this proposal is not acceptable then there is no need to discuss any further because IBM:
 - thinks its meeting contractual obligation;
 - can't accept a never ending inclusion of changes in scope;
 - is working in good faith but can't continue doing this; and
 - thinks it has demonstrated the intent of the CR129 gates (while acknowledge that they weren't actually met) and considers CorpTech's failure to pay them for this to be a show of bad faith.
- JS • Focus on how to proceed which meets both parties requirements rather than talking about walking away.
- BD • If moving to 'legal dispute' then move to that phase now:
 - IBM stop project and focus on dispute issues
- PR • Lets move through issues
- JS • What do you think will stop project?
- BD • Have schedule and will work towards it.
- JS • But delivery was for November - IBM didn't meet it.
- BD • But under condition precedents in CR 129, IBM have been working in good faith towards the new project schedule as set out in that CR.
- JS • That timetable hasn't been agreed. But can IBM still deliver to that timetable?

- BD • Yes - within the contract.
- JS • What do IBM propose to happen if they don't hit that timetable? Should there be a commercial risk to IBM, eg liquidated damages, if IBM fail?
- BD • Already substantial commercial penalty to IBM because of the fixed price and delay caused by both parties. No appetite for more commercial penalties than what is currently in the contract.
 - IBM believe they substantially met the conditions precedent for CR 129 and substantially demonstrated that they have a good solution.
- TB • How to get performance measurement?
 - IBM was only able to show a degree of compliance with the conditions precedent because Health manipulated its business processes to enable IBM to get close to the gate. How will IBM demonstrate that they can achieve performance requirements.
- BD • Yes, did manipulate processes, but proved pragmatically that it is a workable solution.
- TB • Position at Health at level of project, enough to continue, good chance to get a solution;
 - But, to go to the finance integration issue, need cost allocation for its business.
- JS • We think finance integration is in scope
- BD • IBM designed a solution, Health signed off that solution and IBM have now built to that scope. It isn't in scope.
- JS • Sign off of design is not acceptance that the design is correct, sign off is just approval to proceed to the next stage.
- PR • Isn't sign off to say the design meets the business requirements?
- BD • IBM built to design, not going to go back and redesign now, built to best practice.
- TB • It isn't how the customer runs its business.
- BD • IBM does not consider this is what it was asked to do.
 - IBM is meant to be delivering best practice.
- TB • Surely IBM should look to see how it is done now within the business.
- BD • Best practice.
- TB • In terms of IBM's proposal to continue with the project while discussing liability for cost allocation and the finance integration in parallel - Will IBM build Health's required cost allocation now as part of continuation?

- BD • Until agree a new schedule, IBM will continue to build to old scope.
- JS • Will you build cost allocation to Health's requirements?
- BD • If paying to do extra work, want to discuss at QLD Government, recognition that it is not best practice and get sign off at a high level within Government;
 - Recommend Health does what "the rest of world" does (ie standard SAP processes) rather than automate bad existing process;
 - Solution currently does cost allocation as per SAP standard processes.
- JS • Don't think we can leave the cost allocation issue out of discussions and resolution of the new timetable.
- TB • Is IBM saying that unless IBM gets more money to do cost allocation as required, IBM won't proceed?
- BD • First we need to work out who is responsible for the cost of this - is it in scope?
- TB • Yes - but that's a cost issue. Will you build cost allocation?
 - Are you saying, you will build the Health required cost allocation and then work out who pays?
- BD • Focus on delivering to current schedule;
 - Strong recommendation not to change cost allocation from SAP standard.
- JS • Can IBM deliver Health cost allocation requirements in same project timetable.
- BD • It will extend out project, optimistically October, but realistically end January 2010.
- MC • On the issue of Best practice - yes, overall "whole of government" contract requires best practice.
 - However, SOW 8 was a specific project to implement an interim replacement system;
 - This was just to move Health off lattice to mitigate that risk; see Schedule 23.
 - The intention was always to put Health on an interim solution and then retrofit SAP standard back into Health after rolling out to whole of government.
 - Government requirements - like for like interim lattice replacement system - always very clear on this.
 - SOW 7 solution - authorised to scope that like for like replacement - surely this initially requires IBM to scope the current system?
 - SOW 7 requires minimal implementation to mitigate risk of lattice

- If can't implement replacement because of how work processes operate this should have been raised at the scoping stage.
 - IBM's response to the original ITO was that it could do this and implement the replacement in June 2008. In its response IBM said that it "understood the requirements" of QLD Health.
 - SOW 12 - Health Awards in WorkBrain - this component would go forward
 - SOW 8 - not "whole of Government" - always intended as an interim replacement solution.
- BD
- Intent to implement SAP with minimal customisation;
 - Under those boundaries that IBM is building a replacement
 - IBM developed a design on this basis and got it signed off by Health
 - IBM have built to that design
 - Now these "new issues" have been raised just before UAT
 - If customise SAP finance solution to meet Health requirements
 - doesn't do anyone any favours
 - need to ensure sign off high up in QLD Health
 - not even sure current processes are legal.
- JS
- We need a process to work out whether this is in scope or not
- BD
- We need to give a direction to the team - BD wants to tell the team to get on with the project on the basis of the current IBM proposed schedule.
 - In parallel with this, propose we get the right people in room to discuss scope.
- JS
- Who are the right people from IBM and when can they be available- next week?
- BD
- Yes they can be available next week - not sure who yet. Maybe an SAP person?
- JS
- Would it be helpful to have an independent third person?
- BD
- Think it would be best to test internally between us first.
- JS
- Should we get set of documents first so that everyone is working from the same documents? For early next week? Tuesday?
- BD
- Need to confirm, but will let us know today.
- TB
- On what basis is IBM questioning legality of existing process?

- BD • Would need to check with the team, but know that is an issue that has been raised.
- JS • If IBM is recommending existing build, could we get a document on this basis, including any grounds on which IBM claims that the existing process are illegal?.
- BD • Yes, we can do that.
- MC What we are after is:
 - a robust system, that operates on a repeatable basis, delivered within agreed timeframes
 - it needs to be supportable by Service Management at Government; and
 - cost allocation is important
 - but we also need certainty of the solution and some confidence on that IBM can deliver these things.
- BD • We have an agreement with a Project Schedule, contracted deliverables, roles and responsible, which are being fulfilled now.
 - These are already all in place.
 - If CorpTech are asking for extra work, extra demonstrates (eg gates as per the CR 129 conditions precedent) - IBM is not interested.
 - We already have a contract
- JS • Back to cost allocation - need to document IBM recommendation
 - Recommendation should cover
 - legalities
 - best practice
 - how IBM approach is good or better than current process
- PR • Pragmatically, we also need to deal with an extension of SOW 8. There is an impact to the process if this is not extended.
 - Program office in SOW 2 - finishes tomorrow
 - If lose that SOW 2, lose a lot of "horse power" of how to meet timetable
- JS • Why renew SOW 2?
 - Can IBM provide a document on the benefits of extending this SOW?
- MC • Role of program office to manage program

- There hasn't been overall program management on this project.
- We have seen delivery in silos, no actual program office oversight. eg - person managing SOW 5 - didn't understand what happened on SOW 12. no interdependency between silos.
- If we ask for information on reporting, don't get the value of that reporting
- What value getting from extending SOW 2?
 - CR s
 - assistance
 - management of sub contractors
- BD • Let's not get down to the nit picking level.
- Need to resolve SOW 2 today.
- Don't see why we need to go through this process now. The program office was signed off over a year ago, and they are still required.
- If going to make June deadline we need some decisions on these issues now.
- There are assumptions in the schedule that IBM will start working on various things (eg on Tuesday) and they have not started yet!
- PR • SOW 8 - why does CorpTech consider old time table still applies?
- JS • Our position
 - condition precedents in CR 129 were not met
 - So SOW 8 timetable November 2008 still applies.
- BD • So what is the status of current schedule?
- JS • This is the schedule IBM is working to now in an attempt to remedy its breach by failing to deliver in November 2008
 - If we took strict legal view all our costs and IBMs from November 2008 and Project office costs would all be costs recoverable from IBM as a result of their delay.
 - We are not taking this view, because it isn't constructive, but this would be the approach if we did.
- BD • So what are the next steps?
- JS What other issues are there. We have identified:
 - Cost allocation

- SOW 2
- BD • Outstanding payments 1.2 million from SOW 8
- How paid for future issues
- JS • At a high level future payments will be covered off as part of the discussion on:
- timetable; and
 - payment plan..
- From customer perspective promised delivery at a fixed price for delivery in November
 - IBM haven't met this, why should the customer pay them until the work is done?
- BD • Because IBM are producing deliverables.
- Also not just IBM responsibility for delay.
 - Why should IBM keep working if not CorpTech isn't paying?
 - There are a lot of other deliverables, why not pay for these?
 - Point taken but need money.
- JS • We need to be persuaded why we should pay.
- BD • Contractual rights will protect you if we fail to deliver.
- JS • Its better to have the money in our pocket than to sue IBM for cash if they fail.
- What happens if don't have solution in July?
- BD • Look at contract - need to discuss with lawyers
- Don't want to go back and discuss new payment plan of money against dates, already done this.
- JS • Other issues?
- BD Smaller other issues:
- Acceptance Criteria etc
 - happy to treat these as BAU and resolve on that basis.
- MC Expects program office to start dealing with these issues.
- JB Two other issues:

- 1 Commercial handover to CorpTech commercial, due last May (SOW 9)
- PR • This now has a higher profile in IBM.
- MC SOW 9, general issues such as:
- warranty etc
 - acceptance criteria etc.
- JS This contract has attention of high level in Government, they have formed the view that IBM's performance has been very poor
- BD People in IBM also think CorpTech's performance has been very poor.
- JS • Need to have confidence that we'll get working deliverable on time
- May need to get through issues such as SOW 9 before paid. SOW 9 is part of what gives us confidence on the issue of hand over to the support function.
- JB • Acceptance criteria outstanding since May last year - how can it have taken this long?
- BD • Not rising to that!
- JB Second issue
- 2 Performance of pay run process, still an issue
- Don't want to divert resources but need confidence that pay run is robust
 - Main issue is the number of workarounds.
 - Some accepted on basis of getting quicker timetable. If now not getting by end of this financial year don't want solution compromised with workarounds.
 - Some of the workarounds are also to deal with existing Lattice functionality.
- BD • Don't believe there are current lattice functionality. If pre-existing lattice functionality should be in scope - agree.
- JS • We need each party to come back with their big issues for resolution, exchange and to be discussed.
- BD • Needs a clear message to the team by the end of this week.
- JS • Message - full steam ahead, deliver as soon as possible.
- BD • By what schedule?
- JS • AS SOON AS POSSIBLE

- BD • Can we agree (without prejudice) to June timetable?
- TB • By this does IBM mean - do two scope completions?
 - hold off on cost allocation until agreement, ie for a day or two; and
 - in interim continue with current process and scope excluding disputed component?
- BD • Yes.
- JB • Not agreeing to change in timetable. But IBM should continue trying to deliver the project and if their recommendation is to work to their proposed timetable, then they should do that until there is agreement on the outstanding issues.
- JS • So resolve cost allocation by end of next week?
 - What about SOW 2?
- PR • If don't extend SOW 2 there is no point meeting next week
- JS • SOW 2 being discussed today and IBM to demonstrate why extension is required.
 - Has an IBM lawyer been allocated to this project?
- BD • Yes, Sophie is the IBM Lawyer.
- JS • Are you happy for me to call Sophie to bring her up to date?
- BD • Yes.
- JS • We will send list of actions from meeting.

