PUBLIC

THE PARLIAMENTARY STANDING COMMITTEE OF PUBLIC ACCOUNTS MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART ON FRIDAY 21 AUGUST 2026.

MACQUARIE POINT STADIUM COSTING AND GOVERNANCE

The Committee met at 10:31 am.

CHAIR (Ms Forrest) - Thank you both for appearing before the Public Accounts Committee inquiry into the Macquarie Point stadium, and the development of the site and the costings particularly associated with that.

This is a public hearing. Everything you say is covered by parliamentary privilege. That may not extend beyond the Committee hearing. Keep that in mind if you are making comments outside of this setting. The transcript will be prepared at a later time and then published on our website. If there is anything of a confidential nature you wish to share with the Committee, you could make that request, and we would then do that, subject to the agreement of the Committee, as a private hearing where we wouldn't broadcast and it would be a separate *Hansard* that wouldn't be published. Do you have any questions before we start?

Mr SHIELD - No, but I will make an observation - I did oversee the tender process for the broadcasting service quite a few years ago.

CHAIR - That's interesting. Mostly it works well except when there's a very controversial issue. The system can't quite cope sometimes.

I'll just ask you, Ian, to take the statutory declaration. If you can just read that out and then I'll invite you to introduce you and Rory and to make some opening comments, if you wish, and whatever sort of presentation, if you wish, and then we'll have questions for you.

Mr IAN SHIELD, PRINCIPAL, O'CONNOR MARSDEN & ASSOCIATES, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Thank you.

Mr SHIELD - Hi, I'm Ian Shield, a local - fourth, fifth generation. I have been working with probity for about 25 years. Rory O'Connor - we both were at Deloitte many, many years ago, and then Rory left to start up O'Connor Marsden & Associates (OCM). I will let Rory tell you a little bit about himself.

Mr O'CONNOR - Thank you, Chair. We've actually covered off some of this in the short overview presentation, but, as Ian says, yes, I was one of the founding partners for OCM. OCM came out of initially Deloitte many, many years ago when Deloitte determined to exit probity services, as did several other knowledge practices, because of the potential for conflict. But we can cover that off in the short presentation.

CHAIR - Thank you.

Mr SHIELD - Do you want to put the presentation up, Rory, please?

Mr O'CONNOR - I'm happy to share. You'll have to bear with me. I don't have my daughter at hand, who's a technical marvel.

Mr SHIELD - Even the rehearsal was problematic.

CHAIR - See how we go. If you have problems, we could always send it to the Secretary and he could share it.

Mr O'CONNOR - Is that on? Can everybody see that now?

CHAIR - We can. Thank you.

Mr O'CONNOR - Excellent. That's a great start. Ian, you're going to talk to this, so would you like to go ahead?

Mr SHIELD - Yeah, sure. Thank you for inviting us, first of all. We've already introduced ourselves, so we might skip to the next one, Rory.

The areas addressed through the presentation are an overview of the practice, the key members of the team, what our role is as probity advisers and then, more importantly, what it is not, and the key activities we've taken during the process.

Rory, a quick overview of OCM please?

Mr O'CONNOR - Thank you, Ian. Good morning, everybody. Thank you for the invitation to attend. We're deliberately going to keep this presentation short to absolutely enable any questions. OCM is a practice - we're the largest probity practice both in Australia and New Zealand. We operate in eight jurisdictions - I guess probably nine if we include New Zealand. We've been going strong since 2009. In most of the jurisdictions that we operate in there's an accredited process for probity practitioners, and we are accredited in those jurisdictions. In Tasmania, Ian is a registered probity adviser on the Treasury's listing of probity practitioners.

In total, we've completed over 2,500 probity engagements, and we've overseen major infrastructure programs of work. We'll touch on some of those in the next one or two slides, but pass back to you, Ian, if I may?

Mr SHIELD - Thanks, Rory. The core team for the engagement is myself, Rory, as the strategic probity adviser, and Dr Robert Waldersee is the conferring reviewer.

I won't go through all of this. You can read it, but there's a significant number of years of experience. I have also worked for the Department of Defence. Prior to OCM commencing services in 2009, I was responsible for serving a number of probity engagements within Deloitte until 2015, and I retired and I joined OCM. I think the major ones on that slide there are Marinus Link, where we oversaw the cable tender, the Convertus tender and the balance of work. Balance of works were the Heybridge and Hazelwood power stations, or converter stations, and 90 kilometres of underground cable from Waratah Bay to Hazelwood. The TasNetworks, that's the remaining North West Transmission Developments, a major one, which is still trying to acquire some land, I think. This is connected to Marinus. I also worked on the Brighton Bypass, the TasPorts, of which Macquarie 6 was the most recent project that

I worked on there. I even made it to Mongolia on a probity assignment, back in 2014. That was for a coal-fired power station.

Rory's the strategic probity adviser on the team. He is one of the founding partners of OCM, along with Andrew Marsden. He has undertaken a significant number of probity engagements, in many jurisdictions, relating to iconic projects such as the Sydney Metro, North Sydney corridor and South Australia: major sporting events and related infrastructure, most recently in relation to the Brisbane Olympic Games.

Robert is the conferring reviewer and SME on the account. He brings a wealth of experience, not only from the probity engagements for OCM but from his prior role as executive director of the NSW Independent Commission Against Corruption (ICAC), a position he held for several years.

Next, we are going to talk about our role as the probity adviser. Our scope of work mirrors that as advocated by better practice guidelines for probity as set out on the Treasury's website. It's important to note what our role is not. We're not part of the team. Rather, we're an observer to the process, ensuring that the parties - that is, the respondents to the EOI and the tenderers for the RFT - are treated in a fair and equitable manner. Our role also extends to being available to provide input as to how any particular probity matters presenting might be addressed. However, for the avoidance of doubt, we are not decision-makers in that regard.

Also important is that we do not provide advice to corporations in relation to the procurement. External legal advisers have been engaged to provide such advice, and they work hand in hand with the Office of the Crown Solicitor.

Our key activities to date have included the generation of a probity plan, and assistance in the development of interactive tender workshop protocols. The probity plan addresses key probity principles and how such principles are to be applied to the process, very much aligned to the better practice guidelines set out in the Treasury website.

Our role is to assist in the socialising of the probity plan through the provision of probity briefings. Our contact details have also been provided, as part of both the EOI and the RFT, to the proponents, and to date, no such issues have been raised.

I think that is all we had to say today. We will take the questions.

CHAIR - Thank you for that. I wanted to fully explore, perhaps, or understand, the difference in your role in terms of - if you believed there was a matter where probity was a concern, you don't provide legal advice - they've got a separate team for that -

Mr SHIELD - Correct.

CHAIR - So, if you felt there was a matter that was inappropriate, what action would you take and how would it proceed from there?

Mr SHIELD - Well, I've only - Rory has probably experienced more, but basically you investigate the allegations or the queries. Most recent was in relation to Mac 6, where a tenderer felt that they should have been selected. They thought there was some conflicts of interest amongst two of the bidders, and they had a parent company that was a common parent and the investigation showed that there was a clear separation and so that matter was resolved.

CHAIR - So, it complied. Yes.

Mr SHIELD - That's an example. I mean, Rory, you might have a few more there.

Mr O'CONNOR - Yes, there's a few that have given me a bit of grey hair over the years, but effectively not for [inaudible 10.41.05] and not for Mac Point, and I'll keep it general in the interest of confidentiality, but on occasion, sometimes matters present, such as information being sent to the wrong party inadvertently and trying to ascertain, one, how did that occur, what was the impact and how do you make sure it doesn't occur again: separately, it could give rise to somebody having an association that could give rise to a conflict and how that conflict has been dealt with or addressed. There tends to be for every project a means of elevating up if there is a matter or issue. Our direct reporting for Mac Point is to the CEO and also we have access to the Board if required: but even so, if a matter presents, the first thing to do is make sure we fully understand it, capture the information and then to the extent that we need to source any additional input, talk to the relevant players and then make sure that that matter has been communicated to relevant folks within the respective agency or department.

Mr SHIELD - Yes, I had an issue a few years ago with Aurora Energy, where communication went to the wrong tenderer, so we had to sort of work out how we could wind that one back and it basically involved statutory declarations that they destroyed the thing, destroyed the -

CHAIR - Destroyed the email that was sent, yes.

Mr SHIELD - Yes, and the incumbent was very reluctant to sign off that there were no probity issues because they hadn't won the job.

Mr O'CONNOR - I suppose the relevant point to make and properly call out is things like the probity plan. I mean the best sort of circumstances is to not have any matters present. So, to make sure that in key documents such as the probity plan and the various guidance that is available - and we've referenced already to the Treasury's website - that people, one, are aware of what the responsibilities are; two, they're across the key probity principles, and as an aside, those probity principles, it doesn't matter what jurisdiction you're in, they tend to be common: and, three, making sure that there is mechanisms and processes established to monitor those processes throughout the particular procurement. An example of that would be in relation to interests that give rise to conflicts. There's a form-filling exercise at the start: people are made aware of what that definition is for conflict, and then at any key governance meeting, typically the first agenda, the item is: has anybody's associations moved or changed?

CHAIR - I'll come to you, Bec, after I just ask this one: do you have a probity plan that you could provide to the Committee on how you manage this project particularly?

Mr SHIELD - Well, it was developed in conjunction with Macquarie Point. It is actually their document: they own it. So, the request would need to go to them.

Mr O'CONNOR - But I'm sure it would be made available.

Mr SHIELD - We would not have an issue with it.

CHAIR - Right.

Mr SHIELD - We can look at you now, if you like, and take the presentation away.

Mr O'CONNOR - Yes. I'm just going to get my practice manager to do that, so that you you're not taking me away at same time. Just a sec, I think I can do that now. There we are.

Mr SHIELD - That's better.

CHAIR - So, Bec, I'll go to you.

Ms THOMAS - Thank you. Thank you for that high-level overview of what your role is and what it isn't, and it's really helpful, but I guess I'm interested to understand a bit more specifically what your role is in this particular procurement, from commencement of the EOI through to contract awards. So, at what date were you first engaged by the MPDC for this work?

Mr SHIELD - Let me check that one. Well, I can tell you we started with the EOI. The first meeting there was the industry briefing in January 2026, but we were actually engaged in 2025, and that was sort of preliminary review of documentation and so forth. Since then for the EOI we had Evaluation Committee meetings on 2 and 11 March [2026] and then a final evaluation tender review Committee meeting on 17 March [2026]. We also attended the opening of the EOIs on 11 February [2026].

Ms THOMAS - Were you involved in designing the EOI process and evaluation criteria?

Mr SHIELD - No.

CHAIR - Can you just bring your microphone slightly closer, or sit closer to your microphone, that would be helpful. Thank you. Sorry to interrupt.

Mr SHIELD - Okay. We reviewed the documentation but we didn't actually develop it. We review it from a probity perspective, so we see that the evaluation criteria are published, but basically it complies with the Treasury guidance in terms of inclusion of the economic development - the 30 per cent.

Ms THOMAS - So, more about the application of the process and the evaluation criteria rather than the actual design of the EOI process?

Mr SHIELD - Absolutely, yes.

Mr O'CONNOR - If I could add, if I may, through you, Chair, just a footnote to that: one, we're not technically competent to develop up the criteria, so that's not our role. Our role is to peruse, when available, key documentation from a probity perspective and make sure that, for example, key artefact documents such as the call document aligns to documents such as the evaluation plan, that the criteria stated is consistent, and to provide commentary and feedback to that effect. Similarly, when the evaluation report is settled, again, to make sure that the evaluation report aligns back to our observations made through, for example, attendance at key governance forums, such as the Evaluation Committees: but for the avoidance of doubt, our role is not to design criteria and, again, big picture. Even if we have the competency to do it, that would be, in our view, highly problematic because we would be reviewing work that we'd already done in terms of designing. So, it's self-review, and that would not fit well within the remit of probity.

Ms THOMAS - That makes sense. Did you attend every Evaluation Committee, Tender Review Committee and Procurement Review Committee meeting during the EOI? I know you mentioned a few different dates there.

Mr SHIELD - No, it was a fairly straightforward process, unlike the tender evaluation, which is obviously a lot more involved: but no, we attended all -

Ms THOMAS - Okay. Did you attend every material meeting or communication with the respondents? Do you have oversight of that?

Mr SHIELD - In the case of the EOI, there weren't presentations. Early on, quite a while before it actually went to market, there were some market-sounding exercises which we attended, but that wasn't part of the EOI process.

Mr O'CONNOR - We did attend the industry briefing, which Ian's already referenced to, that was held during the - during the EOI? Yes, it was part of that process.

Ms THOMAS - So, if respondents had communication with the MPDC in the process of developing their EOI, did you have oversight of that?

Mr SHIELD - I'm sorry - question again?

Ms THOMAS - If participants in the EOI process had communication with MPDC in the process of developing their EOI, did you have oversight of that correspondence?

Mr SHIELD - Usually yes, in terms of clarifications, yes, the respondents would seek a clarification and we'd see the response which was usually in the form of an addenda: but there weren't too many as part of the EOI, unlike the RFT.

Ms THOMAS - Okay, sure.

Mr O'CONNOR - Again, there is an established process. It's set out in the call document as effectively, inverted commas, a single point of contact, which proponents can raise any queries, questions they have with the documentation or the response thereof. I seem to recall there was one addendum issued: it was to do with formatting or whatever, but there is an established process and that single point of contact, for obvious reasons, so there's a consistency in the timing of a response back. As Ian said, I don't think - and I'll throw back to Ian - there was any interactive meetings, et cetera in the EOI. In the RFT, it's a more intensive process. Those interactives that may happen with bidders, et cetera, the probity adviser would typically be in attendance.

Mr SHIELD - Yes, we attended all of the RFT interactives. I think, from memory, there were about eight each.

Mr O'CONNOR - The other relevant point to note is that both in the EOI document - that's the document that's issued to the case of the EOI - the parties are called respondents, and in relation to the RFT where the respondent then becomes the tenderer, in the documents that are issued, our contact details are provided and the respondents/proponents are directed if they have any probity matters or issues to raise, that they can raise them directly with us. That goes to the comment that Ian already made that our role is not as an evaluator: it's there as an observer. That is a typical process for any of those major programs of work previously referenced, and we can confirm that no respondent or proponent has raised any matters with us vis a vis probity.

Ms THOMAS - Okay. Did you provide a written probity report on the EOI process before the two parties were invited into the RFT?

Mr SHIELD - Yes, we did.

Mr O'CONNOR - Yes, we did. My understanding was that the PAC was provided with a summary of our report. I could stand corrected on that, but certainly we did provide a probity report.

Ms THOMAS - Did that report provide an unqualified assurance that the EOI process had been conducted fairly and in accordance with its published requirements?

Mr SHIELD - Yes.

Ms THOMAS - There were no exceptions, concerns, qualifications or recommendations included in that report?

Mr SHIELD - No. I think, as Rory said, the Corporation's already provided the summary of our conclusion, which I could read to you if you wanted, but we wouldn't have an issue if you requested our full report.

Ms THOMAS - Okay, through the MPDC?

Mr SHIELD - Yes. It's not for us to release it.

Ms THOMAS - Okay, sure. Are you happy for me to keep going, unless anyone else has questions?

CHAIR - If Dean or Rob have any questions, pop your hand up on the screen. I'll come to you.

Ms THOMAS - As you may have heard through previous hearings, MPDC has been challenged over provisions requiring respondents to disclose claims or disputes and circumstances potentially affecting contractual performance, including regulatory or law enforcement investigations. We've had some back-and-forths with MPDC. MPDC have said that it was not aware that the Kimber investigation had been disclosed: it hadn't been disclosed through the process.

I am interested, from a probity point of view, MPDC said it was not aware that Webuild had disclosed the Kimber investigation. Did you advise the MPDC that the Webuild EOI complied with the conditions of the EOI?

Mr SHIELD - We weren't asked to provide an opinion on that.

CHAIR - Is that something you would normally consider? Clearly, it's one of the required confirmations, if you like, that the person putting in the expression of interest, or the company, is required to meet. You wouldn't check against those?

Mr SHIELD - As we said earlier, we're not part of the Evaluation Team: we observe. It's the Evaluation Team that would do that.

CHAIR - Who's is the Evaluation Team?

Mr SHIELD - MPDC and their consultants.

Ms THOMAS - A team of experts. So, in terms of your role, though, isn't it your role to sign off in your probity report that the expressions of interest submitted have complied with the conditions of the EOI, or not? Or just that the EOI process itself has been conducted?

Mr O'CONNOR - If I may, through you, Chair: our role is to confirm that the process, through the team, the Evaluation Team and Evaluation Committee, have basically done their job. I am mindful of the matters raised by yourselves in relation to non-compliance and mindful too that a level of that is down to legal interpretation. However, what we did do in our role as probity adviser, I personally spoke to the legal external advisers and confirmed their advice in relation to compliance. And their advice, my understanding is, was reflected in the correspondence that was sent back to the PAC. So, we confirmed that the legal advice came in, and the legal advice confirmed compliance.

CHAIR - So you saw legal advice?

Mr O'CONNOR - I didn't sight - I spoke directly to the lead from the external legal practice and confirmed that to be the case.

Ms THOMAS - Confirmed what, specifically, to be the case, sorry?

Mr O'CONNOR - The matters that had been raised, for example, through the PAC, that the view held was that the submissions were in compliance with what they were required to do from a legal perspective.

CHAIR - We've had this as a bit of an issue, not just MPDC perhaps, but other entities, where they're relying on a legal opinion where there's a matter that's being contested, that no-one actually sees.

Mr O'CONNOR - Can I say, Chair, to that, just to put it into context as well, and again, this is typical to the processes that we would see elsewhere, and we've already referenced several of those major programs of work. This process is a staged evaluation process. It's typically in the RFT stage, the stage that this particular procurement is currently in, that effectively - and I'll coin a phrase here - the tyres get kicked in terms of any representations et cetera made. It's available, and it's called out very clearly in the RFT stage, that matters such as - and I'll give an example, typically it's in the RFT stage, and they're currently about to occur - referee checking. However, on the basis that, you know, somebody's - arrive at somebody's probably not going to get a bad referee - it's available to - and this does happen for the relevant department or agency, to make its own inquiries, its own investigations in relation to any representations, whatever that might be provided by the, in this case, the tenderers.

In addition, there is a very strong benchmark, or bench strength, in terms of subject matter experts that are applied to those evaluation processes as well. My understanding is that the PAC has requested a listing of those and that my understanding, too, is that the corporation is proceeding to accede to that request. However, in broad terms, without going too much into this, because I'm mindful that it's been responded to, that there is a significant number of SMEs too that are, in inverted commas and for want of a better word, 'on the case' in terms of the evaluation process.

Mr SHIELD - Yeah, there are actually 17 SMEs involved. That's 17 subjects, I should say.

Ms THOMAS - Is that subject matter experts?

Mr SHIELD - Seventeen subjects, with subject matter experts sitting behind. So, for example, the stadium operations, there's financial options, environment and sustainability, work health and safety, financial capability, project interfaces, design, architecture - you name it. There are quantity surveyors.

Mr O'CONNOR - And that, Chair, is what we would typically expect to see. It was referenced in our experience, for example, that we have been the probity advisers and are the probity advisers, to a number of major infrastructure projects including stadia and that type of resource, that type of depth, that's something we would typically expect to see. We're certainly seeing that in relation to this particular procurement.

CHAIR - Can I just ask who would be the subject matter experts involved in the assessment of the financial contract or risk management and financial capacity assessment?

Mr O'CONNOR - I'm just mindful, Chair, that I know that you've asked that question of the detailed names. We do have it, we've been privy to that, but I know that there is one that's now winging its way back to the Committee, but I'm just not sure how we should treat that question. I know that they are there, and having sighted the organisations, this would appear to be highly competent parties that are doing it - but might seek some guidance from yourself in relation to answering the question.

CHAIR - I'm just trying to find who the Committee can ask about how they satisfy themselves that there was no - in part A - no information requirements under that section, that there were no other 'claims, disputes which are on foot or subject to litigation, arbitration or determination by an independent expert', when public reports in the media have stated that there's been pre-trial work going on for the case that is currently before the NSW courts for two years. I know there's been delays, et cetera, and some of that's the legal process, obviously, but that two years encompasses the period under the timeframe that this was going on -

Mr O'CONNOR - Sure.

CHAIR - so who can provide some assurance to the Committee that that was considered?

Mr O'CONNOR - My sense, Chair, is to go to that list in which my understanding is - and I can't recall the time, date, but I think it's very in the near future, you'll see the listing there of the SMEs and you should be able to source whatever relevant party you need to speak to in relation to that. But again, just reiterating: it's a pretty comprehensive list of SMEs, so I don't think that will present as an issue to you.

CHAIR - Sure.

Ms THOMAS - To be totally clear: it's not your role to tell MPDC whether an EOI response is compliant? That's the role of the Evaluation Team and [Evaluation] Committee?

Mr SHIELD - Correct.

Mr O'CONNOR - Yes. The role of the Evaluation Committee, supported by those SMEs, is to, by definition, conduct an evaluation process. Our role is to confirm that the processes that have been established are adhered to, for example, evaluation plan has been applied to the call document, that the parties are treated fairly and equitably in terms of the level of consideration time, et cetera, and that the criteria status is consistently applied, but the actual assessment of that, that's to the Evaluation Committee and its supporting SMEs.

CHAIR - Does the Evaluation Committee have a Chair, and then the others -

Mr O'CONNOR - Yes.

CHAIR - When we get this information, one would expect the Chair will be identified as well as the various 17 roles within that Committee?

Mr O'CONNOR - Yes, there is an Evaluation Plan which sets out the various governance levels from the Board down, and it typically - and is the case with this process - you have an Evaluation Committee, you have a Review Committee, which is there to confirm that the process has been followed and the plans that have been endorsed have been applied: there's a separate committee, as is recommended by Treasury in relation to, again, providing oversight in terms of the process has been fair and equitable to the parties responding. It's a multi-tiered level. The heavy lifting in the first instance is done by the Evaluation Committee or Panel, in this instance from memory, it is called an Evaluation Committee, and that's supported by a stream of SMEs as well and the Evaluation Panel, the composition of that goes to whatever criteria that's been evaluated, so to make sure that there's a level of competency in relation to the members of that particular committee.

CHAIR - The Evaluation Panel is the same as the Evaluation Committee? Are we talking two different things?

Mr SHIELD - Yes, Evaluation Committee.

Mr O'CONNOR - Different procurements call them different names, but in this instance, it's the Evaluation Committee.

Mr SHIELD - Chair, I might just run through from the Evaluation Plan. There's the Evaluation Committee, who are suitably qualified and experienced, there are the subject matter experts, that's on all those little things like commercial, project interfaces, traffic engineering.

CHAIR - Little things?

Mr SHIELD - Some of them are not so little. The quantity surveyor, the program. There are also subject matter experts in relation to the project parameter alignment, whatever that - and that includes representatives from Stadiums Tasmania, but also subject matter experts in relation to funding; and then the next stage up, after the Evaluation Committee has prepared their report, it goes to the Executive Tender Review Committee within Mac Point. We have some external members. Then goes to the Procurement Review Committee and then ultimately will go to the Board.

CHAIR - What are you actually reading from there?

Mr SHIELD - This is from the Evaluation Plan.

CHAIR - That's the Evaluation Plan, right. Okay. I think we probably need to ask for a copy of that.

Mr SHIELD - Again, we can't provide it, because it's actually -

CHAIR - No, no, I'm being clear about what we request so we ensure we request the right document.

Mr SHIELD - It's a Corporation document.

Mr O'CONNOR - Chair, it's typical in processes, the Evaluation Plan references to the governance structure and, if I may from a probity perspective, I've referenced previously that there's four or five key probity principles that need to, basically, from our perspective - need to be present to provide comfort on whatever procurement is happening. Those principles are set out and referenced in the Treasurer's Instructions, but they're also referenced in every other jurisdiction: they're common. The first one, which goes to the question I've been asked now, is all about accountability and responsibility and that covers, really, two components: the first one is, is everybody very clear about what their accountability and responsibility is, and by definition, what it's not. And the second one is, is there sufficient documentation to support any recommendations or decision-making, effectively an audit trail.

So, that's the first principle that and there's - after that there's about three, four other principles and again, if you want me to, I'm happy to give you some insight to that, but if there is those principles, and they're the principles that we would reference back, they're referenced in our probity plan. Chair, it depends upon the timing, but if you want me to, I'm happy just to cover them all very quickly.

CHAIR - No, I think these are on the Treasury website.

Mr O'CONNOR - Yes, they're on the Treasury website, and they're important, but I think the other point to note is that the principles all link. They shouldn't be looked at in isolation, and so you have the principles about - one of the principles deals with transparency, another principle deals with confidentiality, and probably one of the most important principles is value for money.

Mr WINTER - Just in terms of the [audio interference 11:07:06] we've heard a lot before [audio interference 11:07:11] referred to probity advice and then what I've heard you say earlier is that it's really not up to you, it's up to the people that told us about relying on the probity advice. So, we might have to go back, Chair, but the question is, I guess, on process: is there any ability for the MPDC to withdraw one of the tenderers from the process on the basis that their response to the EOI document was [audio interference 11.07.44] or failed to meet any of the criteria?

Mr O'CONNOR - The short answer is yes. The long answer is that for any major procurement, set out in the invitation documents, there's effectively conditions of tender and part of, if you like, the rules of the game are that the parties looking to participate are accepting of those conditions of tender. They're normally quite broad in nature, for example, enables people to go off and get into negotiations pretty quickly or go down a particular path. The important thing, going back to a probity perspective is that there's documents about the rationale, et cetera but they're available to them, is the short answer.

Mr WINTER - You referenced earlier -

[background noise 11.08.35 goes for about 10 seconds]

Mr WINTER - Have you guys got that as well?

CHAIR - I'm not sure where that's coming from. Can you both hear that on your end?

Mr WINTER - Yeah, it's not coming from me.

Ms THOMAS - Rob wasn't on mute.

Mr O'CONNOR - Yes, we can.

Ms THOMAS - Rob wasn't on mute, I don't think: now he is.

CHAIR - Alright, okay, sorry about that.

Mr WINTER - Someone's listening in.

CHAIR - Back to you, Dean.

Mr O'CONNOR - Did that answer you -

Mr WINTER - I know a lot of people like watching the PAC, Chair, but don't usually hear from them as well.

You also referenced earlier a letter, and I think you're referencing the letter from [audio interference 11.09.18]

Ms THOMAS - Dean, can I just suggest you turn your video off, because you keep cutting out.

Mr FAIRS - Sorry, I'm getting a lot of distortion and - can you hear other voices coming from this end or anything?

CHAIR – We did, but it has stopped now.

Mr WINTER - Yeah, I've got a bit of stuff going.

Ms THOMAS - Dean, can I just suggest you turn your video off, because you keep cutting out.

Mr WINTER - I'll try and not take offence. I'll do that. Is that better?

CHAIR - So far, yes.

Mr WINTER - You mentioned earlier a letter that was sent, and I think it's the one with Kim Evans, and he talks about in the letter:

> I note that your advice that the expression of interest assessment process was overseen by probity and legal advisers and that specific clarification was sought about whether the submission received from Construction Joint Venture was compliant with expression of interest requirements.
>
> Your letter advised that the legal advice indicated the submission was compliant and completed in accordance with expression of interest requirements.

Do you know whether, in considering that, it was assessed that the answers provided by the joint venture were honest and accurate in terms of whether there were any legal matters on foot?

Mr O'CONNOR - My understanding is yes, but my suggestion is to probably, just for absolute clarity, direct the question back to the Corporation. But I know, and as I've referenced previously, I spoke directly to the lead from Legal and confirmed that, from their perspective, their advice was that the submissions received were compliant with what was asked.

Mr WINTER - We've been asking these questions a lot, and you might be familiar with some of the evidence we've received. It really centres on one component of the EOI documents that says that the respondent's response to the EOI response schedule must include, amongst other things, part 5 is 'any other claims and disputes which are on foot and subject to litigation, arbitration or determination by an independent expert', and we now know that when the EOI was submitted that Webuild must have known that they were a party to at least the Kimber inquiry and other legal disputes. Can you explain to the Committee how they weren't in breach of the EOI requirements by not disclosing this at the time?

Mr O'CONNOR - My understanding was that, in terms of the legal view - and again, I'd suggest perhaps talk directly to Legal - but in relation to the legal view was that it revolved around definition of proceedings but also involved around what definition of instrument was being applied. However, because I'm not a legal expert, however, from a process perspective, we did speak to Legal, and they confirmed the submissions were compliant.

Mr WINTER - Have you offered your advice on this? I know what you said earlier about having spoken to legal, but do you believe that they should have disclosed that they were the subject to an inquiry in New South Wales and other [audio interference 11.13.11] proceedings?

Mr O'CONNOR - Yeah, from our perspective, we are focused on what was asked for and what was the view held by the SMEs, in this case Legal, from the point of view of the Corporation, and that view was fairly firm that they were compliant.

Mr WINTER - Did you offer a view about whether they should've disclosed?

Mr O'CONNOR - As I say, I'm not a legal expert, so I didn't, and nor did Ian, get into that territory, because it's not our domain to do so. What we did confirm -

Mr WINTER - You are a probity expert, though.

Mr O'CONNOR - We did confirm from a process perspective that the relevant experts had formed a view that the submissions received were compliant.

Mr WINTER - I'm just struggling with this idea that - and because we haven't heard a really full and frank piece of evidence about how this could possibly not be in breach of the EOI process - it looks black and white - and now we're relying on legal advice we haven't seen, but perhaps I'll hand back to you, Chair.

Mr O'CONNOR - Again, just to conclude, from a probity perspective, the comments that we received from Legal in relation to it were black and white, and black and white was that it was compliant.

CHAIR - You can only rely on the information you've got, but you haven't actually seen the legal advice. You've spoken to Legal but not seen a written advice. Is that correct?

Mr O'CONNOR - That's correct.

Ms THOMAS - Did you ever advise the MPDC that there was a probity risk associated with progressing either respondent from EOI to RFT?

Mr SHIELD - No.

Mr O'CONNOR - The probity risk in relation to what?

Ms THOMAS - Anything. Were there any probity risks identified?

Mr O'CONNOR - No, there were no matters that presented, from our perspective. Typically a risk that would typically or could present would be - for other procurement processes, I'll give you a sense for where sometimes things might get called out, but it was not the case on this one, is if, for example, somebody was looking to take parties into the next stage process and there was, for example, significant gaps in capacity, capability and whatever, and you wondered how one would be able to be competitive with the other, then we would call those types of things out. This has been, through our observations, a very competitive process to date, so that didn't present.

Ms THOMAS - Have you ever recommended that a decision be reconsidered, an evaluation be revisited, or further information be obtained or any process steps be repeated?

Mr O'CONNOR - On other processes?

Ms THOMAS - Yeah, on any of the things you've observed so far.

Mr O'CONNOR - On any other programs of work, is that the question?

Ms THOMAS - Of any of the work you've been doing for MPDC on this stadium.

Mr O'CONNOR - Short answer: not for the Corporation, no. But I didn't know whether the question was limited to this particular engagement or [audio interference 11.16.25 am] for example, in other jurisdictions. But the short answer is no.

Mr WINTER - One of the letters dismisses the proceedings as 'untested allegations before the court on a different type of project located in another jurisdiction'. At what point does a pattern of regulatory fines, safe work prosecutions, court proceedings - all in another state - trigger a significant warning or red flag to MPDC that this is not somebody that should be in a tender process?

Mr O'CONNOR - I guess that's, again, a scenario and a level of hypothetical. What I did say previously is that, through the RFT process, it is a very - that the concept of investigation is a concept of referee checking, the concept of whatever other work that needs to be formed. The RFT is a very intensive process. This is currently an active procurement, and before a proponent is preferred or whatever, that level of detail, analysis and work would typically be undertaken. We've no reason to believe, looking at the resourcing that's been applied by, in this instance, Mac Point, the Corporation, that is not the case - that level of work and intensity has not been applied in the RFT stage, and that's the stage that it would typically be applied.

I think the question is also a good one because when you look - also what I've seen over the years, too - is one needs to have regard - and I appreciate the question that was raised is directed to jurisdictions that are in, for example, Australia. But I have seen matters present where other issues might be presenting in jurisdictions overseas. One of the challenges that presents in that type of scenario is different jurisdictions, different legal requirements. But if you're starting, to your question, through, say, investigations being conducted - I'll use the RFT stage as a key stage for where that occurs, then those matters won't need to be addressed. And you've already heard of the layers of governance that have been applied in this process. So, it would be an obvious question for forums such as the Review Committee, obvious questions for the other committees established and obviously questions for the Board. So, they would want to be satisfied before they would endorse, authorise or approve a preferred party.

Mr WINTER - We can ask questions [audio interference11.20.03 am], my recollection, we are not even allowed to know who is on it. So, I mean, we're just getting [audio interference 11.20.12 am]

CHAIR - Can you turn the camera off, Dean? Because it's just not working with your camera on.

Mr WINTER - [audio interference 11.20 18 am].

Mr O'CONNOR - Chair, I'm not aware of what information has been provided to the Committee or not, but I do know it's in your remit to ask as many questions to, for example, ourselves or also of the Corporation, so I hear what Dean's saying about info, but I can't speak to that: I don't know what's been asked.

Mr WINTER - It's no criticism of you, Rory. It's just a frustration that we've been asking these questions now for, I think, three months and we keep being referred to the word 'probity' and Probity Advisor and then we're here, and you're just telling us what your job is, but it feels like we're in this process where we're not able to get to the bottom of the answers to the questions we're asking.

Mr O'CONNOR - I take that, but again, from our perspective, we'll be trying to be as helpful as we can, but we'll carry on.

Ms THOMAS - Now that the Stage 1 tenders have been received, are you satisfied the due diligence process that the MPDC described to us back in May [2026] has now commenced, and have you provided any advice to the MPDC on the scope of the due diligence associated with that process?

Mr SHIELD - Well, they're well aware of what needs to be done. I do know that referee checks will be taking place very shortly and, in addition to referee checks, there are other enquiries that can be made.

Ms THOMAS - Okay, and who is it that does those reference checks?

Mr SHIELD - In the case of the Corporation, it's the Chair of the Evaluation Committee and a member of the Review Committee - both highly experienced.

Ms THOMAS - Are you satisfied that the due diligence that will be undertaken through those reference checks and other mechanisms is genuinely independent, rather than simply relying on information and references that are provided by the tenderer themselves?

Mr SHIELD - It would be independent, I think, don't you think, Rory?

Mr O'CONNOR - Yes, again these are all good questions, but I can reference to what we see also elsewhere. My view, Ian's view as well, is that they are being conducted in a very diligent manner. I guess also they would be very much aware that they may have the pleasure of [audio interference 11.22.40 am] speaking to the Committee at some stage, so they would want to be doing that. But looking at one, the resourcing that's been applied, two, the quality of resource and the experience that's been applied as well, and the other comment I would say is for that referee checking, and you can confirm this for me as being the person on the ground, but you're in attendance of that referee checking as well.

Mr SHIELD - Yep.

Mr O'CONNOR - On that, typically what we see is through those referee checking, the referee checking in itself might give rise to more questions and the referee check intends to focus on several aspects: one, if there's any particular matters that people want to get information on, two how does the organisation travel; but also, importantly, if there is key individuals nominated to be involved in the project, how those key individuals performed. They are very intensive and, again, you heard already about the number of SMEs that have been applied as well, so they're making sure that the relevant competencies are available for any of those inquiries, et cetera, that need to be made.

Ms THOMAS - Okay.

Mr SHIELD - I have seen a draft of the questions that the referee checks are going to - it's very comprehensive.

CHAIR - In that, I assume the questions would cover the field of what's expected of a company to deliver a project of this size and scale in terms of their financial wherewithal, their record on workplace health and safety.

Mr SHIELD - Yes. On time, on budget, subsequent claims and so forth. All those things are covered.

Mr O'CONNOR - And financial capability and those types of matters as well.

Ms THOMAS - If the Stage 1 submissions indicate the project can't be delivered within the budget, the approved budget or timetable, would it be consistent with the existing procurement rules to materially alter the scope and then negotiate with only one preferred bidder?

Mr O'CONNOR - Well, I think it'd be problematic if they were able to determine that in Stage 1, given that in Stage 1, from memory, there wasn't any pricing being sought, you can confirm that for me.

Mr SHIELD - In Stage 1, the RFT has certainly got pricing.

Mr O'CONNOR - The RFT stage is where - yes, so if you look to the evaluation criteria that are set up for the EOI, from memory you had - there was three gates: one, what did you get back, two, the conditions of participation, which there were two of, one went to financial capability, the other went to accreditation for WHS, and after that there was four criteria. In the RFT is where pricing and other things get considered, particularly also commercial risk, which is really, really important to conclude on our value for money, but it's at this stage, the stage we're currently in, that those matters get focused. So, the concept about pricing, et cetera, that is - really gets analysed, looked at, in this stage, the RFT stage.

Ms THOMAS - Ian, can you just clarify that, you just said so at this stage we're in now where the -

Mr O'CONNOR - The RFT stage, yes.

Ms THOMAS - The RFT stage, where the submissions -

Mr O'CONNOR - Because that's when bidders have had had to respond with their, amongst other things, pricing, et cetera for scope of work.

Ms THOMAS - Yes, so it does include pricing.

Mr SHIELD - Yes.

Ms THOMAS - Yes. So, back to my -

Mr O'CONNOR - But again, what's really important when you're looking at the pricing, just to be clear, is you also have to have regard to any conditions that apply to that pricing as well, and they're important, and then those matters get further explored through negotiation processes as well.

CHAIR - So, just on the -

Mr O'CONNOR - The key challenge is to keep up that competitive tension through the process.

CHAIR - Just with regard to the potential conditions applied to prices: I imagine that would be things like cost escalations, another war somewhere, whatever -

Mr SHIELD - I also think, from memory, one of the things raised was hyper-escalation.

CHAIR - Right. So, in terms of the parliament being informed about the likely cost, which is the key function of this Committee, you know, tell how much it's going to cost, et cetera, and there were certain commitments made by the Government around cost, too, so, I mean, if the price is X, subject to conditions, do the conditions indicate what X plus conditions might be, or it's just a suck it and see?

Mr SHIELD - They could, but as part of negotiation you'd be looking to remove as many of those as you possibly could.

Mr O'CONNOR - I'm happy to give you some colour on that: normally what happens with major program of work is, you're right on, the conditions can go to pricing, but what you try and do is say to the extent that any of those commercial conditions are applied, the first question you typically would ask is: well, what is your price to remove that? So, you're looking and doing an apple-for-apple comparator. If I carbon date myself, and then carbon date myself now for many years ago when there was a stadium being built, and this is out in the public domain, that's been built in Sydney, the matters that can come up saying, we will build this for X dollars, but by the way, this might - for some people might be very agreeable, but say, well, yeah, the condition is that you can't build another stadium for so many period of years, that this has to be it. So, you're looking to say, well, what does that actually give rise to, separately to some of those clauses that Ian talked to and one that's very topical at the moment across major programs of work for procurement, is the hyper-escalation clause in relation to what's happening worldwide, and again you're looking to try and - what effectively the agency or the department is looking to do is to try and get as much certainty as it can to lock in price, because what it wants to avoid, and should seek to avoid, is the issue about claims variations later on. So, they're looking to get that lock in.

I take your point, and it's a good point to raise about, well, what's happening with costings et cetera, like that. It's a question that we see typically that comes up on our travels and people can say, well, you talk about probity principles; is not one of the probity principles transparency? And so be able to see what that is. What the integrity bodies would tell you is that there's a balance there and it's a timing issue. Yes, costing, et cetera does need to be articulated and presented to the relevant stakeholders, but during a procurement process, it's problematic to be giving updates in terms of costings, and the reason for that is - and it's referred to, again, in other jurisdictions, they talk about things like anchoring the price point where you have parties that would love to give you back the price that you're setting, and it effectively can have an unintended consequence of removing the - seeking competition or innovation from the various proponents. The other issue, too, when you get costing, one needs to have full visibility about what those commercial terms are. For example, if I say I'll do something for $10 but have a whole lot of conditionality against it, and the other party says I can do it $14 but not have that level of commercial terms against it, well then, you have to then further go down a pathway to saying, well, which one delivers the best value for money? In this process, there will be a negotiation process as well and the issue is trying to get that balancing act between not showing your hand and not going public. At least in our experience, it's rare to have updated costings being released to market during a procurement process. Again, we're not making a call that it should be released or not, I'm just saying from a probity perspective, it's rare.

CHAIR - Thanks for that. The MPDC told us they were going to enter into a fixed price contract. How does this work? You know, the conditionality that could attach to it - how do you enter into a fixed price contract when there's no certainty?

Mr O'CONNOR - Basically, when you enter into it, if that's the pathway for fixed price, what you want to do is make sure you remove any ambiguity at all when you determine that fixed price. That's why you're looking for certainly on those commercial terms. Typically, when you get a project being assessed, if somebody has conditionality, you can also have a concept where agencies will seek to apply a loading to that pricing, so what is the view about what does that term give rise to, so they have visibility about what the overarching cost is. Effectively, what occurs is, there's a practice of readjusting. So, you say to the proponent, you've got that term X, what's the cost of that term? Otherwise, you're going to have to put a cost on it.

CHAIR - Fixed price contracts are generally higher than at the outset, because they've got to put that buffer in, clearly. Macquarie Point said to us last hearing, I'm pretty sure, that they were seeking to enter into a fixed price contract. I hear what you say about releasing costings on the way; I'm not talking about that. I'm just trying to understand, when we get some visibility over this and public visibility over it, is a fixed price contract the cost?

Mr SHIELD - It should be.

Mr O'CONNOR - I think fixed price by definition, in my view, would be the cost. But again, it's like any contract, and my understanding typically is contract summaries are provided, making sure that you read all of the print. Yes, is the answer.

CHAIR - Because the first time you move a light switch and it's a variation, that's when you find yourself in trouble, isn't it?

Mr O'CONNOR - Particularly if you're moving the light switch, say, from Hobart to [inaudible 11.33.17 am] or wherever, you're right.

CHAIR - Something more substantial, you know.

Mr O'CONNOR - We typically say for any program of work, it's not our domain, but put on your resources, but [inaudible 11.33.31] management team as well, because - but that's making sure that people are across what's been committed and then follow through on it. Then really, it's up to all of the relevant agencies, departments, in this case Mac Point, to be very firm on what the scope is and to make sure that those scenarios with light switches don't.

CHAIR - I was being a bit tongue-in-cheek there. I mean, it's obviously something more major, like you have to relocate one of the staircases, or you have to relocate major supporting infrastructure.

Mr SHIELD - Lower the roof or raise the roof.

CHAIR - Yes, that's right. Or you have to put in more grow lights and things like that, permanently or something, I don't know.

Mr O'CONNOR - Yes, and to accommodate events, et cetera. But again, typically, and again, through the resourcing applied through the contract letting, you would like to say that they have accommodated those types of scenarios in the price that's led. And for stadia projects, which we have had the opportunity of oversighting many, including some current processes elsewhere, that's the type of thing that would typically get covered. I think the term used by one of your colleagues was that due diligence process that's occurring at the moment.

Ms THOMAS - I know we're out of time, and thank you, I know we've gone a little bit over. What's your view on the probity and/or value-for-money risks of reducing to one bidder before final commercial negotiations occur?

Mr SHIELD - Well, I guess there's a risk -

Mr O'CONNOR - It really comes down to -

Ms THOMAS - Hang on, maybe Ian first.

CHAIR - There's a bit of a delay.

Mr SHIELD - Hang on, Rory.

Mr O'CONNOR - I mean, there's a balance off there. The first question you'd have to ask oneself is: as you get ready to down select it if it's a case to one, how many matters are still outstanding to be negotiated? So, what is the gap there? If there were a lot of matters to be negotiated - if you down to one and there's a lot of matters still to be unresolved, you very much run the risk of losing that competitive tension. However, if there's not many matters to do and you can see quite clearly a definitive gap between the two, we would be uncomfortable to take, for example, two parties into that last home stretch if there was a material gap between the two, because it would be unfair on the party where that material gap would have to come from. It's rare that that presents, and if you're going down the pathway of going to one, the question - and I'm confident that question will be raised within corporation, is: to what extent will that reduce competitive tension? So, what matters need to be resolved before we can get to a contract?

Mr SHIELD - The Corporation reserves the right to take two through: they prefer only to take one through, but in the current process there's going to be quite a few clarifications. There won't be negotiation, as such, because that happens when you've got your preferred. And they're very keen to get as much of that resolved so they feel comfortable with only taking one forward.

Ms THOMAS - Is there anything that we haven't asked you that you expected us to or that we should have?

Mr O'CONNOR - You didn't ask our ages. You're very kind.

Mr SHIELD - I didn't know what you were going to ask me.

Ms THOMAS - Nothing further to add, then?

Mr SHIELD - No, I don't think so. So far, we've been confirming with the tenderers along the way, during the workshops, that they don't have any issues to raise. Hopefully they won't, but if they do, we'll have to work out how to resolve them.

CHAIR - Thanks very much for your time today. We have kept you a bit longer than agreed, so we do appreciate that. We do appreciate the information you've provided and perhaps directed us down other rabbit holes, but anyway.

Mr SHIELD - Yeah, I hope it has been helpful. Thank you for the opportunity.

CHAIR - Thanks very much for your time today, both of you. Thanks, Rory.

Mr O'CONNOR - Thank you. If there's anything further, we'd be more than happy to come back again if you had any further questions.

Mr SHIELD - Simon's got our contact details.

CHAIR - Thank you very much.

The witnesses withdrew.

The Committee adjourned at 11:38 am.