

**INQUIRY INTO GRANTING OF CONTRACT NUMBER
OoS17/18-021 BY THE OFFICE OF SPORT**

Organisation: Equestrian Services

Date Received: 24 August 2021

Written responses to this submission published by resolution of the committee 10 November 2021 are hyperlinked below:

- [Ms Julie Farrell](#)
- [Mr John Vallance](#)
- [Mr Barrie Smith](#)
- [O'Connor Marsden & Associates](#)



EQUESTRIAN SERVICES

ALL WEATHER ARENAS – WORLD CLASS SURFACES

Thank you for setting up an Inquiry and providing an opportunity to make a submission to the Public Works Committee into the granting of contract number OoS17/18-021 by the Office of Sport.

My submission will focus on clause b), c) and f) of the Inquiry's terms of reference.

- b) the role played by the board, CEO and members of Equestrian NSW (ENSW), Equestrian Australia and officials within the Office of Sport, in both the application for funding and the process for selection of the grant by the Office of Sport,
- c) the potential or otherwise for the existence of corrupt conduct and/or conflicts of interest within the Office of Sport, Barrie Smith Motor Sports P/L and ENSW, in the granting of the contract, with reference to the ICAC letter of 1 December 2020 to the Office of Sport,
- 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;

According to the Office of Sport document, Tender Recommendation (with scoring and weighting the non-price criteria) my company Equestrian Services Australia was the highest ranked tenderer receiving the score of 92.21 from the Tender Evaluation Committee, which comprised Office of Sport employees Jim Kasif, the project manager of the contract, Kevin Flynn the manager of SIEC and Dave Porter operations coordinator at SIEC. The Tender Recommendation document was approved by Office of Sport officials Matthew Brown, reviewer, project manager assets and facilities, Michael Bangel approver, director asset management. Kevin Flynn and Jim Kasif both appear to be making their recommendation and approving it, by signing the document as they are members of the Tender Evaluation Committee. The third member of the Tender Evaluation Committee, Dave Porter did not sign the document.

I ask the Committee whether the failure of Dave Porter to approve his recommendation is of significance?

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 lodged a non-conforming tender in accordance with the provisions of the tendering process. The following comment dismissed the non-conforming tender on the basis that; “this was passed over as it didn’t meet the Ebb and Flow drainage system or equivalent.” The tender process restricted tenders to companies which installed ebb and flow drainage systems.

All that was required was for one of the signatories to this document to send an email to the world governing body of equestrian sport, the FEI, to clarify the range of the different types of arenas which are suitable for international competition. This simple ‘desktop research’ would have produced a response which confirmed that the non-conforming tender met the highest standards for international level competition and met the Office of Sport’s professed brief for a world class surface in the indoor arena at SIEC. It was almost half the price of ebb and flow technology, easier and more cost efficient to maintain and did not require the volume of water.

Equestrian NSW’s funding submission suggested to the Office of Sport that Oliver Hoberg be approached to provide technical advice and expertise. An email to Mr Hoberg would have enlightened officials of the Office of Sport who were the Tender Evaluation Committee that the non-complying tender was worthy of consideration.

Section 4 – Evaluation of Price contains incorrect names and spelling mistakes. It provides a chilling insight into the lack of care and a total disregard for accuracy and accountability by the officials who prepared and signed the document. No one noted that the name of my company was incorrect. Instead, it was twice referred to as Equestrian Australia, which is in fact the name of the national governing body of the sport.

I draw the Committee’s attention to;

“...the experience of Equestrian Australia (sic) is very limited in practice with the Ebb and Flow drainage system as they are specialised in an alternative surface that does not adhere to Federation Equestre Internationale (sic) “best practice” to attract world class competitions (sic)

I ask that the Committee consider on what evidence and from whom did these officials form their opinion?

I ask that the Committee consider on what evidence these officials relied on, that ebb and flow technology was the Federation Equestre Internationale (FEI) equestrian industry best practice for arenas?

I ask why these officials with titles as manager of this and director of that, were unable or unwilling to conduct any level of due diligence at all? For example, why did Michael Bangel, note and initial the above assertion, without checking the validity of whether it was correct?

In the same section, it is claimed that the FEI not only endorse ebb and flow technology but also the specialised mats, the product of Otto Sport. This is false and misleading, yet it was accepted without question, by the officials of the Office of Sport.

Section 5 - Commentary on Preferred Tenderer

“BSM Pty Ltd is considered capable of completing the work satisfactorily, and recent relevant completed projects indicate a satisfactory level of performance with other contracts.”

By 2 November 2017 when this document was signed, it was common knowledge that the outdoor arena at Wallaby Hill had major issues and an employee from Otto Germany and Barrie Smith were trying to fix it. The FOI documents reveal that Barrie Smith had only one contract prior to tendering for the SIEC contract, and that was at Wallaby Hill.

I ask the Committee how these officials considered BSM Pty Ltd capable of completing its only contract to install ebb and flow technology to a satisfactory level of performance when the outdoor arena installed at Wallaby Hill had failed?

Contained in this section is the declaration that;

“The preferred tenderer has provided evidence of satisfactory WHS management on previous projects.”

This is not consistent with Barrie Smith’s own admission in his tender application that this government contract would be his companies’ first ‘civil works project’. He was unable to provide three completed projects as part of his tender. Instead, Barrie Smith passed off work done at Wallaby Hill between May and September 2017 as being three separate projects which he claimed were completed in 2014 and 2016, when it is probable that he did not have the agency for the Otto Germany products. Did anyone from the Office of Sport check these claims?

The Wallaby Hill project did not require NSW government accreditation for WHS or environment management. I ask the Committee how these officials did not enquire into Barrie Smith’s lack of accreditation when they signed this document?

In Barrie Smith’s tender, JK Williams Contracting is not listed as a sub-contractor, or as the project manager. I ask the Committee to consider why Barrie Smith was awarded the contract without the requisite accreditations?

Michael Bangel notes and initials another false and misleading claim contained in the summary of section 5, attributed to John Vallance that; “The international experience of Otto Sport Arenas makes Barrie Smith the preferred tenderer.”

I ask the Committee to consider the relevance of a German company’s overseas experience installing arenas to its distribution agent for its products in Australia, Barrie Smith, who had not met the minimum standard for an installation, that the arena is fit for purpose, at its first and only contract at Wallaby Hill?

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 ask the Committee to consider why the mats technology and ebb and flow drainage system should be preferred above any other type of arena surface available?

I ask the Committee to consider what international elite experience Barrie Smith had had in installing arena surfaces, as of 2 November 2017?

I ask the Committee to consider how Barrie Smith's commitment to the program was any difference or more superior to that of my company Equestrian Services Australia's commitment?

Bruce Farrar claims that Barrie Smith should be considered as the preferred tender for a government contract on the basis that he is easy to do business with. When has Bruce Farrar done business with Barrie Smith's company considering that the only contract completed was the Wallaby Hill contract? Did Bruce Farrar rely on the opinion of Equestrian NSW board member Alex Townsend? Did officials of the Office of Sport rely on the recommendation or opinion of Alex Townsend?

Did Bruce Farrar have a role in ensuring Barrie Smith was awarded the tender to provide a remedy for Alex Townsend's failed arena?

How was it appropriate for Bruce Farrar to impose his personal experience on a government process?

Under the Miscellaneous heading of section 6; "Approval for calling for select tenders was obtained from the Director, Asset Management with the concurrence from the client."

Michael Bangel and Kevin Flynn decided to restrict tenderers to those who installed ebb and flow drainage systems. Why?

The Committee will have information before it which clearly demonstrates that there are different arena surfaces that conform with the FEI international competition standard. Why did Michael Bangel and Kevin Flynn refuse to consider other arena surfaces such as the non-conforming tender that I submitted?

Contained in the miscellaneous section is a reference to four containers needing to be ordered and despatched. If these were from Europe, I ask the Committee to discover the date Barrie Smith placed the order with his supplier?

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.

The OCM probity review into the request for tender procurement process commissioned by the Office of Sport included the Tender Recommendation report. OCM does not query why officials did not make inquiries the independent of Bruce Farrar or check Bruce Farrar's information and advice. 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 he set up?

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;

“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).”

Perhaps I am missing something?

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. Karen Jones did not include the unanswered questions as to how and why the then Minister for Sport Stuart Ayres received the funding submission from Equestrian NSW in the first place. How as the submission evaluated and on what basis, by the Office of Sport?

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.

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.

Is it fair to say, the Office of Sport nobbled OCM?

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 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.

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 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';

"There is no information to suggest that the President of NSW, other NSW representatives or BSMS had any direct involvement or indirectly influenced either the procurement process itself or Mr Farrar's activities in connection with the procurement.

And I take the Committee to the first two sentences of the review headed Review of Tender Documentation – Funding allocation and commitment.

"A business case was prepared by NSW 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."

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.

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.

If the Office of Sport was required to review the funding submission, why didn't they conduct an appropriate review?

The premise for the upgrade was in OCM's opinion, to 'rescue national equestrian events.'

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.

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?

The national dressage committee of the national governing body, Equestrian Australia calls for expressions of interest and determines the location of national competitions.

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.

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?

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.

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.

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.”

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.

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?

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.”

The OCM report appears to accept without question, that the advisory panel possessed technical expertise and were qualified to provide advice to officials.

Will the Committee consider whether officials of the Office of Sport were derelict in their duty as a public officer and if their actions and/or inaction amount to bias at best, or negligence and possibly dishonest or corrupt practices at worst?

I ask the Committee, to consider what the OCM probity review actually achieved.

Yours sincerely,

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