

MONDAY, 11 MARCH 2013
PROCUREMENT HEARINGS
OPENING REMARKS OF PETER FLANAGAN QC

Introductory

Mr Commissioner, this first two weeks of evidence will look at the adequacy and integrity of the procurement process. This issue was not within the scope of the Auditor-General's Review nor any other review.

The Commission will be calling 23 witnesses to give oral evidence and will tender the written statements of a further six witnesses.

The tender process was the subject of anonymous allegations of collusion made on ABC radio on 2 November 2012. These allegations were made by a person referred to by the interviewer as "*Margaret*". The Commission has identified and interviewed the person who participated in the ABC radio interview. A statement has been taken from this person and will be tendered in evidence. Suffice to say that upon investigation, the person who made these allegations was not employed at Queensland Health until after the tender process had concluded. Accordingly, no direct evidence of any alleged collusion in the tender process was provided by this witness.

Since the commencement of this Inquiry on 1 February 2013, the Commission over the past month has received and reviewed an enormous number of documents provided pursuant to requests directed to the State, IBM and other parties. The Commission has conducted numerous interviews with witnesses and potential witnesses and has informed itself

about matters concerning the tendering process as well as State practices and procedures in that regard.

Over that month, certain lines of inquiry emerged and issues of apparent importance to the tender process were identified.

The Commission has distilled, as best it could in the time available, the most relevant documents in respect to the tender process. This has resulted in a 32 volume bundle of documents which I tender.

Although this may appear to be a large bundle, it is only a very small portion of the even larger number of documents which were produced to the Commission. There are however key documents relevant to the tender process which, despite numerous requests, have not as yet been located by the State. These include the tender directory and conflict of interest declarations for the ITO process.

I propose, Mr Commissioner, in these remarks this morning to give a brief overview of the issues which the lines of inquiry exposed and which will be the subject of the evidence to be led in the next two weeks.

The tender issue

Generally speaking, the tender issue involves:

1. the events which led to it including an initial Request for Proposal;
2. the issue of the Tender Invitation itself (known as the ITO – Invitation to Offer) which occurred on 12 September 2007;

3. the way in which the responses of the 3 companies that responded to the tender invitation were analysed (and IBM selected as the party with whom the State would contract);
4. the people involved in those events and making the relevant decisions and whether each fulfilled his or her obligations.

There will emerge questions as to whether certain senior officials discharged their obligations and, in particular, the extent to which those officials ought to have relied upon an outsider – to the extent they did – to advise upon or decide the course the State ought to take.

It will be informative we hope, Mr Commissioner, for us to set out a little more about these points so as to give an overview of what we expect the evidence to be and the themes to be.

These are the themes which we have identified from having analysed the documents and interviewed numerous witness.

Until early 2007, the State was pursuing what it called the ‘Shared Services Initiative’ by itself rolling out computer system upgrades for Government departments. One of the agencies responsible was within Queensland Treasury was known as “CorpTech”.

The model which the State adopted in its rollout was to engage contractors to assist it. Under this model, the State remained the project manager and had prime responsibility for the Initiative – CorpTech was,

in effect, the prime contractor of the State for the work it was gradually undertaking.

The Shared Services Initiative, however, was not entirely smooth. There had been a significant slippage in its rollout and its initial budget was rapidly been expended.

The State commissioned several reviews of that Initiative.

Queensland Treasury wanted a new approach and commissioned various outsiders to help it decide what to do to speed up the delivery and to slow the rate of spending.

The Service Delivery and Performance Commission prepared a report on the Shared Service Initiative in March 2007. That report made a number of recommendations about changes which ought to be made to the Initiative. Many of them recommended that the Under Treasurer cause certain tasks to be undertaken directed, in a general sense, to seeing if the Initiative could be better and more cost-effectively organised.

The Under Treasurer was at that stage Mr Gerard Bradley.

He commissioned, in April 2007, a high level review of the Initiative. That review was conducted over about 5 days by Mr Gary Uhlmann, Mr Mark Nicholls, Mr Terry Burns and Mr Keith Goddard.

Mr Burns had only recently arrived in Brisbane and this was the first work he had ever done for the Queensland government – indeed the first work he had ever done in Queensland or Australia. He was, apart from

having come well-recommended (but from people who could not have known him more than a few weeks and who themselves were contractors), unknown to people within CorpTech. He came, however, with an impressive CV, having worked in senior roles and importantly for present purposes in IBM in South Africa (as its “top man” for 3 years as he said to us) and have run - and saved - several very large projects in the UK and New Zealand.

The 18 April 2007 report or presentation became known as the “Phase I” report.

This was the first of four reviews.

The subsequent reviews were undertaken by Mr Burns alone. The reliance placed upon Mr Burns - for such an important matter – is a particular issue which is of interest and which will be pursued in the oral evidence. We know that within a very short time, he had what he described as a “short line” to Mr Bradley, the Under Treasurer.

Mr Burns undertook a review in May 2007 – the Shared Services Replanning Report (**Bundle p 182 – VOLUME 1**).

That report (also known as the “Phase II” report) gave a pessimistic view of the Shared Services Initiative as presently being implemented. It would be late and over budget it was said. Mr Burns recommended that the State appoint a Program Delivery Director and a “highly empowered program management office to provide the disciplined process which the Program Delivery Director would rely on” (**Bundle p 192 dot point 3 – Volume 1**).

At this time, there does not seem to be any suggestion - on the documents at least - that the State would change course and appoint a prime contractor to assume the role it has previously had for the Initiative. But that advice must have been given and acted upon before late July 2007, as will be seen presently.

It is a matter of interest that Mr Burns came to occupy some of the positions which he had recommended be established and which he recommended to be "highly empowered" ones.

Even at the early stage of the Phase II review, and well before the State had decided to change the model for delivery of the Shared Services Initiative, Mr Burns was having discussions with IBM about its possible involvement in the Initiative. It will be a line of inquiry to ascertain the nature and extent of those communications, whether they were authorised and whether they gave IBM an unfair advantage in the tender process which was to follow.

At some stage – we are not entirely sure when precisely - Mr Burns suggested to the State that it move to a prime contractor model, ie engage a major company to not just deliver the Initiative, but project-manage it.

These events coincided with the then head of CorpTech (a Mr Geoff Waite) leaving his job. He was replaced by Ms Barbara Perrott, who up until then had been working on other aspects of the Initiative.

Mr Terry Burns had never before done work for the Queensland Government. He had never before worked in Queensland. He came well-recommended by one contractor who was known to CorpTech.

There successive reviews. One is dated 15 September 2007 (and known as the “Phase III” report). It too was a report of Mr Burns. It recommended the establishment of a ‘Solution Design Authority’ which would identify and own the restated solution model (**Bundle p 477 – Volume 1**). There was also a “Phase IV” report.

The issue of a prime contractor model had been considered – perhaps as part of the “restated solution model”. In late July 2007, CorpTech sought the advice of Mr John Swinson from Mallesons as to whether, given the existing contractual arrangements which the State had in place with various “vendors”, it was legally even possible for the State to move to appoint a prime contractor.

Advice of that kind was sought on 26 July 2007 (**Bundle – p 5 - Volume 9**). Mr Swinson was asked to consider the matter overnight. The next day, he conferred with Treasury legal officials and advised that there was no impediment to the State moving to a prime contractor model.

This was the legal advice. The advice about the desirability of that move seems to have come from Mr Burns in his various reviews or reports.

A Request for Proposal (**RFP**) was issued in about July 2007. It was issued to some 11 external service providers (including IBM, Accenture and Logica). Only four companies responded to the RFP, namely, IBM, Accenture, Logica and SAP.

There was an evaluation of the RFP responses. It has been unclear on the material we have seen just how extensive or rigorous it was. The participants in it (which included Terry Burns) signed a conflict of interest declaration. Despite having worked at IBM including, as he told us for 3 years as its “top man” in the Cape Province in South Africa, and having worked since with IBM in New Zealand as part of a large project, Mr Burns declared “None” on his conflict of interest declaration **(Bundle p 19 – Volume 9)**.

After the RFP, there was some attempt made to regularise the process. Advice was obtained from John Swinson of Mallesons and Treasury legal officer Mr David Stone. In one meeting with Treasury legal officials, Mr Burns told the meeting he had already had “RFO discussions” with two vendors.

Treasury had become involved, it seems, after Ms Maree Blakeney, who seems to have had an important role in the RFP process and the tender process which followed it, raised concerns that Mr Burns had been out talking to potential vendors. The evidence will show that Mr Burns had a number of one on one meetings leading up to this RFP process with Mr Bloomfield of IBM.

It has not yet appeared clearly which of the RFP respondents was preferred, and whether there were any attempts to contract with one of them at that stage rather than proceed to the ITO stage. Some documents do demonstrate that after the RFP process, Accenture was rated first followed by IBM. This was certainly the belief of Mr Marcus Salouk who was leading the Accenture proposal.

It was later decided to issue an Invitation to Offer (ITO). That took place on 12 September 2007 (**Bundle p1 - Volume 12**). It was a “closed tender”, and was issued only to IBM, to Accenture and to Logica. SAP had withdrawn from the process.

The ITO invited responses from a “Shared Services Solution Prime Contractor”. The scope of the response was wide. The prime contractor was to ‘plan, resource, coordinate and manage the overall Shared Services Solution program’.

Each of the 3 invitees submitted responses. Logica was regarded as non-compliant because it’s tender did not respond to all of the relevant services which were required.

Before turning to the evaluation phase, can we pause, Mr Commissioner, to make some observations?

First, the process up until this point was conducted in an atmosphere of urgency. We have inquired about the causes of it. It would seem that there was a concern that, because the Shared Services Initiative to date had been expensive and was delayed, there was a need to proceed with urgency to a new model.

We see the urgency manifest in asking Mr Swinson to advise overnight. We see it in discussions taking place before it has even been decided to engage a prime contractor. We see it in the engagement of an outsider charged with “accelerating” the solution and we see it in an abbreviated

timetable for the drafting of the ITO and for the submission of responses to it (less than 4 weeks).

Secondly, we see a change from the early review to the later review. At first, it is recommended that the rollout in Queensland Health be one at a later stage. By the Phase III report, Queensland Health is one of the first (or perhaps the first agency in which there is to be a roll out) using the Prime Contractor Model. It was known that Queensland Health was a complex agency from a payroll point of view.

So it is unclear why a decision was made to bring it forward. One reason may have been a belief (as was the case) that the vendor of the payroll system then in place at Health – LATTICE – would soon cease its support of it, meaning that the need for the new system became more important. You will hear evidence, however, Mr Commissioner, that it is far from clear that this is the case both because CorpTech, though Mr Darrin Bond, had acquired people who were capable of maintaining LATTICE and CorpTech had acquired the necessary codes to permit it to do that. Moreover, there is some evidence to suggest that the LATTICE vendor (Talent2) would have, if paid to do so, continued its support. We know of course that LATTICE stayed in place at Queensland Health until the go-live date for the SAP – payroll system in March 2010.

We have had, Mr Commissioner, some difficulty in understanding why there was such urgency and we will inquire whether and to what extent it was justified to adopt such an approach and cut the corners which an urgent approach seemed to justify. Whether that was warranted in such a large and important project is one of the issues which we will submit requires some attention.

Thirdly, the move to a Prime Contractor Model involved that company providing the 'project management' component. By that we mean, preparing the schedule, the specification and program and project management documentation. One of your terms of reference, Mr Commissioner directs to you inquire whether project management practices were breached. You will hear evidence of the extent to which IBM met its obligations in the next block of hearings which concern the contract, and parties' performance under it and the State's management of it.

ITO Evaluation

We indicated earlier saying something of the ITO Evaluation.

An evaluation panel was established. It comprised as "Project Lead Advisor", Mr Terry Burns. Again, we see his name prominent in the process.

The panel was divided into sub-teams, with various leaders, including Mr Darrin Bond (Functional and Business and Technology), Phillip Hood (Operations and Support) and Colleen Orange (Pricing).

The time allowed for the evaluation was short. Responses were received on 8 October and the Evaluation report was signed by the Chair (Ms Perrott) on 25 October.

You will hear evidence, Mr Commissioner, of what this process entailed. Sub-teams met according to topic to which they had been assigned.

They also met as a group. The team with responsibility for pricing was kept quarantined from the others, the idea being that the other aspects of the evaluation not be tainted by questions of price.

Price takes on a special relevance, so I will turn to it specifically in a moment.

Evidence has emerged that, about two thirds the way through the evaluation process, Accenture was ahead. Mr Burns at this time met with sub-team leaders and urged them to reconsider their assessments. Mr Darrin Bond's evidence, for example, is that this occurred and that, as a result, and feeling uncomfortable about it, he re-visited the provisional scoring he had adopted. The result was that, at a time when it looked as though Accenture was in front, IBM took the lead on the provisional scoring.

Not all team leads have this recollection. There are others, however, who do have a recollection similar to that of Mr Bond.

What is interesting, however, is that the documents which the Commission obtained showing the draft scoring, does show IBM on any many issues not to have been ahead in the initial evaluation. One important example of the change in the assessment of IBM's tender response is that more "strengths" are listed for IBM and, in particular, IBM's response is described as being "innovative" (**Bundle – Volume 22, Tab 19, Pages 1-32 Summary Heading 6.1**), a word which resonates with the discussions which Mr Burns apparently had with Mr Bloomfield of IBM in about early May 2007, about IBM's response needing to be innovative.

The reference to the IBM proposal being “innovative” seems to be to it using a programme called “Work Brain” as the awards engine, ie putting the details of the awards (which are complicated) in WorkBrain rather than SAP, the other and more proven programme which was being used. This issue too is of interest, but it primary arises when it comes to considering IBM’s performance under the Contract. The question remains, however, at this point, whether this was “innovative” of IBM or simply unsafe or overly risky.

We said we would say something of the evaluation of price. The assessment of the pricing component was that IBM’s proposal was the “least cost”. We have had some difficulty understanding how that assessment could have been made. Not only is the pricing in the various tender responses difficult to follow, the various proposals are difficult to compare, especially with the certainty which the pricing assessment seems to assert.

There is another complication. IBM’s pricing was, in large part, on a “best estimate” basis. So when the pricing was to be compared, it is difficult at present to see how the comparison was on a like for like basis.

Might we add, Mr Commissioner, that we pursued this issue with some focus. But we have not yet been able to ascertain, despite having interviewed all of the relevant price evaluation witnesses, not only precisely how that assessment was arrived at, but whose view it represents. This is an issue which will require some further attention in the public hearings, being one of the most important reasons why IBM was selected over other tenders, the assessment on the other criteria

being, for all present material purposes, relatively close as between IBM and Accenture. It is also an issue of public interest because it involves the expenditure of public funds and is part of the point to which one of the terms of reference is directed [paragraph c]: namely how the contract price increased over time.

Ultimately, IBM won the tender. It was selected as the party with whom the State would enter into negotiations for a contract.

As we know, that contract was executed on 5 December 2007. It was for the provision of services directed to the - now revamped - Shared Services Initiative.