

Op Hector – opening statement

At its core, this investigation concerns allegations of collusive tendering across two government organisations, involving dissembling conduct, including the use of aliases, the provision of false references and CVs for fictitious persons, known conflicts of interest and secondary employment being kept secret, and the provision of undisclosed commissions and rewards.

There are two principal aspects to the investigation, which are interrelated and involve a commonality of persons of interest and modus operandi with respect to alleged corrupt conduct.

The first aspect involves the procurement of building, civil and construction contracts during the period from June 2015 to September 2020, at what was formerly Leichardt Council, and is presently Inner West Council.

Tony Nguyen, who is an affected person in this inquiry, was the Senior Project Engineer, and later Property Project Manager, at these two organisations. Mr Nguyen was responsible for arranging quotes and making recommendations as to the successful tenderer for works of this nature at both Councils.

Without declaring a conflict of interest, Mr Nguyen awarded much of this work to persons he was associated with, including the affected persons Monty Nguy and Aidan Cox, and in respect of the subcontracting company named SDL Project Solutions Pty Ltd, of which Seng Laphai was the director, Mr Nguyen received cash kick-backs in the order of \$22,000 to \$70,000.

The second aspect of the investigation concerns the procurement processes involved in two multi-million dollar contractual projects by Transport for NSW (**TfNSW**), using as principal contractor Downer EDI Works Pty Ltd, which I will refer to simply as **Downer**. The first of

these projects was the Transport Access Program (or **TAP**), which involved accessibility upgrades at rail stations, including the provision of ramps, lifts, improved lighting and car parking. TfNSW's TAP projects have been allocated funds in excess of \$2.2 billion since 2011.

The second of these transport projects involves rail corridor and platform modifications in preparation for TfNSW's New Intercity Fleet of trains (or **NIF**).

Through three separate companies, ASN Contractors Pty Ltd, Sanber Group Pty Ltd and RJS Infrastructure Group Pty Ltd, Mr Nguyen partnered with certain other affected persons in tendering for and, where successful, delivering civil, building and landscaping works at various train stations in connection with these two transport projects. In excess of \$10.28 million (ex GST) of public monies was paid to these three companies in the years 2014 to 2020 in connection with these transport projects. Much of this activity took place during the time when Mr Nguyen was employed by the Council.

None of these three companies had any employees. In most instances, they would subcontract the work to other engineering and construction firms and collect a profit on top. To assist with the competitiveness of their tenders, each of these companies benefited from improper assistance from officers of TfNSW and/or Downer at various times during the procurement and project delivery stages. This included TfNSW employees Nima Abdi and Raja Sanber, and on the Downer side, ABD Abdal Aziz and Sairam Pilli, each of whom are affected persons for the purposes of this public inquiry.

Beyond these individuals, the Commission's investigation has uncovered that a number of other Downer employees appear to have influenced the awarding of subcontracts for TfNSW projects to companies with whom they had an association, and in some cases in exchange for a benefit, without declaring a conflict of interest.

This includes:

1. Former Downer officer and Sydney Trains Project Manager Benjamin Vardanega, and the company ProjectHQ Pty Ltd;
2. Downer Project Manager Andrew Gayed, and the companies AVCO Construction Consulting and Management Services Pty Ltd and Mansion Building Pty Ltd;
3. Downer Project Manager Vlad Stanculescu, and the company Dalski Pty Ltd; and
4. Downer Construction Manager Kevin Watters, and the company RJS Infrastructure Group Pty Ltd.

Forms of misconduct

The types of misconduct under investigation in so far as concerns the affected persons principally concern:

1. Collusive tendering;
2. The giving and receiving of corrupt commissions or rewards;
3. Misconduct in public office;
4. Fraud and larceny offences; and
5. The dishonest application of public funds for private advantage.

The potential commission by some of the affected persons of offences in contravention of the *Independent Commission Against Corruption Act 1986*, including wilfully making false statements to Commission officers to mislead or attempt to mislead them in the exercise of

their functions, procuring false testimony, and wilfully destroying or damaging documents or things relevant to the Commission's investigation, will also be explored during the public inquiry.

I will now address the principal aspects of the Commission's investigation and the types of suspected misconduct in more detail. I will also touch on corruption prevention measures in so far as they relate to matters the subject of the public inquiry.

Inner West Council

Commencing with the Council allegations, Mr Nguyen was first employed by Leichardt Council in June 2015 as a Senior Project Engineer. Upon his acceptance of the position, Mr Nguyen acknowledged that he had read and understood Council's policies with respect to avoiding and disclosing real or perceived conflicts of interest, obtaining approval for secondary employment, maintaining confidential information, and the need to obtain market competitive tenders and quotes.

These Council policies were acknowledged again by Mr Nguyen when he obtained the role of Property Project Manager at the recently established Inner West Council in July 2017. Inner West Council is the amalgamation of the former Leichardt, Ashfield and Marrickville Councils.

In September 2020, Mr Nguyen was subject to disciplinary action by Inner West Council for his role in relation to the irregular procurement of construction works, and he later resigned on 28 September 2020.

During his time at both Councils, without ever declaring a conflict of interest, Mr Nguyen awarded contracts to the value of \$4,299,577 (ex GST) to the following companies of which

he was associated – all dollar figures referenced in this opening statement are exclusive of GST:

- \$682,535 (ex GST) worth of work to Marble Arch Pty Ltd – the director of which was Aidan Cox who Mr Nguyen had met at the Glenfield Junction Alliance TAP project, and who he subsequently partnered with in RJS Infrastructure Group Pty Ltd when tendering for and performing TfNSW and Sydney Trains project works. In December 2018, Mr Cox purchased a mobile phone valued at \$1,960 for Mr Nguyen.
- \$174,343 (ex GST) worth of work to Innocon Pty Ltd, a director of which was Monty Nguy who Mr Nguyen went to university with. In 2019, Mr Nguyen and Mr Nguy, along with others, partnered together in a café business in Liverpool.
- \$973,789 (ex GST) worth of work to Constructicon Pty Ltd, the sole director and shareholder of which was Mr Nguy. While Mr Nguyen had reached an agreement with Mr Nguy to be paid between 10% to 20% of Constructicon’s profit on Council projects, the evidence appears to suggest that no such money ever changed hands between these two gentlemen. Constructicon also subcontracted with RJS Infrastructure Group Pty Ltd in connection with the TfNSW TAP project at Kingswood.
- \$1,460,422 (ex GST) worth of work to SDL Project Solutions Pty Ltd, the director of which was Mr Laphai. SDL Project Solutions subcontracted with Sanber Group Pty Ltd trading as RJS Civil in connection with the TfNSW TAP project at Victoria Street Station in Maitland. As mentioned previously, Mr Nguyen received between \$22,000 and \$70,000 by way of cash kick-backs from Mr Laphai in connection with Council construction and engineering projects he awarded to SDL Project Solutions. That was pursuant to an agreement whereby Mr Nguyen would be paid an amount equivalent to 20% of SDL Project Solutions’ net profit and/or 10% of the contract sum. Mr Laphai also gave Mr Nguyen a mobile phone to be used in connection with the Council work he awarded to SDL Project Solutions.
- \$963,387 (ex GST) worth of work to Ballyhooly Civil Pty Ltd or BH Civil Pty Ltd, which company subcontracted to RJS Infrastructure Group Pty Ltd in connection with

TfNSW TAP and NIF projects at Central, Lithgow, Kingswood and Wollstonecraft, and the Sydney Trains project at Macdonaldtown. Mr Nguyen met the director of Ballyhooly Civil while working alongside Mr Cox at the Glenfield Junction Alliance TAP project in 2014.

- \$22,720 (ex GST) worth of work to Sanber Group Pty Ltd, the director of which was Raja Sanber. Mr Nguyen secretly partnered with Mr Sanber when tendering for and performing TfNSW TAP works at Glenfield Junction in 2014 and Victoria Street Station in Maitland in 2017. It was Nima Abdi, the other silent partner in the company, who had requested Mr Nguyen to provide Council work to Sanber Group.
- Lastly, Mr Nguyen awarded \$22,381 (ex GST) worth of work to JTG Services Pty Ltd, the director of which was Mr Abdi's wife, Jessica Tosh. Mr Nguyen secretly partnered with Mr Abdi in ASN Contractors Pty Ltd, Sanber Group Pty Ltd and RJS Infrastructure Group Pty Ltd in connection with TfNSW TAP and NIF Projects at Glenfield Junction, Victoria Street, Central, Lithgow, Kingswood and Wollstonecraft stations.

To ensure these companies were successful in winning project work from Council, Mr Nguyen engaged in collusive tendering practices, including by passing on budgetary figures, and confidential methodologies and pricing information from competing bidders, to those companies whose quote he intended to have approved. Alternatively, Mr Nguyen would use confidential information of this nature to draft quotes on behalf of both the contractor he intended to have approved, as well as other contractors with prices above those of his chosen supplier – in other words, to ensure his preferred supplier was awarded the work, Mr Nguyen would draft both the winning and the unsuccessful quotes, the latter of which are also known colloquially as dummy bids.

On many occasions when Mr Nguyen drafted a dummy bid, he did so without the knowledge of the directors of the company on whose behalf the quote was purportedly submitted. Mr Nguyen achieved this by obtaining quote templates and email login details for these

companies, and then emailing the dummy bid to himself on behalf of the tenderer using an alias.

On occasions, Mr Nguyen would break up particular jobs so that the quoted value fell below the threshold of \$10,000, thereby justifying procurement on a single source basis. On other occasions, Council's procurement rules in relation to the need to obtain three competing quotes for works valued between \$10,000 and \$150,000, or from June 2019, \$250,000, were neither followed nor enforced.

The construction and engineering projects which Mr Nguyen awarded to these companies included facility upgrades at:

- Pioneers Memorial Park in Leichardt;
- The War Memorial Park in Leichardt;
- Leichardt Oval;
- Lambert Park in Leichardt;
- Bridgewater Park in Rozelle;
- The Enmore Children's Centre;
- Steel Park community rooms in Marrickville;
- Ashfield Council administrative building;
- Leichardt Council administrative building;
- The Seaview Centre in Leichardt;

- The Air Raid Shelter and Waterfront Drive Sports Complex in Rozelle;
- Camperdown Memorial Rest Park;
- Petersham Park;
- The Mervyn Fletcher Centre in Haberfield; and
- The May Murray Childcare Centre in Marrickville.

Given the number of projects that Mr Nguyen was influential in awarding to these entities, summaries will be used as a means of presenting this evidence to relevant witnesses. These summaries have been made available to the legal representatives of affected persons. If any affected person considers there to be any inaccuracy with respect to these summaries, or any other summaries that are to be used throughout the course of the public inquiry, their legal representatives can raise this with myself or Ms Davidson.

We expect the evidence relating to Inner West Council will also disclose that on one occasion Mr Nguyen made a false report that some \$3,000 to \$4,000 worth of tools which had been hired by Council had been stolen. Mr Nguyen did this so that he or Mr Cox could later use these tools in connection with TfNSW work which had been awarded to RJS Infrastructure Group Pty Ltd.

From a corruption prevention perspective, we anticipate findings will be proposed concerning the inappropriateness of the effective end-to-end control that Mr Nguyen had over the procurement and payment processes at Inner West Council. There were no mandated preferred supplier panels or centralised bidding systems, leaving it open to Mr Nguyen to source, assist and select tendering companies with whom he was associated. Inadequate supplier due diligence, poor project scoping and management, and a control framework that was weakened by organisational change, was also causative of the alleged corrupt conduct within Inner West Council.

TfNSW and Sydney Trains

I will now turn to the issues relating to TfNSW and Sydney Trains.

On 6 July 2016, Downer entered into a Framework Agreement with TfNSW to undertake the development and design of the TAP projects throughout NSW.

On completion of the design and development phase for each project, TfNSW awarded separate Managing Contractor, or **MC**, contracts to Downer for engineering and construction works at nominated train stations. Under the MC contracts, Downer could call for tenders and recommend companies for inclusion in subcontractor tender lists, but final approval of subcontractors rested with TfNSW. Under the MC contracts, it was open to TfNSW to direct Downer to accept a quote from another tenderer which had not been recommended by Downer.

TfNSW was liable to pay Downer its “Reimbursement Costs” under the MC contracts, which included payments made by Downer to subcontractors. Through this mechanism, any price inflation by subcontractors would ultimately be borne by TfNSW. However, this was subject to a pain/gain sharing clause which provided that all over-expenditure and savings from pre-agreed budgets would be allocated at a ratio of 75% to TfNSW and 25% to Downer.

The TfNSW and Sydney Trains projects which the Commission is primarily investigating, in chronological order, are as follows:

- **First**, the Glenfield Junction Station carpark defect rectification works which involved contracts to the value of \$246,000 (ex GST) being awarded to ASN Contractors Pty Ltd;
- **Secondly**, the Victoria Street Station TAP upgrade works which involved contracts to the value of \$1,748,137 (ex GST) being awarded to Sanber Group Pty Ltd trading as RJS Civil;

- **Thirdly**, the Central Station NIF upgrade works which involved contracts to the value of \$510,497 (ex GST) being awarded to RJS Infrastructure Group Pty Ltd trading as RJS Projects (which for convenience I will now refer to simply as RJS Infrastructure);
- **Fourthly**, the Lithgow Station NIF upgrade works which involved contracts to the value of \$1,681,848 (ex GST) being awarded to RJS Infrastructure;
- **Fifthly**, the Kingswood TAP Station upgrade and landscaping works which involved contracts to the value of \$868,338 being awarded to RJS Infrastructure;
- **Sixthly**, the Sydney Trains Macdonaldtown stabling yard upgrade works which involved contracts to the value of \$452,462 (ex GST) being awarded to RJS Infrastructure;
- **Seventhly**, the North Strathfield Station TAP upgrade works which involved contracts to the value of \$95,299 (ex GST) being awarded to RJS Infrastructure; and
- **Eighthly**, the Wollstonecraft Station TAP upgrade works which involved contracts to the value of \$4,686,728 (ex GST) being awarded to RJS Infrastructure.

I will now outline the nature of these projects, and the related alleged misconduct, individually.

Glenfield Junction carpark defect rectification works

Prior to joining Leichardt Council, Mr Nguyen worked for John Holland Group Pty Ltd on the TfNSW Glenfield Junction Alliance TAP upgrade project. It was within this professional environment that Mr Nguyen met TfNSW officers Raja Sanber and Nima Abdi. Mr Abdi was the TfNSW project manager for the Glenfield Junction Alliance program and Mr Sanber was

the TfNSW project engineer. While together on site, these three gentlemen formed a plan to create a company to tender for TfNSW engineering and construction work.

The first tender they were successful in obtaining involved rectifying defects at the Glenfield Junction station car park, which structure had been completed as part of the TAP project in 2014.

The company which Messrs Nguyen, Abdi and Sanber incorporated to tender for this work was originally named TRN Contractors Pty Ltd, being a reference to Tony, Raja and Nima. Mr Nguyen's wife, Susan To, was listed as the director and sole shareholder of this company. There is no suggestion that Ms To has engaged in corrupt conduct.

The company's name was changed in August 2014 following receipt of a cease and desist letter in relation to alleged trademark infringement. The renamed company was called ASN Contractors Pty Ltd, being a reference to Abdi, Sanber and Nguyen.

Despite the connection between the name of the company and its principals, Messrs Nguyen, Abdi and Sanber went to considerable lengths to distance themselves from the appearance of any association with ASN Contractors. To achieve this, the three gentlemen communicated about company business using phones registered in other persons' names, and they gave themselves aliases and would answer phone calls in the names of their fictitious identities. They also had their false names printed on business cards.

Mr Abdi adopted the alias 'Nick Sandrussi'. Mr Sanber used the aliases 'Roger Smith' and 'Raj Sandy', and Mr Nguyen used the alias 'Anthony Lee'.

While TfNSW employees are required to abide by the TfNSW Code of Conduct and were required to sign 'disclosures of interest' documents from time to time, it is perhaps

unsurprising that Mr Abdi and Mr Sanber each made nil disclosures notwithstanding their involvement with ASN Contractors.

ASN Contractors obtained the defect rectification work at the Glenfield Junction car park because Mr Abdi both invited the company to tender for the project and passed on confidential price information that he had obtained in his role to ensure ASN Contractors was able to submit the lowest priced tender.

On 27 August 2014, using the false name Raj Sandy, Mr Sanber on behalf of ASN Contractors submitted a quote for \$218,000 (ex GST) for the Glenfield Junction carpark defect rectification works. Mr Abdi recommended ASN Contractors as the preferred tenderer, and subsequently endorsed the report of the tender review panel by falsely stating that he had followed the evaluation methodology and was not aware of any breach of confidentiality, conflict of interest, or any unresolved probity issues.

The other tenderers for the Glenfield Junction carpark defect rectification works were Ballyhooly Civil Pty Ltd and Dabcorp Pty Ltd. The principal of Dabcorp, John Dabit, was an associate of Mr Sanber. Mr Nguyen and Mr Sanber each played a role in the provision of quotes from these companies, and it appears with the sole intention that their tenders would never be successful. In fact, Daval Group Pty Ltd, a director of which is Mr Dabit, carried out the entirety of the rectification works at Glenfield through a subcontracting arrangement with ASN Contractors.

This is the first example of the collusive bidding methodology which Mr Nguyen would continue to employ in relation to both Council and TfNSW tenders.

In terms of financials, the contract sum for the Glenfield Junction carpark defect rectification works was \$218,000 (ex GST). With additional variations to the value of \$28,000 (ex GST) having been approved, the total amount paid to ASN Contractors in connection with the work at Glenfield was \$246,000 (ex GST).

To carry out these works, Daval Group charged \$121,000 (ex GST), leaving ASN Contractors with a profit in the order of \$125,000, which was split evenly between Messrs Sanber, Abdi and Nguyen.

Victoria Street Station, Maitland

I will now turn to the Victoria Street Station upgrade works at Maitland.

On 26 April 2017, Downer issued an Invitation to Tender in relation to the building package for the TAP upgrade works at Victoria Street Station in Maitland. The scheduled tender closing date was identified as 15 May 2017. On the same day the tender was released by Downer, Mr Dabit forwarded the tender invitation to Mr Sanber.

On 11 May 2017, ABD Abdal Aziz, who was Downer's project manager for the Victoria Street Station project, requested for the tender closing date to be extended to 19 May 2017. This was Mr Aziz' first project for Downer, having only recently been employed on the basis of a false reference provided by Mr Abdi.

Mr Aziz' intervention to extend the submission closing date permitted Sanber Group trading as RJS Civil to be added, on or around 12 May 2017, as a new tenderer for the Victoria Street Station building package. Following the deregistration of ASN Contractors in 2014, Sanber Group trading as RJS Civil was the new corporate vehicle through which Messrs Nguyen, Abdi and Sanber had partnered to win TfNSW engineering and construction work.

Sanber Group was incorporated on 20 October 2015, with Mr Sanber listed as the sole director and shareholder of the company. It is reasonably uncontroversial that Mr Nguyen and Mr Abdi each had a silent interest in this company.

Between 2016 and 2020, Mr Sanber submitted four senior service declarations to TfNSW. On each occasion, he falsely stated that he held no private interests that may conflict with his position at TfNSW.

In around June of 2017, Mr Abdi was appointed as TfNSW's project manager in relation to the Victoria Street station upgrade works.

With the assistance of confidential price information supplied by Mr Aziz, Messrs Abdi and Sanber, together with Mr Dabit on behalf of Dabcorp, engaged in collusive tendering practices designed to ensure Sanber Group would be the successful tenderer for the Victoria Street Station building package. Mr Aziz provided specific guidance as to the price Sanber Group should submit in its tender, the slightly higher quote which Dabcorp was to submit, and the timings by which Sanber Group's tender information should be lodged to maximise its appeal to Downer.

During the tender process, to create the impression that Sanber Group was a real construction company with its own employees, Mr Sanber sent false information to Amit Patel from Downer regarding Sanber Group's experience and purported staff numbers. To assist with this façade, Mr Abdi drafted fake CVs which were also supplied to Mr Patel by Mr Sanber. There is no suggestion that Mr Patel has engaged in corrupt conduct.

On 29 June 2017, Mr Aziz lied about undertaking reference checks for Sanber Group and then provided fictitious feedback about the company's experience to his colleagues at Downer.

Mr Aziz was influential in ensuring that the Victoria Street building package was awarded to Sanber Group, notwithstanding that its quote was significantly more expensive than the next placed tenderer. Mr Aziz approved the recommendation to award the building package to Sanber Group for the contract price of \$847,803 (ex GST) with a comment that "*looking to*

the availability, experience and pricing ... [Sanber Group] ... is deemed to be the best value.”

Mr Aziz maintained his positive recommendation notwithstanding significant concerns being raised internally within Downer about Sanber Group’s financial capacity to complete the project. In one email to Mr Aziz and Mr Patel, another Downer project manager queried whether Sanber Group actually existed as no records for the company were available on Google.

Mr Patel responded to these concerns by noting that engaging Sanber Group was low risk due to Mr Aziz’ confidence after speaking with the parties.

Sanber Group’s tender recommendation was officially approved and signed by Downer on 13 July 2017.

On 11 July 2017, Mr Laphai on behalf of SDL Project Solutions provided a quote of \$544,566 (ex GST) to Sanber Group to complete the Victoria Street Station building works. This quote was accepted, and it is understood that Sanber Group paid SDL Project Solutions slightly in excess of \$600,000 (ex GST) for the completion of these works.

Between August 2017 and March 2018, Sanber Group received a total of \$1,748,137 from Downer (ex GST) in connection with the Victoria Street Station building works. The extra monies, in excess of \$900,000, paid in addition to the agreed contract sum, arose as a result of 30 approved contract variations, most of which were initiated by Mr Aziz, and none of which were awarded by way of competitive tender. In some cases, Mr Aziz reviewed Sanber Group’s draft variation claims and provided guidance as to the amount of money that could be charged before the formal claim was submitted to Downer.

Some of these variation claims appear to have been inflated.

For example, in relation to one such claim, on 16 August 2017, Mr Aziz texted Mr Sanber stating *“Call me once you have Farshad’s spreadsheet so we fill it out together. Claim should include all possession work as well, well smash it it’ll be a good claim.”*

In relation to other claims, on 18 December 2017, Mr Aziz texted Mr Sanber stating *“I am at my limit now and can not push any more veries through. You need to make it all happen asap so people don’t start sniffing around and asking questions...”*

Falling out between Sanber, and Abdi, Aziz and Nguyen

Despite the apparent success of the Victoria Street station building works for Sanber Group, there was a falling out between Mr Sanber and Messrs Nguyen, Aziz and Abdi, with the latter three becoming suspicious that Mr Sanber, who had complete control of the Sanber Group bank accounts, was not being transparent in so far as concerned project costs, cash flows and profitability.

Mr Sanber’s manipulation of Sanber Group’s accounts for the Victoria Street station building works has made it difficult to assess the profit derived on completion of the project. Despite this, in a spreadsheet sent by Mr Aziz to Mr Sanber, using the anonymous, self-deleting email system, Guerrilla Mail, a figure of \$873,000 is identified as the profit amount for the Victoria Street project, which was notionally split 50% to Mr Aziz, with the remaining 50% split evenly between each of Messrs Abdi, Nguyen and Sanber.

Evidence the Commission has obtained indicates that a portion of Mr Abdi’s profit from this project was expended on a fig farming venture which he, Mr Nguyen and Mr Sanber had sought to develop at one of Mr Abdi’s properties.

The Sanber Group partnership breakdown led to Mr Nguyen forming RJS Infrastructure Group Pty Ltd trading as RJS Projects in June 2018, which name was consciously chosen to match Sanber Group's trading name, RJS Civil, and to thereby benefit from the reputation associated with the successful completion of the Victoria Street building works.

The director of RJS Infrastructure was Mr Nguyen who at the time of incorporation was the company's sole shareholder.

Central Station

The first project that was awarded to RJS Infrastructure was the Part A conservation works at Central Station, for which Mr Aziz was allocated the role of assistant project manager on behalf of Downer. This job commenced in the latter part of 2018.

To enable it to tender for the Central Station NIF works, Mr Aziz passed on RJS Infrastructure's details to the tendering team at Downer. Mr Aziz did the same in respect of Mr Nguy's company, Constructicon, knowing that Mr Nguyen would supply a dummy bid purportedly on behalf of that company for the purposes of the tender. The third company invited to tender for these works ended up not quoting.

RJS Instructure was awarded the Part A conservation works at Central Station. The original subcontract price was \$92,200 (ex GST). However, in addition to this amount, 26 variations totalling \$418,297 (ex GST), essentially in the nature of a fresh package of works, were awarded to RJS Infrastructure in the absence of competitive tender. The total amount paid to RJS Infrastructure in connection with the Central Station NIF works was \$510,497 (ex GST).

The subcontractors used by RJS Infrastructure to complete the works at Central Station were Constructicon, and Ballyhooly Civil. Mr Laphai also provided some supervision assistance to RJS Infrastructure pursuant to a labour hire agreement.

A spreadsheet prepared by Mr Nguyen identifies the operating cost of the Central Station project to RJS Infrastructure as being \$222,564 (ex GST), leaving a profit of \$198,622 (ex GST) to be split evenly between Messrs Nguyen, Abdi and Aziz.

Lithgow

The second TfNSW project which was awarded to RJS Infrastructure was in relation to the NIF upgrade works at Lithgow Station. The closing date for this tender was 15 March 2019.

Mr Nguyen engaged Aidan Cox of Marble Arch to deliver the work at Lithgow on behalf of RJS Infrastructure, pursuant to a profit sharing arrangement. As part of his role, Mr Cox prepared the Lithgow tender submission on behalf of RJS Infrastructure.

The Downer project manager for Lithgow was Mr Aziz, who, at times using Guerrilla Mail, assisted RJS Infrastructure by providing information in relation to pricing, including by disclosing the quotes of competing tenderers.

On 26 March 2019, Mr Nguyen submitted RJS Infrastructure's tender for the Lithgow project to Downer. The total quote was for \$1,297,756 (ex GST). After further requests and clarifications were sought, a revised quote of \$1,591,756 (ex GST) was submitted by RJS Infrastructure to Downer.

In May 2019, a subcontract agreement for the Lithgow NIF works between Downer and RJS Infrastructure was formally entered into. \$246,191 worth of variations were subsequently approved for RJS Infrastructure to carry out as part of the Lithgow project.

One subcontractor used by RJS Infrastructure to perform the NIF works at Lithgow was Ballyhooly Civil.

The total amount paid to RJS Infrastructure by Downer in connection with the Lithgow NIF project was \$1,681,848 (ex GST). After paying expenses, including \$350,000 (ex GST) to Mr Cox of Marble Arch, Mr Nguyen's spreadsheet reports a profit for the Lithgow project of \$663,997 to be split evenly between himself, Mr Abdi and Mr Aziz.

As a result of his work on, and the success of, the Lithgow project, Mr Nguyen offered Mr Cox a 50% shareholding in RJS Infrastructure. ASIC records show that Mr Cox's shareholding in the company was registered on 27 June 2019.

Kingswood Station

The third TfNSW project which was awarded to RJS Infrastructure involved TAP upgrade works at Kingswood Station, including lift installations, platform widening and lighting improvements.

On 4 June 2019, on instruction from Mr Abdi, the Downer project engineer for Kingswood, Sairam Pilli, sent an internal email asking for tender requests to be issued to subcontractors including RJS Infrastructure, SDL Project Solutions and Constructicon, as well as two other companies. Of this group of potential subcontractors, Mr Nguyen, using aliases, drafted and submitted dummy bids purportedly on behalf of SDL Project Solutions and Constructicon.

To assist RJS Infrastructure with its tender submission, Mr Abdi supplied Mr Nguyen with information in relation to TfNSW's budget for the Kingswood Station building project. Having been informed of RJS Infrastructure's proposed quote for these works, Mr Abdi instructed Mr Nguyen to increase its tender price by \$100,000.

Additional packages for asphaltting and fencing, which ordinarily would have gone out to tender, were awarded to RJS Infrastructure on a sole source basis as part of the Kingswood Station project. Mr Pilli had obtained the Downer budgets for these two packages and disclosed them to Mr Abdi, who then relayed this information onto Mr Nguyen before RJS Infrastructure submitted its quotes for these works.

RJS Infrastructure's original subcontract value for the building works at Kingswood was \$388,756 (ex GST). With 34 variations to the value of \$414,611 (ex GST) subsequently approved, the total amount paid to RJS Infrastructure in connection with the Kingswood building package was \$803,368.

The subcontractor engaged by RJS Infrastructure for the Kingswood building package was Constructicon.

Kingswood landscaping package

The landscaping package for the Kingswood Station TAP works was also awarded by Downer to RJS Infrastructure. The tender process for this package was similarly subverted by dummy bidding prepared or arranged by Mr Nguyen, purportedly on behalf of Marble Arch and Ballyhooly Civil.

The subcontracting company which RJS Infrastructure engaged to carry out the Kingswood Station landscaping package was called WHC Landscaping Pty Ltd, the director of which, William Clark, is a relative of Mr Abdi's.

On 21 November 2019, Mr Clark sent a quotation to Mr Nguyen of \$36,436 (ex GST) in respect of the landscaping package at Kingswood. On 26 November 2019, RJS Infrastructure submitted its quote to Downer of \$59,790 (ex GST) in respect of these works.

On 9 December 2019, Mr Clark provided Mr Nguyen with a revised reduced quote for the Kingswood landscaping works of \$29,462 (ex GST). There is no suggestion that Mr Clark has engaged in corrupt conduct.

On 16 December 2019, Mr Pilli and Downer project manager, Vlad Stanculescu, recommended that the Kingswood landscaping tender be awarded to RJS Infrastructure due to its competitive pricing and capability. The evaluation also noted that this would amount to a \$9,790 loss to Downer as its tender break-even point was \$50,000 for landscaping.

In addition to the contract sum of \$59,790 (ex GST), it appears that a variation to the value \$5,180 (ex GST) was approved in respect of the Kingswood landscaping package, bringing the total amount paid to RJS infrastructure in connection with this package to \$64,970 (ex GST)

In return for his assistance to RJS Infrastructure with the Kingswood Station packages and apparently some additional contracting works, Mr Pilli received \$63,500 (ex GST) which was paid on receipt of an invoice by a company Mr Pilli controlled named PSR 360 Pty Ltd. For his specific assistance in relation to Kingswood, Mr Pilli received a further \$38,000 in cash from Mr Abdi.

The spreadsheet prepared by Mr Cox identifies the combined profit to RJS Infrastructure from the Kingswood Station building and landscaping packages as being in the order of \$529,000, which appears to have been split roughly 22% to Mr Abdi, with 78% going to Mr Nguyen, who from his cut supplied to Mr Cox an amount equivalent to around 24% of the overall profit.

Macdonaldtown

The fourth project which was awarded to RJS Infrastructure was the Sydney Trains stabling upgrade works at Macdonaldtown Station.

On 20 September 2019, Benjamin Vardanega, who was then working as a part time project manager at Sydney Trains, received methodology information in relation to the Macdonaldtown stabling works from the site's Senior Project Manager. Mr Vardanega forwarded this information to his personal Gmail address and then subsequently sent the information onto Mr Cox. Evidence which the Commission has obtained suggests that further confidential information in relation to the Macdonaldtown tender was supplied by Mr Vardanega to Mr Cox via the secure messaging platform, Wickr.

The head contractor for the stabling upgrade works at Macdonaldtown Station was Brodyn Pty Ltd trading as TCQ Construction. On or around 25 September 2019, Mr Cox prepared a quote for \$448,209 (ex GST) in relation to these works, which it is understood he supplied to the head contracting company.

On 25 October 2019, Brodyn Pty Ltd awarded the sub-tender for the Macdonaldtown containment works to RJS Infrastructure, which package was further subcontracted to, and completed by, Ballyhooly Civil for \$217,545 (ex GST).

At the end of the project, a finder's fee of between \$25,000 and \$40,000 was paid in cash by Mr Cox on behalf of RJS Infrastructure to Mr Vardanega.

RJS Infrastructure was paid \$452,462 (ex GST) by Brodyn Pty Ltd for the Macdonaldtown Station containment works. Once Ballyhooly Civil's charges and other expenses are deducted from this amount, Mr Cox's spreadsheet identifies that RJS Infrastructure's profit for the project was around \$192,363, which was split evenly between himself and Mr Nguyen.

North Strathfield

The fifth project which was awarded to RJS Infrastructure involved the TAP station upgrade works at North Strathfield Station. Kevin Watters was the Downer Project Manager for this site.

On 10 September 2019, Mr Watters sent an email to Mr Nguyen stating:

“...now that RJS are coming to an end of works at Kingswood, I have a small package of heritage style building works at North Strathfield that I need looked at...can you get out to site this week for a walk around...keen to get you guys pricing asap”.

On 30 September 2019, Mr Cox, on behalf of RJS Infrastructure, emailed Mr Watters a quotation for \$34,209 (ex GST) for platform building adjustment works at North Strathfield Station. On 17 October 2019, a revised quote of \$45,107 (ex GST) was sent on behalf of RJS Infrastructure by Mr Cox to Mr Watters.

Following a site visit which took place on 18 October 2019, in the absence of any tender process, Mr Watters accepted RJS Infrastructure’s revised quote.

Also, on 18 October 2019, Mr Watters emailed Mr Patel advising him that Downer would engage RJS Infrastructure to complete the waiting room floor lowering works at North Strathfield Station. In his email, Mr Watters noted that he was *“expecting \$0 variations as all considerations have been made.”*

Despite his assurance, in addition to the further revised subcontract amount of \$51,007 (ex GST), an additional \$44,292 (ex GST) worth of variations was issued by RJS Infrastructure in relation to the works at North Strathfield Station, all of which were approved by Mr

Watters. Some of these variations are understood to have been inflated, and the legitimacy of some of these costs was queried by certain Downer employees.

The total amount paid to RJS Infrastructure in connection with the works at North Strathfield Station was \$95,299 (ex GST).

It is understood that in response to a direct request for money by Mr Watters, at the end of the project, Mr Nguyen provided between \$5,000 to \$8,000 cash to Mr Cox who then supplied this money to Mr Watters in the carpark at North Strathfield Station. Lawfully intercepted telephone calls confirm that Mr Watters received a cash payment of \$8,000 on this occasion.

Mr Cox's spreadsheet identifies that the profit to RJS Infrastructure in connection with the North Strathfield station works was around \$48,783, which was split roughly 35% to himself and 65% to Mr Nguyen.

Wollstonecraft

The final project awarded to RJS Infrastructure concerned the Wollstonecraft Station TAP upgrade works. This significant project involved the installation of two lifts, two bridges, platform raising, platform strengthening, drainage and conduit installation works in and around the station.

On 8 July 2020, at a time when he was contracting with TfNSW through his company, ProjectHQ, Mr Vardanega sent an email to Mr Cox containing a Dropbox link with materials and a spreadsheet including information in relation to subcontractors, and budgets and prices for the Wollstonecraft TAP station upgrade, which he had received from Downer project manager, Andrew Gayed. Mr Cox subsequently forwarded this email to Mr Nguyen. Mr Vardanega and Mr Cox were later seen on this day at the Burwood Club reviewing the contents of a laptop screen.

On 6 August 2020, Mr Abdi forwarded to Mr Nguyen a copy of TfNSW's confidential bill of quantities in relation to the Wollstonecraft project. Mr Abdi had obtained the bills of quantity for Wollstonecraft, Birrong, Roseville and Banksia stations from a TfNSW project manager working on the Wollstonecraft site. Whether that particular TfNSW employee received a benefit from Mr Abdi for assisting him in this way will be explored during the public inquiry.

On 20 August 2020, Mr Vardanega sent a further email to Mr Cox with an attachment containing confidential Downer information in relation to pricing and budgets for the Wollstonecraft Station project. This information had been sent to Mr Vardanega on 27 May 2020 from Mr Gayed's Downer email address.

In the email account of Mr Nguyen, Commission investigators located an email sent by Mr Cox on 2 September 2020 containing the tender submission of a competitor for the Wollstonecraft project. These documents contained information relating to that competitor's confidential pricings and methodologies for the works. The email chain confirms that these materials had originated from Mr Gayed, who had emailed them to his private email address and then onto Mr Vardanega's ProjectHQ email address. Mr Vardanega then forwarded the materials to Mr Cox who in turn sent them to Mr Nguyen.

RJS Infrastructure provided the lowest quote, and was accordingly selected as the preferred tenderer, for the Platform Civil and FRP works at Wollstonecraft Station.

RJS Infrastructure was also recommended for another two packages at Wollstonecraft, being the Station Civil & FRP package, and the piling package. For both these packages, RJS Infrastructure was the cheapest tenderer.

On 11 September 2020, a text conversation took place between Mr Cox and Mr Watters in which Mr Watters told Mr Cox, *'Approved the first \$2.8M for you guys this morning, have the rest in my approval queue. Good result for RJS, make sure we're looked after well! (smiley face with wink)'*.

While it was successful in obtaining three packages for the Wollstonecraft TAP project, RJS Infrastructure missed out on the building package despite again being the cheapest tenderer. Mr Nguyen was told by Mr Gayed that RJS Infrastructure would be awarded three separate packages by Downer for Wollstonecraft if it refrained from pursuing the building package.

The building package for Wollstonecraft was awarded by Mr Gayed to Maize Group Pty Ltd, which is a company with which he appears to have an association. In this respect, the Commission has evidence that Mr Gayed assisted Maize Group in preparing its tender submission for the Glenbrook Station TAP upgrade works, including by providing Maize Group with Downer budgetary information in relation to this project.

The total amount paid to RJS Infrastructure across the three Wollstonecraft packages was \$4,686,728 (ex GST), including variations to the total of \$92,836 (ex GST).

On 2 December 2020, search warrants were executed by Commission officers at the residences of Mr Nguyen and Mr Cox. As this occurred at a time when the Wollstonecraft TAP project was still ongoing, it has not been possible to ascertain the profit figures and splits in relation to this project. This will be a matter for further exploration during the public inquiry.

The manner by which the packages for the Wollstonecraft TAP station upgrade works were awarded to RJS Infrastructure did not go entirely unnoticed at TfNSW.

In accepting Downer's recommendation to approve RJS infrastructure in relation to the three Wollstonecraft packages, on 20 October 2020, the TfNSW representative and senior project manager, Brenden Wakim, stated that:

TfNSW does note that with this recommendation coming through literally hours before the contractor is to commence on site that it does not leave time to review the suitability of the contractor for this type of work.

Later that same day, in an email to others from TfNSW, Mr Wakim stated:

Downer have awarded a number of large contracts for Wollstonecraft Station to RJS Projects, prior to seeking TfNSW endorsement to do so.

I can't find much about this company, it does not have a website and the company address is a residential house.

I asked Andrew Bedwani about the company, what the past experience is and what connection they have to Downer and he seemed very defensive about it.

Please be aware of this on the weekend, please check if this company is just sub-contracting the work out to other firms. It may be an example of pyramid contracting.

The contracts awarded are for over \$4.5 million in value, and are for piling, platform, civil and FRP works.

The sub-contractor recommendation for this company came through at 5pm on Friday night, literally hours before they were due to start on site.

I might be feeling paranoid, but something seems very odd about all this.

I have requested formally that Downer supply further information about this company and previous work they have undertaken.

Mr Wakim says that when he spoke up about concerns of this nature, Downer representatives would complain, and Mr Wakim was told by his TfNSW manager that he had trust issues and should work on developing that trust with Downer. There is no suggestion that Mr Wakim has engaged in corrupt conduct.

Mr Wakim's sense of paranoia appears to have been justified.

As an example of the duplicity occurring within TfNSW at the time, a screenshot of Mr Wakim's email from 20 October 2020 was leaked by a particular TfNSW employee to Mr Abdi, who subsequently provided it to Mr Nguyen.

Hexam NIF – Chandler Macleod allegations

In a matter unrelated to RJS Infrastructure, in September 2019, Mr Aziz was appointed Downer project manager for the NIF project at Hexam. While purportedly performing tasks in this role, Mr Aziz requested that an employment agency named Chandler Macleod hire a particular TfNSW project manager and Mr Abdi's wife, Jessica Tosh, on the NIF project at Hexam.

No work was undertaken by Ms Tosh on this project, and nor so apparently by the TfNSW employee. Despite this, timesheets were submitted to Downer in their names which led to gross wage payments of \$25,571 to the TfNSW officer and \$22,263 to Ms Tosh, all of which was approved by Mr Aziz.

For his role in the scheme, Mr Aziz received 50% of Ms Tosh's net wages and Mr Abdi and Mr Aziz each apparently received 25% of the TfNSW employee's net wages.

Mr Aziz also engaged the company linked to Mr Abdi, JTG Services Pty Ltd, to purportedly carry out work on behalf of Downer on TfNSW's NIF project. Between January 2020 and June 2020, without, however, performing any actual work, JTG Services submitted three invoices to Downer totalling \$207,353 (ex GST), and it seems Mr Abdi received the benefit of this money. The Commission hopes to learn during the public inquiry how much of this money Mr Aziz may have received in return for awarding this work to JTG Services.

Other Downer employees and conflicts of interest

I mentioned earlier, Commissioner, that additional Downer employees had engaged subcontractors with whom they were associated to perform services and carry out work for TfNSW and Sydney Trains.

Andrew Gayed

This includes Downer Project Manager, Mr Gayed, who through a company purportedly controlled by his father, AVCO Construction Consulting and Management Services Pty Ltd, charged Downer \$12,000 (ex GST) for the hire of lighting towers to be used in connection with the Wollstonecraft TAP project. These towers were not owned by AVCO, but appear to have been hired by that company from a supplier named Access Hire Australia for as little as \$4,678 (ex GST).

Mr Gayed, again through AVCO, provided storage services for shipping containers and materials used by Downer in connection with TAP and rail corridor works at Glenbrook and Wollstonecraft. These materials were stored at Mr Gayed's residential property in Rossmore. The total value of the invoices submitted by AVCO to Downer in connection with these storage services, which were initially approved for payment by Mr Gayed, was \$27,900 (ex GST).

On both of these occasions, Mr Gayed used aliases when engaging in communications with Downer on behalf of AVCO, and the high prices charged by AVCO for these two services were queried internally by Downer representatives.

Between May and June 2019, another company associated with Mr Gayed named Mansion Building Pty Ltd was awarded contracts with Sydney Trains for works to be undertaken at Penrith, Wollongong and Liverpool Train Stations. These projects were awarded by Mr Vardanega via a sole source procurement process whereby individual contracts under

\$30,000 were not subject to tender evaluation. Mansion Building invoiced Sydney Trains a combined amount of \$64,133 (ex GST) in connection with these three projects.

Mr Gayed had formed a prior relationship with Mr Vardanega while Mr Vardanega had been previously working for Downer. Despite this, no conflict of interest declaration or application for secondary employment was made by either of these two gentlemen.

Evidence obtained by the Commission appears to suggest that Mr Vardanega asked Mr Gayed if he could use Mansion Building to perform these works as he knew there would be a conflict of interest if the work was carried out by his company, ProjectHQ.

Local trades were used by way of subcontracting arrangement to carry out the works at Wollongong train station.

The Liverpool and Penrith train station projects were completed by way of subcontracting arrangement between Mansion Building and Camlin Constructions Pty Ltd, the latter being a company controlled by another Downer subcontractor, Ross Dean. The amount invoiced by Camlin Constructions to Mansion Building in connection with the two jobs at Liverpool and Penrith Train Stations was \$15,000 (ex GST). There is no suggestion that the principal of Camlin Constructions, Mr Dean, has engaged in corrupt conduct.

Mr Gayed further assisted with these projects by allowing the AVCO bank account to be used for transactions associated with purchasing materials and paying subcontractors.

On their completion, it is understood that Mr Vardanega received a cash payment in the order of \$5,000-10,000 from Mr Gayed on account of the profitability of these three projects to Mansion Building. It is understood that Mr Vardanega, who at the time he received this money was contracting with Sydney Trains, may assert that such payment was in return for him assisting Mr Dean with the completion of these projects.

Benjamin Vardanega

It would seem as a quid-pro-quo for the Sydney Trains work awarded to Mansion Building that Mr Gayed recommended to Downer that Mr Vardanega's company, ProjectHQ, be engaged for rail corridor possession work at Glenbrook between May and October 2019.

On 8 April 2019, while employed full time at Sydney Trains, Mr Vardanega provided a quote to Mr Gayed on behalf of ProjectHQ for possession supervision work at Glenbrook Station. Mr Vardanega quoted himself at \$180 per hour as a Senior Project Engineer, with a total quoted price of \$4,320 (ex GST).

ProjectHQ ultimately received \$113,110 (ex GST) from Downer in connection with these possession works in and around Glenbrook station. This fee was paid largely for engineering services provided by undergraduate employees of ProjectHQ in connection with rail corridor possession work. These works were physically carried out at a time when Mr Vardanega had dropped down to part time employment with Sydney Trains.

Vlad Stanculescu

Then there is Downer project manager, Vlad Stanculescu. An investigation by Downer into Mr Stanculescu's conduct found evidence that he was working for and performing services for the company Dalski Pty Ltd in relation to non-Downer engagements. The investigation also found that Mr Stanculescu had inappropriately used his position at Downer, and delegated authority, to benefit Dalski in tendering for Downer subcontracts.

In so far as it was alleged that Mr Stanculescu assisted Dalski in obtaining TfNSW TAP work at Banksia Station, for which he was Downer's project manager, the investigation found that Mr Stanculescu:

1. First, created a number of documents submitted by Dalski in its tender responses and during the clarification process;
2. Secondly, submitted Dalski's initial tender responses using the Downer ARCUS login details of a Dalski employee;
3. Thirdly, using his own Downer ARCUS system privileges, accessed a competitor's pricing information and provided it to Dalski to give it an unfair competitive advantage in the tender; and
4. Fourthly, scored Dalski's tender submission the highest, including in key criteria which he knew to be false or misleading.

Each of these steps was performed for Dalski's benefit by Mr Stanculescu without him ever declaring a conflict of interest or applying for secondary employment approval.

Dalski was awarded the building package for the Banksia Station TAP upgrade works valued at \$1.978 million (ex GST), the due completion of which, according to Mr Wakim, required the rectification of some 600 defects.

Following another internal Downer investigation, while not a decision maker, Mr Stanculescu was found to have again acted inappropriately in favour of Dalski in connection with the Birrong Station TAP upgrade building package. Mr Stanculescu was specifically found to have authored several Dalski tender documents and used his access to internal Downer project budget information to inform Dalski's price submission. Dalski was the successful tenderer for the Birrong building package, and was awarded a contract valued at \$251,760 (ex GST).

As a result of these investigations, it is understood that Dalski, who Mr Stanculescu commenced employment with upon his resignation from Downer, has been blacklisted as a supplier to Downer.

Kevin Watters

In addition to his role in relation to the North Strathfield and Wollstonecraft projects to which I have already referred, the public inquiry will also explore whether Downer construction manager, Mr Watters, with the expectation that he would receive a benefit in return, provided confidential pricing information to Mr Cox in relation to two additional packages for TfNSW projects which RJS Infrastructure had tendered for but was not awarded. This was in connection with the Canley Vale and Birrong Stations TAP upgrade projects.

Corruption prevention

As you would appreciate, Commissioner, corruption prevention is a very important aspect of this investigation, and particularly in so far as it relates to TfNSW.

The investigation to date has revealed that TfNSW may not have adequately responded to relevant corruption risks in partnering with Downer. In particular, TfNSW appears to have not understood the importance of appropriately monitoring Downer's activities in the context of enforcing the terms of the MC contracts. This lack of oversight resulted in Downer not being made accountable for compliance with the NSW Government's Code of Practice for Procurement, which in turn created opportunities for alleged corrupt conduct to prosper.

This may be due to the fact that the risk lens, in so far as concerned TfNSW's MC contracts with Downer, was focused on construction, safety and delivery, rather than corruption.

On an occasion in September 2021 when the Paxon Group, on behalf of TfNSW, sought timesheets or alternative supporting information to audit the personnel usage at Wollstonecraft, Banksia, Birrong, Roseville and Canley Vale Stations, as was its right under the MC contracts, the evidence suggests that Downer did not comply with this request.

The effect of this combination of such apparent poor corruption risk awareness, inadequate monitoring and enforcement of contractual terms, was that potential red flags of corrupt conduct were not properly addressed when they arose as part of the day-to-day management of the MC contracts by TfNSW.

This was despite an awareness within TfNSW of the potential corruption risks associated with public private partnerships, such as the TAP projects. In an email sent to TfNSW staff on 13 April 2016, the Acting Deputy Secretary, Infrastructure and Services at TfNSW acknowledged that that the agency was:

... undergoing a period of accelerated growth and expansion of which Infrastructure and Services (I&S) is at the forefront, delivering a program of work in the region of \$27b.

[the email continued]

Building on the earlier TfNSW Corruption Control Survey performed in January 2016, [Infrastructure and Services] has identified a need to undertake a more detailed Fraud and Corruption Control Survey having regard to the heightened risk in our Division, given the significant program of work at hand.

Failure to manage potential fraud and corruption risks would seriously damage Infrastructure and Services' brand and reputation ... and may impede the delivery of our program of works. Therefore, we need to be constantly vigilant in our business practices and regularly evaluate the effectiveness of our control environment.

Under the MC contracts, Downer staff were required to comply with various policies and procedures of TfNSW and the NSW Government Code of Business Ethics.

This included the NSW Government's Code of Practice for Procurement which encompassed requirements relating to standards of behaviour, confidentiality and evaluation. This required Downer staff to:

- a. Behave at all times in accordance with honesty and fairness; accountability and transparency, and the rule of law;
- b. Demonstrate commitment to continuous improvement and best practice performance in the management of procurement risk;
- c. Not disclose tender information that is intellectual property, proprietary, commercial-in-confidence or otherwise confidential; and
- d. Ensure tender evaluations are conducted by people free of any conflict of interest that might undermine process fairness.

Downer was also required to ensure that its contracts with subcontractors imposed equivalent obligations on the subcontractor when working on TfNSW projects.

Thus, all of the obligations just described applied equally to other subcontractors engaged by Downer.

Whether Downer sought to comply with and enforce these requirements, or whether it simply passed them on to employees and subcontractors without caring for their compliance, is a matter that will be explored over the course of the public inquiry.

Findings and recommendations may be proposed that are intended to remedy systemic issues, relating to management, governance and capability, which facilitated the failure to prevent or detect the alleged corrupt conduct the subject of this investigation within TfNSW and Downer.

It is anticipated that this aspect of corruption prevention evidence will significantly reduce corruption risks, not only at the level of government procurement, but generally for the improvement of supplier engagements, and the delivery of programs and services, in all forms of large-scale contracts entered into by or on behalf of the NSW Government.