

Ms Madeleine Dowd  
Principal Council Officer  
Upper House Committees, Legislative Council  
Parliament of New South Wales  
Parliament House, Macquarie Street  
Sydney NSW 2000

21 October 2021

Dear Ms Dowd,

**OCM Response: Inquiry into the granting of contract number OoS17/18-021 by the Office of Sport**

I refer to your correspondence dated 6 October 2021 advising of the receipt of submissions from a number of authors regarding the NSW Legislative Council Public Works Committee Inquiry (**the Inquiry**) into the awarding of the above contract by the Office of Sport (**OoS**).

As part of the Inquiry, O'Connor Marsden & Associates (**OCM**) is being provided with an opportunity to respond to potential adverse comments made by the authors of Submission 0003 (Equestrian Services) and Submission 0018 (Name withheld) in relation to OCM and specifically OCM's probity report to the OoS dated 29 April 2020 (**OCM Report**).

OCM acknowledges the Terms of Reference for the Inquiry includes the following:

- f) *the engagement of and role played by O'Connor Marsden in the examination of probity issues in regard to the granting of the contract and the failure to examine aspects prior to and following the evaluation and awarding of the contract*

OCM strongly disputes the above statement regarding the "failure" of OCM to examine aspects of the contract award. OCM's engagement on this matter was limited to a retrospective review of the Request for Tender (**RFT**) tender process (most notably the evaluation stage) and to provide a report on the probity of this process.

The aspects outlined in the OCM Report specifically refer to the probity matters which OCM identified during our retrospective review of the RFT process. OCM was not engaged by, or provided any advice to, the OoS before or during the RFT tender process. Our review was conducted after the award of the Contract and after the project had been completed and focused on a specific conflict of interest allegation and any "learnings" about the RFT tender processes needed to apply to future tender processes. Furthermore, there was no capacity or authority for OCM to overturn the decision made during the RFT tender process.

OCM does not have governing or statutory authority to revoke or reverse decisions made as a result of the RFT tender process, in relation to the subsequent Contract award or regarding the Project performance and outcome. OCM provided an independent probity review of the RFT tender process limited to the agreed scope of engagement. Our review was over two years after contract completion. The objective of this review was to provide the OoS with an outline of the probity matters that we could identify from the RFT documentation provided to us, supplemented with interviews, together with some lessons learnt for the OoS to consider for any future tender processes specifically relating to probity.

OCM was not the probity advisor engaged during the RFT tender process and therefore strongly refutes any assertion or claim that the OCM Report represents failures regarding our conduct during and after the RFT tender process and management during the project delivery phase.

We have outlined in the tables below specific comments in response to the OCM scope in the context of point (f) in the Inquiry's Terms of Reference, as well as comments in response to the matters raised in Submissions 0003 and 0018.

We are available to present to the Committee, should this be required.

Yours sincerely,

**Andrew Marsden**  
**Partner**

**Sarah Mullins**  
**Partner**

## OCM scope and methodology

	Included	Not included
OCM Scope	<p>OCM received an email request from the Office of Sport (OoS) on the 13 March 2020 requesting OCM to consider an engagement fee regarding <i>“an independent review of the tender documentation, the tender process, tender panel and advisory committee, and the role of Equestrian NSW in the tender process”</i>. The tender process being referred to is the Sydney International Equestrian Centre.</p> <p>OCM provided a fee proposal on 13 March 2020, which was accepted by the OoS on 14 March 2020.</p> <p>The objective of OCM’s engagement was to:</p> <ol style="list-style-type: none"> <li>1. Retrospectively review the 2017 RFT tender process conducted by the NSW Office of Sport</li> <li>2. Provide probity advice and comments in relation to our observations of any areas of probity risk associated with the RFT process;</li> <li>3. Retrospectively review the allegations of an undeclared conflict of interest in relation to BSMS and the NSW President</li> <li>4. Provide probity advice and comments in relation to our observations of whether the undeclared conflict of interest had any impacts on the integrity of the RFT process.</li> </ol>	<p>OCM was not engaged by the OoS to undertake the following activities and therefore these were not considered, required, or reviewed as part of the OCM engagement and do not form the basis of the OCM Report:</p> <ol style="list-style-type: none"> <li>1. The basis, involvement, engagement, expertise or industry experience of individuals in the development of the scope and specifications in the RFT tender documentation</li> <li>2. The manner and processes undertaken by OoS in managing the works before, during and post completion of the Project</li> <li>3. All correspondence and communication between the OoS, NSW and the tenderers before, during and after the tender process (apart from the documentation provided by the OoS to OCM as part of our review which can be found in Appendix A)</li> <li>4. Negotiations leading to Contract Award to BSMS</li> <li>5. The delivery of the project by BSMS.</li> </ol>
Activities	<p>OCM undertook the following activities as part of our probity review that informed the OCM Report:</p> <ul style="list-style-type: none"> <li>• Review of the tender documentation (refer to Appendix A);</li> <li>• Review of the tender process;</li> <li>• Review of the appointment of the tender panel, its processes and deliberations;</li> <li>• Review of the role of Equestrian NSW in the tender process;</li> <li>• Review of the declarations of Conflicts of Interest and the management of those declared and the management of those not declared; and</li> <li>• Interviews with three (3) NSW Office of Sport staff and one (1) NSW representative.</li> </ul>	<p>OCM were not engaged to undertake the following activities:</p> <ol style="list-style-type: none"> <li>1. Investigate whether corrupt conduct was evident throughout the RFT process by the OoS, NSW or the tenderers</li> <li>2. Whether appropriate channels were followed regarding the initial funding request and development of and process regarding the business case</li> <li>3. Investigate the daily activities undertaken by the OoS and NSW during the RFT process and whether inappropriate, undue influence or misconduct dealings transpired</li> <li>4. Whether the technology and scope specifications in the RFT documents were appropriate or properly considered for the Project objectives and outcomes.</li> </ol>

## OCM response to Submission 0003

We have outlined in the table below OCM's response to the comments made by Equestrian Services in Submission 0003 regarding OCM's engagement on this matter and the OCM Report (noting the version of Submission 0003 provided to us was a redacted version and therefore OCM can only respond to the unredacted components of the Submission as provided).

Submission statement	OCM response
<i>The score was formulated on price and non-price criteria which the O'Connor Marsden (OCM) probity report reveals Bruce Farrar the CEO of Equestrian NSW had significant input and involvement.</i>	<p>OCM disputes this statement.</p> <p>The OCM Report does not "reveal" that Mr Bruce Farrar had "significant input and involvement" in the price and non-price criteria in what we assume, this submission author, is referring to as the RFT documents.</p> <p>The OCM Report states in Section 2.1 (page 7) that detailed scope of work for the RFT was developed internally in conjunction with, and based on advice from ENSW (which OCM was advised by the OoS is the principal user of the facility) through Mr Bruce Farrar the CEO of ENSW.</p> <p>This statement from OCM is specifically referring to the scope for the RFT and not the price and non-price evaluation criteria.</p>
<i>Officials appear to have relied upon Bruce Farrar as he is quoted as promoting Barrie Smith as his preferred tender "due to the mats technology, international elite experience, commitment to the program and ease of doing business with."</i>	<p>The OCM Report provides an outline of the evaluation process as conducted.</p> <p>The evaluation of the tender submissions was undertaken by the Tender Evaluation Committee (<b>TEC</b>).</p> <p>The role of the TEC was outlined in the approved Tender Evaluation Plan (<b>TEP</b>) and stated the role as being to assess tenders in accordance with the TEP and to submit a Tender Recommendation Report which includes the TEC's recommendation for a preferred Tenderer/s or other course of action for approval by the Director, Asset Management and Procurement.</p> <p>The members of the TEC were a NSW Office of Sport Project Manager and two Sydney International Equestrian Centre Officers.</p> <p>The TEP also made provision for the TEC to seek subject matter expertise and advice from a Tender Advisory Panel (<b>TAP</b>).</p> <p>OCM noted that there were three representatives of the TAP with technical subject matter expertise and experience and were recommended by ENSW, as the principal user.</p> <p>Mr Bruce Farrar was one of the TAP representatives.</p> <p>The OCM Report states<sup>1</sup>:</p> <p><i>"...based on OCM's interviews, it was confirmed that TEC assessed the tenders independently of the TAP's involvement and formed their own view as to a preferred Tenderer. The TAP advice was not received by the TEC members and therefore was not considered in the TEC's decision to recommend BSMS as the preferred</i></p>

<sup>1</sup> Section 2.3, Page 17 of the OCM Report dated 29 April 2020

Submission statement	OCM response
	<p><i>supplier. However, we note that the TAP written advice was incorporated into the TRR to strengthen the TEC's recommendation."</i></p> <p>The comments made by Mr Farrar, in his role as a TAP representative, appear to have been made independently of the evaluation process undertaken by the TEC. All members of the TEC that were individually interviewed by OCM verbally confirmed that the TEC did not rely on the comments or recommendations from the TAP representatives and the TAP did not influence the scoring of the tender submissions. OCM was not provided with any information or documentation during our engagement to contradict the verbal advice provided by all members of the TEC, nor do we have the powers to use covert means to validate these statements. The information provided to us and the questions we independently asked do not support that "the Officials relied upon Bruce Farrar" in finalising their tender recommendation. We cannot and will not rely on 'hearsay' in our probity work.</p>
<p><i>There are references to the urgency of the contract through the FOI documents. It appears that the officials of the Office of Sport relied upon Bruce Farrar to set the dates for the project schedule and agreed to him extending the completion date to favour Barrie Smith. Officials from the Office of Sport and OCM claim Bruce Farrar was not a decision maker, yet here is an obvious example of him making a decision.</i></p>	<p>The OCM Report states<sup>2</sup> that "...the RFT was conducted in a relatively short tender period of approximately two (2) weeks which was owing to the urgency and time constraints for project delivery as advised by the NSW Office of Sport namely an international competition scheduled to be held in January 2018."</p> <p>The above comment is in reference to the tender period relative to the completion of the project works needed prior to an international competition.</p> <p>The Submission statement infers a link between the commentary throughout the OCM Report regarding Mr Farrar's involvement in the RFT process and Mr Farrar's involvement post Contract award and during the project works.</p> <p>OCM was not engaged to undertake retrospective review of the project works component of the Contract and has not and cannot comment or provide a view regarding the alleged extension of the Contract completion date and reasoning behind this.</p> <p>The OCM Report comments have been made solely in reference during the RFT tender process, and specifically the tender period, as per our scope of engagement.</p>
<p><i>OCM does not query why officials did not make inquiries the independent of Bruce Farrar or check Bruce Farrar's information and advice.</i></p> <p><i>OCM does not consider why the Office of Sport did not request a league table for industry best practice for international competition arenas, from either Bruce Farrar or the tender advisory panel the set up?</i></p>	<p>OCM's role in retrospectively reviewing the RFT process focused on the probity principles and whether the RFT documentation provided to OCM highlighted any areas of concerns and/or probity risks. Our role was not a technical specification review, as that is not a probity element or requirement.</p> <p>The OCM Report highlights in Section 2.1 the following regarding the RFT process:</p> <ol style="list-style-type: none"> <li>1. The NSW Office of Sport sought relevant industry experience and expertise from sixteen (16) key stakeholders to provide comment on the proposed scope of works for the RFT. Feedback provided was considered by the NSW Office of Sport in the development of requirements. Available records confirm that feedback was received from four of these stakeholders, namely:</li> </ol>

<sup>2</sup> Refer to Section 2.1 Page 8 of the OCM Report dated 29 April 2020

Submission statement	OCM response
	<ul style="list-style-type: none"> <li>• Equestrian NSW;</li> <li>• Dressage NSW;</li> <li>• Arabian Horse Society of Australia (AHSA); and</li> <li>• Show Horse Council of Australasia.</li> </ul> <p>The NSW Office of Sport confirmed to OCM that the detailed scope of work for the RFT was developed internally in conjunction with, and based on advice from ENSW through Mr Bruce Farrer the CEO of ENSW. As above, our role was not a technical specification review, as that is not a probity element or requirement.</p> <ol style="list-style-type: none"> <li>2. Two of the three TEC members and the Director, Asset Management, that OCM interviewed during the engagement confirmed that the NSW Office of Sport did not have the internal expertise to prepare a detailed scope of work for an arena riding surface meeting international standards and therefore sought subject matter expertise from ENSW, in addition to the stakeholder consultation (in point 1 above), to assist in the preparation of tender requirements.</li> <li>3. Prior to inclusion in the scope of work, input from ENSW was tested by the NSW Office of Sport who relied on internet research, the knowledge of internal staff and case studies of other similar projects to confirm the veracity of the proposed requirements.</li> <li>4. We noted that key stakeholders such as end users of the facilities were asked to provide feedback on the proposed draft scope of work for the RFT which means that requirements were also externally tested by key stakeholders to ensure that the desired business outcomes for an international standard arena could be achieved. Feedback on the draft scope of work was received from stakeholders as noted in Point 1 above.</li> <li>5. Based on the Deed of Confidentiality and No Conflict of Interest forms reviewed by OCM, Mr Farrar did not identify any conflict of interest on his signed form on 25 October 2017.</li> </ol> <p>The above is not an exhaustive list of the queries and considerations made by OCM regarding the input of external parties regarding the RFT scope. However, as previously stated, it is evident that OCM undertook its review of the RFT process in accordance with our agreed scope and based on the review of documents provided (which are itemised in the OCM Report) and interviews with relevant individuals.</p> <p>Further, consistent with the scope of our engagement, OCM also identified a number of recommended future learnings where the tender process could have been improved. However, the review did not identify anything to suggest corrupt conduct in the RFT tender process leading to the recommendation made or that the identified conflict of interest (of the ENSW Board President) unduly influenced the outcome of the tender process.</p> <p>OCM explicitly notes the following as Recommended Future Learnings in the OCM Report<sup>3</sup>:</p> <ol style="list-style-type: none"> <li>1. With regard to the probity principle of Accountability and consistent with section 14.2.1 of the NSW Office of Sport Procurement Manual (3 May 2016), the NSW Office of Sport should ensure that there is Sourcing Strategy developed which includes a record of clear justifications and reasoning for the selection of suppliers who are to</li> </ol>

<sup>3</sup> Refer to Section 2.2.1, Page 14 and 15 of the OCM Report dated 29 April 2020

Submission statement	OCM response
	<p>be invited to participate in the tender process. Under the Sourcing Strategy, there should be detailed market analysis with reasons as to why a particular market approach (in this case a limited/select tender) has been chosen. Where suppliers have been identified in relation to a limited/select tender, the Sourcing Strategy should also include the criteria used to identify these parties so as to mitigate against a risk that the list has been based on subjective or other information and is unable to be justified if openly scrutinised.</p> <ol style="list-style-type: none"> <li>2. Having noted that the NSW Office of Sport was uncertain of the suppliers in the market for arena resurfacing, an open tender to the market would have been appropriate in these circumstances to mitigate against the risk that other capable suppliers are precluded from lodging a submission. An Open Request for Tender would also have been consistent with the process described in Section 8.9 of the Procurement Manual which requires an open RFT process where there is no government panel arrangement in place for the provision of the services.</li> <li>3. Where the NSW Office of Sport is seeking to use advisors, subject matter experts or a TAP in a non-voting capacity as part of the tender assessment process, this should be expressly documented in the TEP. As is consistent with the probity principles of Accountability and Transparency, the TEP should describe the following information: <ul style="list-style-type: none"> <li>• The composition of the TAP (identification of non-voting members);</li> <li>• The roles and responsibilities of the TAP including obligations for maintaining probity in the process;</li> <li>• What components of the tenders and returnable schedules will be reviewed by the TAP; and</li> <li>• How the TAP and individual advisor's comments or input will be fed into the overall tender assessment process.</li> </ul> <p>Where the use of a TAP is not contemplated in the TEP, this should be formally updated by amendment to the Evaluation Plan and signed off by an appropriately delegated authority who is normally the original approver of the TEP. Furthermore, it is equally important to document the TAP's role in the final TRR as it is a record of activities performed as part of the decision-making process.</p> </li> <li>4. In relation to declaration of Conflicts of Interest, it is recommended that in future, all participants in the RFT process be asked to sign a Conflict of Interest declaration at their first involvement in the project. Early identification of any conflicts of interests (including perceived and potential conflicts) enables the NSW Office of Sport the opportunity to proactively implement robust probity controls to manage any potential probity risks before they arise. However once declared, Conflicts of Interest should be routinely reviewed to ensure that disclosures have not changed, and that initial declarations remain valid. OCM's recommendation would be to seek affirmation of declarations at key decision points of the tender process.</li> <li>5. We advocate full disclosure especially if there is any uncertainty from evaluation participants in relation to whether a declaration is required. This would enable the NSW Office of Sport the opportunity to register the conflict for transparency and proactively implement robust probity controls if required to manage the probity risk. This should be regardless of whether the individual declarer forms the view that the conflict of interest is already being managed appropriately and guidance to this effect should be provided to evaluation participants.</li> </ol>

Submission statement	OCM response
	<p>6. In future procurement activities where similar subject matter expertise is obtained from the industry during the tender process, the NSW Office of Sport should ensure that there is a clear understanding of conflicts of interest and the types of associations which should be disclosed.</p> <p>OCM believes we gave due consideration and undertook relevant queries and enquiries regarding the RFT tender process in accordance with the scope of our engagement to the OoS. Due to our review being conducted in a retrospective nature, the outcome of our review was never intended to change or alter the outcome RFT process due to the Project having been completed prior to our engagement.</p>
<p><i>The probity report makes the observation that it was not an area of non-compliance with the procurement policy or procurement manual but it would be better practice in future to;</i></p> <p><i>“Ensuring that there is a clear and strong justification where the TEC (Tender Evaluation Committee) is making a recommendation not to award the contract to the top ranked tenderer and that this aligns with the TEP (Tender Evaluation Plan) as well as discretions in the RFT (Request for Tender).”</i></p>	<p>OCM is not clear what the Submission author is querying or making an assertion about based on this statement. The quote must be read in the context in which it was provided in the OCM Report and we stand by the recommendation as quoted.</p> <p>The purpose of this statement in Section 1.3.2 of the OCM Report is to recognise that the TEC’s recommendation for the selection of BSMS was not in line with the overall ranking of the tenders. The OCM Report is also stating that the tender evaluation process, and in particular the tender evaluation report, would have been strengthened if it included more detailed reasons to support the recommendation. The OCM report highlights this as a weakness in the process but concludes that it is not a breach of the procurement policy or manual but a matter that the OoS should address in future procurement processes.</p> <p>There was no utility in OCM recommending the evaluation be conducted again as the contract was let two years earlier and we were informed by the OoS that the work had been completed.</p> <p>OCM provided the following as a key finding in the OCM Report<sup>4</sup>:</p> <p><i>There appears to be a disconnect in the evaluation process between the views of the TEC on the outcome of the tender assessment and the final ranking and scoring against the evaluation criteria.</i></p> <ol style="list-style-type: none"> <li><i>1. The TEC has identified in the TRR, reasons for not awarding the contract to the top ranked Tenderer, which is largely based on limited experience with the ‘ebb and flow’ systems required in the RFT. However, whilst these are important considerations for the assessment of the tenders, as OCM understands that this is a requirement in the specifications, these concerns should have been factored into the scoring of this tender against the relevant Non-Price Evaluation Criteria. If this has not occurred, then the scoring of the tender response on which the final rankings were based would be incomplete. Alternatively, if the risk identified by the TEC has been considered as part of the scoring and is part of the reason this Tenderer scored 70 for one of the criteria, then to use this information as part of the reason for not awarding them the contract would be penalising the Tenderer for this weakness twice.</i></li> <li><i>2. OCM undertook a level of sensitivity analysis of the tender assessment and even if the score for this tenderer against this criteria was reduced to 60 (defined in the TEP as “meets minimum requirements...”), Equestrian Services Australia would remain the top ranked tenderer.</i></li> </ol>

<sup>4</sup> Refer Section 2.2, Page 14 of the OCM report dated 29 April 2020

Submission statement	OCM response
	As previously stated, consistent with the scope of our engagement, OCM also identified a number of recommended future learnings where the tender process could have been improved. However, the review did not identify anything to suggest corrupt conduct in the RFT tender process leading to the recommendation made or that the identified conflict of interest (of the ENSW Board President) unduly influenced the outcome of the tender process.
<i>The Office of Sport were aware that the release of the FOI documents in December 2019, raised serious questions as to their involvement and conduct. The CEO of the Office of Sport limited the scope of the probity report to the request for tender.</i>	OCM is not in a position to provide a comment regarding this statement as the assertion is regarding the intention and practices undertaken by the OoS.
<i>Karen Jones omits to include in the probity review how the contract schedule was conducted and why second-hand arena surface material from a private contract of the contractor, was installed in the indoor arena at the SIEC.</i>	OCM is not in a position to provide a comment regarding this statement as the assertion is regarding the intention and practices undertaken by the OoS and is outside of our review scope.
<p><i>OCM appears compromised as a result of the restricted scope it accepted, especially as its probity report is freely available, thanks to Mr Latham's assistance in obtaining the document that the Office of Sport attempted to withhold from members of the equestrian community and taxpayers of NSW.</i></p> <p><i>Is it fair to say, the Office of Sport nobbled OCM?</i></p> <p><i>Or was OCM a willing partner with the Office of Sport by attempting to cover up the Office of Sport's dishonest and corrupt conduct?</i></p>	<p>OCM strongly refutes these statements made by the Submission author.</p> <p>The specifics of our review is set out in the probity report and in Page 3 of this response. As stated previously, OCM's role was to undertake a retrospective review of the RFT tender process and to identify whether there was evidence to suggest that the disclosed conflict of interest unduly influenced the process.</p> <p>The contents of the OCM Report were based on our independent review of the documents provided to OCM by the OoS as listed in Appendix A and interviews conducted.</p> <p>The OCM Report does not provide an endorsement of the way in which the RFT process was conducted, nor does it credit the management of conflicts of interest during the process. The OCM Report also identified several areas of key findings and recommended future learnings, as the process was far from perfect, though by the time we examined the RFT tender process the Contract has been awarded and project works completed.</p> <p>The findings in the OCM Report were not influenced or guided by the OoS, Mr Farrar or any other person involved in the RFT process.</p> <p>The assumptions and accusations made by the Submission author are unfounded.</p> <p>The Submission author's accusation of the scope being "restricted" is a subjective and unfounded statement with no basis. OCM does not have investigative powers or statutory authority similar to the Independent Commission Against Corruption (ICAC). The OCM Report thoroughly addresses our independent review of the RFT process as per the scope of our engagement.</p> <p>The Submission author's accusation as to whether OCM was "a willing partner with the Office of Sport by attempting to cover up the Office of Sport's dishonest and corrupt conduct" is once again unfounded subjective and defamatory.</p>

Submission statement	OCM response
<p><i>I ask the Committee to assess the quality of the OCM probity report in the context of what was outside the terms of reference and scope of the review. If an effective probity review had been conducted, the ICAC would have had before it a comprehensive assessment of the origins of how and why the board of Equestrian NSW made a submission for funding to Minister Ayres and the collusion of officials of the Office of Sport with the CEO of Equestrian NSW in every step and stage of the process, from the beginning to the present day.</i></p>	<p>OCM strongly refutes these statements made by the Submission author.</p> <p>OCM welcomes an independent assessment from qualified professionals regarding the quality of the OCM Report against the scope of our engagement and the relevant probity practices and principles.</p> <p>The statements made by the Submission author are not based on any supporting specific examples or evidence therefore the assertions lack substance.</p> <p>OCM stands by the findings in the OCM Report and confirms that OCM undertook the review independently and without undue influence.</p> <p>The statements made regarding the ICAC reliance on a probity report is incorrect and making an assertion between an ICAC enquiry and a probity report is unfounded</p>
<p><i>Given the narrow scope of the probity review, I ask the Committee to consider how the probity review overlooked investigating the central aspect of the process, that the Tender Evaluation Committee made its decision, based solely on the advice of Bruce Farrar and his colleagues on the Tender Advisory Panel. The Tender Advisory Panel unanimously recommended Barrie Smith Motor Sport as their preferred tenderer on false and misleading advice. The Tender Recommendation report exposes the stitch-up which underpinned the Office of Sport's decision, that ultimately set off the chain of events which has resulted in why there is this much needed Inquiry.</i></p>	<p>OCM encourages a review of the OCM Report (in particular section 2.2) that specifically addresses:</p> <ul style="list-style-type: none"> <li>- The evaluation process</li> <li>- The role of the TEC</li> <li>- The role of the TAP</li> </ul> <p>Based on OCM interviews, the OCM Report states<sup>5</sup>:</p> <p><i>"The interviews with the TEC members confirmed that the TAP was not present during TEC discussions, deliberations and scoring of the three (3) tender submissions. OCM notes that TAP written assessments were sent to the NSW Office of Sport after the 30 October 2017 which was after the TEC had completed their individual scoring against the Non-Price Evaluation Criteria. Through OCM's interviews, it was confirmed that the TEC had reached a consensus recommendation for BSMS as the preferred supplier which was independent of the TAP's involvement."</i></p> <p>OCM refutes the statement made by the Submission author and a reasonable review of the OCM report will clearly establish that the areas the author is accusing of being "overlooked" have in fact been thoroughly reviewed and documented.</p>
<p><i>I draw the Committee's attention to the last sentence in OCM's observations in the section 'Management of Conflicts of Interest During the Tender Process';</i></p> <p><i>"There is no information to suggest that the President of ENSW, other ENSW representatives or BSMS had any direct involvement or indirectly influenced either the</i></p>	<p>OCM provides the following comments regarding these statements made by the Submission author:</p> <ol style="list-style-type: none"> <li>1. It appears the statement made is being used out of context as the quote from the OCM Report is in direct reference to Management of Conflicts of Interest During the Tender Process and not the drafting or origins of the funding submission for the project.</li> <li>2. OCM's comment regarding the President of ENSW and other ENSW representatives or BSMS having direct involvement or indirectly influenced the RFT tender process or Mr Farrar's activities relates to the actual RFT tender process, including the evaluation of the RFT submissions received.</li> </ol>

<sup>5</sup> Refer to Section 2.2 Page 13 of the OCM Report dated 29 April 2020

Submission statement	OCM response
<p><i>procurement process itself or Mr Farrar's activities in connection with the procurement.</i></p> <p><i>And I take the Committee to the first two sentences of the review headed Review of Tender Documentation – Funding allocation and commitment.</i></p> <p><i>“A business case was prepared by ENSW and submitted for review by the Office of Sport. The business case identifies the need to upgrade the indoor arena and warm up surfaces to resecure national equestrian events.”</i></p> <p><i>When the first sentence of a probity review is incorrect, it does not provide the reader with a great deal of confidence in the rest of the report.</i></p> <p><i>Bruce Farrar on behalf of the board of Equestrian NSW prepared a funding submission to upgrade a public facility, to the then Minister for Sport, not the Office of Sport. The letters supporting the submission were addressed to the Minister for Sport, not to the CEO of the Office of Sport.</i></p> <p><i>If the Office of Sport was required to review the funding submission, why didn't they conduct an appropriate review?</i></p>	<p>.</p> <p>3. OCM obtained the information regarding the preparation of the business case submission and review by the OoS from an email dated 1 September 2017 from Darren Crumpler to Matt Brown and Colin Robinson. The sighted email clearly notes that the business case submission was reviewed by the OoS. OCM does not state or imply that the business case submission was addressed to the OoS.</p> <p>OCM believes the Submission author is attempting to create a link between two sections in the OCM Report which are not directly related, and they should be read in the correct context together with the key findings also outlined by OCM.</p> <p>Further, we reference for the Committee (and the Submission author) the purpose of business cases in NSW Government process is not to direct the specifics of a procurement but rather confirm the need and benefits for expenditure of public monies. The NSW Treasury <i>NSW Government Business Case Guidelines (August 2018)</i><sup>6</sup> state: “Business cases are a key tool to inform evidence-based investment decisions by government”. Accordingly, the submission author is not correct to make a connection between the process for the development of the business case submission and the subsequent procurement process.</p> <p>OCM considers the inferences made in this statement by the Submission author as a likely deliberate misrepresentation of the OCM Report in an attempt to discredit both OCM and the contents of the entire OCM Report, notwithstanding the criticism of the OoS procurement process our report found.</p>
<p><i>The premise for the upgrade was in OCM's opinion, to 'resecure national equestrian events.'</i></p> <p><i>OCM failed to identify a key aspect to the funding submission, that the national competitions to which Bruce Farrar referred in his submission for funding, are for the discipline of pure dressage. The funding submission focused on the perceived need to upgrade the arenas for the purpose of improving the arena surfaces to attract more international level dressage competitions.</i></p> <p><i>Why was it exclusively Equestrian NSW's business, as one of sixteen equestrian industry stakeholders, to lobby for improvements to a publicly owned indoor arena?</i></p>	<p>OCM refutes the statement that “The premise for the upgrade was in OCM's opinion, to 'resecure national equestrian events.’”</p> <p>OCM repeated this information from email correspondence dated 1 September 2017 from Darren Crumpler to Matt Brown and Colin Robinson.</p> <p>OCM refutes the claims by the Submission author that:</p> <ul style="list-style-type: none"> <li>• we failed to identify a key aspect to the funding submission</li> <li>• did not ascertain whether the OoS had received complaints regarding the arena surface</li> </ul> <p>OCM was engaged to provide an independent probity review of the RFT evaluation process.</p> <p>OCM does not hold any investigative or statutory powers as implied by the Submission author.</p>

<sup>6</sup> Refer to [TPP18-06 NSW Government Business Case Guidelines](#)

Submission statement	OCM response
<p><i>The national dressage committee of the national governing body, Equestrian Australia calls for expressions of interest and determines the location of national competitions.</i></p> <p><i>OCM did not ascertain whether the Office of Sport had received complaints from the national dressage committee of Equestrian Australia in regard to the arena surface.</i></p> <p><i>Dressage is one of a number of equestrian sports that use the indoor arena. Why was it determined by the Office of Sport that it was more important to spend money to advantage this one sport, in this public facility and not spend money on the main outdoor arena, which is used by more sports, more frequently?</i></p> <p><i>It was the board of Equestrian NSW and Bruce Farrar the CEO who began with its funding submission, not as is usually expected, that the Office of Sport would seek suggestions from the equestrian community as to what they would prefer to be improved at SIEC.</i></p>	<p>OCM has never claimed to hold expertise in the sport of Equestrian or any of the disciplines directly related to the sport. OCM was not engaged by the OoS due to any experience or expertise in the sport. OCM's scope was a probity review around the RFT process undertaken which is evidenced in the OCM Report.</p> <p>Comparisons made between OCM and other investigative bodies such as the ICAC are unfounded and irrelevant and should not be used in an attempt to discredit OCM and/or the OCM Report.</p>
<p><i>OCM failed to identify that Julie Farrell, a member of the tender advisory panel advised Minister Ayres that she had paid for a consultant to prepare the funding submission in her letter of support to the Minister.</i></p>	<p>OCM refutes this statement as OCM were not engaged to review the funding submission process.</p> <p>Comparisons made between OCM and other investigative bodies such as the ICAC are unfounded and irrelevant and should not be used in an attempt to discredit OCM and/or the OCM Report</p>
<p><i>The probity report claims that the Office of Sport "sought relevant industry experience and expertise from sixteen (16) key stakeholders to provide comment on the proposed scope of the works for the RFT. Feedback was considered by the NSW Office of Sport in the development of requirements."</i></p> <p><i>OCM do not question or comment on the quality of the relevant industry experience and expertise the Office of Sport received and from whom. It was from Equestrian NSW, and a committee of Equestrian NSW, Dressage NSW. Julie Farrell, a member of the tender advisory panel breeds Arabian horses and has had a long association with the Arabian Horse Society of Australia.</i></p> <p><i>OCM did not question or comment on the relevance of the Show Horse Council of Australasia providing feedback in relation to an upgrade to a surface for attracting national dressage competitions. Does the Show Horse Council of Australasia offer international level dressage competitions to its membership?</i></p>	<p>Section 2.1 of the OCM Report provides commentary regarding the industry experience and the role of the OoS in testing the input from ENSW in relation to preparation of the tender documentation.</p> <p>The statements regarding OCM not questioning or commenting on quality of relevance regarding experience is not relevant as OCM were not engaged to review the key stakeholders.</p> <p>Comparisons made between OCM and other investigative bodies such as the ICAC are unfounded and irrelevant and should not be used in an attempt to discredit OCM and/or the OCM Report</p>

Submission statement	OCM response
<p><i>The probity report is confusing as it has as a key finding that: "The NSW Office of Sport has confirmed to OCM that the detailed scope of work for the RFT was developed internally in conjunction with and based on advice from ENSW through Bruce Farrar the CEO of ENSW."</i></p> <p><i>The OCM report appears to accept without question, that the advisory panel possessed technical expertise and were qualified to provide advice to officials.</i></p>	<p>OCM refutes the claim that the OCM Report is confusing in the key finding noted in relation to the subsequent statement made by the Submission author.</p> <p>The first statement is regarding preparation of the RFT documentation and scope of works and that Mr Farrar was involved with this process.</p> <p>The second statement alludes to the TAP and similar to the above, appears to imply that OCM had a role and obligation to investigate the technical expertise of the TAP representatives. The assertion that OCM "appears to accept without question" is attempting to make a comparison between a statement in the OCM Report and the actions undertaken by OCM when undertaking our retrospective review of the RFT process. The attempted comparison is unsubstantiated, ill-founded and does not warrant any further response/comment from OCM.</p>
<p><i>I ask the Committee, to consider what the OCM probity review actually achieved.</i></p>	<p>OCM stands by the OCM Report including the key findings and recommended future learnings.</p> <p>OCM undertook the retrospective review of the RFT process in accordance with the OoS scope of engagement.</p> <p>The OCM Report focused on the probity matters/concerns identified by OCM from the documentation provided to us (refer to Appendix A) and interviews undertaken. Specifically, we looked at the conflict of interest for the President of the ENSW and the impact of this conflict on the evaluation.</p> <p>The OCM Report was conducted independently and without undue influence.</p> <p>OCM clearly highlights areas where probity concerns have been identified and questions some of the decisions and processes undertaken by the OoS during the RFT process.</p> <p>The nature of the review being retrospective inherently means that the outcome of the RFT process cannot be reversed.</p> <p>Comparisons made between OCM and other investigative bodies such as the ICAC are unfounded and irrelevant and should not be used in an attempt to discredit OCM and/or the OCM Report</p>

## OCM response to Submission 0018

OCM notes that Submission 0018 did not contain any specific reference to OCM or probity or a probity report. OCM has focused on some of the statements that imply a probity matter relevant to points c) and d) in the Terms of Reference for the Inquiry. Therefore, we have outlined in the table below OCM's response to the comments made in Submission 0018 (Name Suppressed) with regard to OCM's engagement on this matter and the OCM Report (noting the version of Submission 0018 provided to us was a redacted version and therefore OCM can only respond to the unredacted components of the Submission as provided).

Submission statement	OCM response
<p><i>I understand that the initial application and the resultant tender document for the SIEC work were researched and prepared by ENSW CEO Bruce Farrar, even though the SIEC is a government asset and not owned by his employer ENSW:</i></p> <ul style="list-style-type: none"> <li><i>Did the ENSW board sanction Farrar's work on this project or did he embark on this task under his own initiative? How likely was this – balance of probabilities?</i></li> <li><i>What were Farrar's reporting requirements back to the ENSW Board? i.e. What did the ENSW Board know and what were their directives on this matter? (evidence-meeting minutes, witnesses)</i></li> </ul> <p><i>Here I am not questioning the concept of involvement of ENSW in this process, their members are the primary end-users of SIEC and they are arguably the best placed to provide information; it is the impartiality, transparency, and checks and balances of the process that are under question here. I would also ask if the outcome demonstrated an "abuse of privilege and power"?</i></p>	<p>OCM confirmed in our interview with Mr Farrar on 21 April 2020 the following key information relating to the statements made by the Submission author:</p> <ol style="list-style-type: none"> <li>Mr Stephen Dingwall, whom is the President of ENSW's son was married to Mr Barry Smith's daughter but was not involved in the BSMS business at the time of the 2017 procurement process but is now involved in the BSMS business.</li> <li>When asked a direct question by OCM in relation to the ENSW President's involvement or undue influence on Mr Farrar in the tender process, Mr Farrar affirmed that the ENSW President had no involvement or influence in the process or his role on the TAP.</li> <li>The ENSW Board had no involvement or influence in the tender process nor Mr Farrar's own activities in connection with the procurement.</li> <li>The management of such conflicts by ENSW was attested to in writing by Dr Suzanne Doyle from ENSW's Finance and Audit and Risk Management Committee.</li> </ol> <p>The OCM report notes that there was no information to suggest that the President of ENSW, other ENSW representatives or BSMS had any direct involvement or indirectly influenced either the tender process itself or Mr Farrar's activities in connection with the procurement.</p> <p>OCM did make an observation in the OCM Report that it would have been preferable for Mr Farrar to disclose the association between Mr Dingwall and BSMS in order to manage the perception risk.</p>
<p><i>"The decision to award the contract to Barrie Smith Motor Sport Pty Ltd was made by the NSW Office of Sport":</i></p> <p><i>However, given that ENSW, had identified the alleged need for re-surfacing and then generated the (draft?) tender documents, and had nominated Barrie Smith Motor Sport Pty Ltd, BSM Sport Equestrian as the preferred supplier then this decision was hardly surprising. Especially, where there appeared to be a lack of due diligence by the Office of Sport in corroborating the initial application for funding, facts and the tender details independently.</i></p>	<p>OCM noted above and outlined in the OCM Report, there is a distinction in the role by Mr Farrar during tender documentation preparation and the RFT tender process.</p> <p>OCM is assuming the reference by the Statement author is referring to Mr Farrar when generally referencing "ENSW".</p> <p>As noted above, Mr Bruce Farrar was one of the TAP representatives during the tender process.</p> <p>The OCM Report states<sup>7</sup>:</p> <p><i>"...based on OCM's interviews, it was confirmed that TEC assessed the tenders independently of the TAP's involvement and formed their own view as to a preferred Tenderer. The TAP advice was not received by the TEC members and therefore was not considered in the TEC's decision to recommend BSMS as the preferred supplier. However, we note that the TAP written advice was incorporated into the TRR to strengthen the TEC's recommendation."</i></p> <p>All members of the TEC that were interviewed by OCM during the review confirmed that their assessment had been completed prior to seeking advice from the advisory panel and the advisor panel members were not present during the TEC meetings.</p>

<sup>7</sup> Refer to Section 2.3 Page 17 of the OCM Report dated 29 April 2020

Submission statement	OCM response
	<p>OCM's view was that the TEC did not rely on the comments or recommendations from the TAP representatives and the TAP did not influence the scoring or ranking of the tenderers.</p>
<p><i>The tender documents issued by the NSW Office of Sport were based on the application for funding for the SIEC upgrade made by the CEO of ENSW; likewise the tender documents issued by the NSW Office of Sport were based on the work done by the ENSW CEO. It is quite possible that Mr Dingwall did not sight the final tender document issued by the Office of Sport but does not rule out the possibility of him sighting draft documents prepared by the ENSW CEO.</i></p> <p><i>It beggars belief that the ENSW Board was not appraised of the fact that their CEO, a paid employee, was involved in the SIEC tender and was not required to report to the Board on his work output; that he received no ENSW Board directives or input regarding this work and was completely oblivious to the family connections regarding one of the key companies under consideration regarding this tender and the ENSW Board Chairman.</i></p>	<p>OCM confirmed via interviews with Mr Farrar that:</p> <ol style="list-style-type: none"> <li>1. No confidential information was discussed or provided by Mr Farrer to the ENSW President, Ms Alex Townsend (ENSW Board Member), Mr Stephen Dingwall nor any other BSMS representatives.</li> <li>2. Mr Farrer confirmed that information he provided to the ENSW Board was limited to a status update (e.g. tender release, contract execution, practical completion etc.) of the tender process but no specific information was shared in relation to the tender evaluation and selection process.</li> </ol> <p>The OCM Report acknowledges the information provided by Mr Farrer when interviewed by OCM and that he did not consider there was a need to disclose the association between Mr Dingwall and BSMS as it did not relate to his personal interest and there was separation in place. This was also consistent with the <i>No Conflicts of Interest Form</i> that he completed which sought confirmation of his conflicts as an individual, not other conflicts (perceived or actual) by other ENSW members.</p> <p>The OCM Report acknowledges that there remained a perception risk which did not appear to have been managed and it would have been preferable for Mr Farrer to disclose the link between Mr Dingwall, as the President of ENSW, and the successful tenderer BSMS. However, during the review, OCM did not identified any information to suggest that this association has unduly influenced the outcome of the tender process.</p> <p>Additionally, it is worth noting that Mr Farrer's involvement in the tender evaluation process was limited to that of a TAP representative and did not hold a determinative role in the evaluation during the RFT tender process. As such, the impact of not disclosing is somewhat minimised due to the nature of Mr Farrer's role in the process and him not being an evaluator or decision maker in the process.</p>
<p>Mr Farrar failed to disclose the connection between the Dingwalls when signing a "no conflict of interest" declaration on October 25, 2017. Given the role of Stephen Dingwall with the preferred supplier Barrie Smith Auto- BSM Sport Equestrian and Otto Sport ,how likely is it that Mr Farrar would not have been alerted to the relationship with ENSW Board Chair Peter Dingwall? It would be interesting to see if Stephen Dingwall or Niki Dingwalls names appears anywhere in the documents submitted by Mr Farrar to the Office of Sport or indeed in any of his research. (Brochures, contacts etc.)</p>	<p>OCM was advised by Mr Farrer during his interview that he declared that he did not have any conflict of interest as he was comfortable that there was clear separation between himself and the Tenderers and that any associations were being managed correctly.</p> <p>Mr Farrer also confirmed that he did not have any more of an association with Mr Barry Smith of BSMS than the representatives of any of the other Tenderers in the industry.</p> <p>Mr Farrer advised that, given he was aware of the association, the only information provided to the Board of ENSW was an update on the progress and did not include any specific information about the process. Mr Farrer also considered that, as the association was being managed by this separation between his role and the Board, he did not consider that there was a need to disclose the association. between Mr Dingwall and BSMS.</p> <p>The OCM Report clearly states that it appears that Mr Bruce Farrer formed his own view as to whether a declaration was necessary.</p>

Submission statement	OCM response
	<p>Noting that the OCM Report was retrospective in nature, OCM provided some recommended future learnings for the OoS consideration when conducting future processes specifically regarding management of conflicts of interest.</p>
<p>What exactly does “ease of dealing with” the preferred tenderer mean? What weight was put on this recommendation? What were the obstacles regarding dealing with other tenderers? In my opinion this statement clearly indicates a “relationship” bias and requires further explanation from Mr Farrar. In what way were other companies more difficult to deal with?</p>	<p>The OCM report notes that <i>“the TAP advice was not received by the TEC members and therefore was not considered in the TEC’s decision to recommend BSMS as the preferred supplier.”</i></p> <p>The statement made by the Submission author is incorrect as the reference to “ease of dealing with” was provided by Mr Farrar in his role as a TAP representative and not an evaluation criterion.</p> <p>Mr Bruce Farrar confirmed in his interview with OCM that in the absence of instructions from the TEC Chair, the TAP had formed a view that they would consider the technical performance of the product, the program and the ease of doing business. In order to inform his assessment, Mr Bruce Farrar confirmed to OCM that he relied on his technical experience, knowledge of the industry, knowledge of products and previous discussions with arena owners and suppliers in the course of his ordinary role at ENSW.</p> <p>The OCM Report refers to ensuring that there is a clear outline of the role of an advisory panel in the TEP for tender processes to make it clear how the advisors’ comments and observations will be factored into the assessment process (refer to Section 2.3.1 of the OCM Report).</p> <p>The distinction in roles and responsibilities between the TEC and TAP is crucial in making a distinction between involvement and direct influence regarding the outcome of the RFT tender process.</p>
<p>Alexandra Townsend did not declare any conflict of interest, being an ENSW Board Member, when providing the reference to the NSW Office of Sport. This evidences that at least 1 board member knew about the tender process.</p>	<p>OCM does not consider that Ms Townsend would be required to disclose a conflict of interest in relation to the tender process as:</p> <ul style="list-style-type: none"> <li>• Ms Townsend was not involved in the tender evaluation process</li> <li>• The ENSW Board was not a decision maker in the tender process.</li> </ul> <p>Mr Farrar confirmed during his interview with OCM that no confidential information was discussed or provided by Mr Farrar to the ENSW President, Ms Alex Townsend (ENSW Board Member), Mr Stephen Dingwall nor any other BSMS representatives. We had no other information to suggest otherwise or authority to make covert inquiries.</p> <p>Mr Farrar confirmed that information he provided to the ENSW Board was limited to a status update (e.g. tender release, contract execution, practical completion etc.) of the tender process but no specific information was shared in relation to the tender evaluation and selection process.</p> <p>The information provided by Mr Farrar does confirm that the ENSW Board knew about the tender process however the information provided to the Board was limited.</p>