

10 February 2023

Mr Peter Church  
Department of Transport for New South Wales  
7 Harvest Street  
**Macquarie Park, NSW 2113]**

By email: peter.church@[REDACTED]

**Downer EDI Works Pty Ltd (Downer)**  
**Department of Transport for New South Wales (TfNSW)**  
**Transport Access Program**

Dear Mr Church,

I refer to the Framework Agreement for the Transport Access Program Easy Access Station Upgrades Managing contract number ISD-15-4742-A between TfNSW and Downer (the **TAP Contract**).

I also refer to my letter to you dated 28 January 2022 (**Letter of Notice**) and your letter dated 8 February 2022.

The purpose of this letter is to provide TfNSW with:

- an update pursuant to clause 11.2 and clause 3.4(a) of Schedule 1 of the TAP Contract in respect of conduct involving Downer's former employee, Vlad Stanculescu (**Former Employee**) and Dalski Pty Ltd (**Dalski**); and
- an update on the actions Downer undertook to implement in the Letter of Notice

Capitalised terms in this letter take their meaning from the TAP Contract unless the context indicates otherwise.

### **Investigation of procurement activities where Dalski was awarded Work**

Downer committed to TfNSW that all procurement activities where Dalski was awarded Work would be examined to ensure there was no similar conduct as notified in the Letter of Notice in respect of services provided under the TAP Contract.

Downer's investigation determined that:

1. although not the decision maker, the Former Employee was the author of several documents submitted by Dalski as part of its tender for the building works upgrade package for Birrong Station;
2. the Former Employee used his position at Downer to access internal project budget information to inform the tender price Dalski submitted in respect of the tender for the building works upgrade package for Birrong Station;

3. on 22 January 2021, TfNSW approved Downer to engage Dalski under a lump sum contract with a contract price of \$251,760.12; and
4. separately, there were breaches of Downer's *Procurement Framework* and *Sourcing Guidelines*, specifically, instances of no value for money testing prior to awarding works directly to Dalski, and engagements of Dalski under the incorrect form of agreement.

Further particulars regarding the findings of the investigation are set out in Schedule 1.

Downer requires its employees to declare all conflicts of interest and to comply with its policies including its *Anti-Bribery and Corruption Gifts and Benefits Policy* and *Standards of Business Conduct*. However, the Former Employee did not make any conflict of interest declarations regarding any interest in respect of Dalski (but had declared his interest in respect of another company).

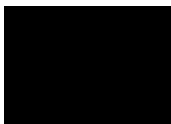
As noted in the Letter of Notice, Downer terminated the Former Employee's contract of employment on 16 December 2021.

#### **Update on status of actions**

Please see Schedule 2 which contains an update on the relevant actions taken by Downer.

Downer would welcome the opportunity to meet with TfNSW to discuss the above matters.

Yours faithfully,



**Karl McCarthy**  
**General Manager, South East Region**  
**Infrastructure Projects**

## Schedule 1

### Investigation of procurement activities where Dalski was awarded Work – factual findings

#### PART A – Total Engagements

1. Further to the engagement for the Banksia Station upgrade (detailed in the Letter of Notice), the further investigation identified 4 engagements of Dalski in respect of the TAP Contract:
  - a. temporary hoarding and fencing for Kingswood Station;
  - b. temporary hoarding and fencing for Glenbrook Station;
  - c. the formwork, reinforcement, pour (ROF) and building package for Hazelbrook Station; and
  - d. building works package for Birrong Station.

#### PART B – Birrong Station

##### The Tender

2. Between October and December 2020, Infrastructure Projects South East Region, administered a tender for the building works package for Birrong Station as part of the Transport Access Program 3 (**Birrong Tender**).
3. The Birrong Tender was administered using ARCUS, a web based online tender platform. A total of 7 subcontractors (including Dalski) were invited to submit a tender response. Two tenderers did not submit a response, and a further two tenderers withdrew during the post tender clarification process due to other commitments.
4. The Former Employee was not the Project Manager for Birrong Station or a decision maker in respect of the Birrong Tender. The Project Manager for the Birrong Station was Mr Jason Briscoe.
5. During the post tender clarification process, Dalski was invited to tender by the then Contracts Administrator, Mr Ashish Gandhi (no longer employed by Downer). Emails show that during Mr Gandhi's interactions with Mr Jackson Sensicle, Business Development Manager, Dalski, on 16 November 2020, with the purpose of assessing Dalski's suitability for another package of work on Birrong Station (platform rework), Mr Gandhi invited Dalski to tender for the Birrong Tender. This occurred after Mr Gandhi received Dalski's capability statement.
6. Mr Briscoe does not recall the exact circumstances of how Dalski was invited to tender, other than they were on the approved tender list, and for probity, they needed at least three written quotes which they did not have due to tenderers withdrawing. However, Mr Gandhi's approach to Dalski occurred prior to the withdrawal of two tenderers during the post tender clarification and it is not clear why Mr Gandhi invited Dalski to submit a tender response at a point in time when there were four tendered submissions.
7. On 22 January 2021, TfNSW approved Downer to engage Dalski under a lump sum contract with a contract price of \$251,760.12.

The Former Employee's Conduct

8. Downer's investigation did not identify any evidence that the Former Employee was involved in the Birrong Tender as decision maker, or that he had access to other tenderer's submissions (including price), or that he influenced those responsible for decision making on this tender.
9. However, there is evidence that the Former Employee acted inappropriately and in support of Dalski by:
  - a. authoring/being the last modifier of several tender documents submitted by Dalski (consistent with conduct detailed in the Letter of Notice in respect of Banksia Station); and
  - b. obtaining budgeted expenditure information for the Birrong Station to inform Dalski's price submission.
10. The Former Employee assisted Dalski with their tender submission for the Birrong Tender. This included:
  - a. Dalski's Microsoft Excel price submission sent to Mr Ashish via email by Mr Sensicle at 12:40pm on 23 November 2020 was last modified by the user 'Vlad Stanculescu' at 12.32pm on the same day;
  - b. other documents submitted in as part of the tender response record that the Former Employee, or variations of his name, as the author of those documents, including the document named:
    - i. *17.9\_Construction Manager CV - Adam Adamczewski*, with recorded author 'vladi', created on 22 July 2020;
    - ii. *7.53\_Organisation Chart\_Dalski Pty Ltd and 9.4\_Organisation Chart\_Dalski Pty Ltd*, both with recorded author 'Vlad Stanculescu' and created on 6 October 2020;
    - iii. *9.1 Tenderer's Capability Statement\_Dalski Pty Ltd*, with recorded author 'Vlad Stanculescu', created on 25 October 2020;
    - iv. *12.2\_WHS Management Plan\_Dalski Pty Ltd*, with recorded author 'Vlad', created on 13 February 2020;
    - v. *12.5\_Quality Management Plan\_Dalski Pty Ltd*, with recorded author 'Vlad', created on 13 February 2020;
    - vi. *12.8\_Environmental Management Plan\_Dalski Pty Ltd*, with recorded author 'Vlad', created on 13 February 2020;
    - vii. *17.2\_Policy Documents\_Dalski Pty Ltd*, with recorded author 'Vlad Stanculescu', created on 26 May 2020;
    - viii. *17.37\_Details\_Dalski Pty Ltd*, with recorded author 'Vlad', created on 13 February 2020.

Budgeted expenditure and Dalski's pricing submission

11. The Former Employee had access to budgeted expenditure information for Birrong Station, referred to as the Bill of Quantities (BOQ).
12. This BOQ was extracted from Candy, the estimating and job costing system used by Infrastructure Projects. It is unclear how the Former Employee obtained the BOQ from Candy.
13. At 11:37 am on 22 November 2020, the Former Employee saved the BOQ onto his Downer allocated OneDrive account.
14. At 12:32pm on 23 November 2020, the Former Employee completed Dalski's Microsoft Excel price submission, most likely using content from the BOQ saved onto his Downer allocated OneDrive account;
15. Dalski's initial price of \$296,369.24 was lower than the total budgeted amount of \$365,024 as per the saved BOQ.
16. The occurrence and sequence of the Former Employee's actions, as well as identical costed line items between the two documents, indicates the Former Employee referred and used the BOQ in preparing Dalski's price submission for the Birrong Tender.

**PART C – Engagements of Dalski breaching Downer's Procurement Framework**

17. Two of the four engagements of Dalski in respect of the TAP Contract were found to breach Downer's Procurement Framework.

Specifically, the conduct found to be breach of Downer's Procurement Framework included:

- a. no value for money testing and works were directly awarded to Dalski; and/or
- b. Dalski was not engaged under the appropriate form of agreement

The below table sets out the conduct against the relevant TAP Contract stations.

Station	Nature of works	Findings
Kingswood Station	Temporary hoarding and fencing (\$55K)	<ol style="list-style-type: none"> <li>1. No value for money testing, works were directly awarded to Dalski;</li> <li>2. Dalski was not engaged under the appropriate form of agreement (engaged under a purchase order instead of a subcontract)</li> </ol> <p>Note, the Former Employee was the Project Manager for Kingswood Station.</p>
Glenbrook Station	Labour hire of one Dalski employee to assist with the	<ol style="list-style-type: none"> <li>1. No value for money testing, works were directly awarded to Dalski;</li> </ol>

	installation of temporary hoarding and fencing (\$5K)	2. Dalski was not engaged under the appropriate form of agreement (engaged under a purchase order instead of a subcontract)  Note, the Former Employee was not the Project Manager for Glenbrook Station.
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## Schedule 2

### Update on actions proposed in Letter of Notice

1. Report the findings of the investigation to the New South Wales Police

Downer reported the findings of the investigation referred to in the Letter of Notice to Ryde Police Station on 11 February 2022.

2. Review all tenders in which the Former Employee was a key decision maker

Based on the information available, the Former Employee was a key decision maker on Kingswood Station and Banksia Station.

Banksia was covered in the first investigation (detailed in the Letter of Notice).

Kingswood Station was covered in the further investigation detailed in Schedule 1 above.

3. Not engage Dalski on any further work in the future

Downer confirms that Dalski has not been, and will not be, engaged on any future work for the TAP Contract.

4. Consideration of whether there are any steps that can be taken to improve Downer's systems and processes in respect of the management of tender submissions and detection of undisclosed conflicts of interest

Following completion of the further investigation detailed in schedule 1, Downer has taken the following steps to improve its systems and processes in respect of the management of tender submissions and detection of undisclosed conflicts of interest:

- a) Ensuring all staff on the TAP contract undertake Code of Conduct and Anti-Bribery and Corruption training. This has been completed as of 8th February 2023.
- b) Mandate the use of the ARCUS procurement platform on future TAP projects as a centralised document repository and procurement approval workflow.
- c) Mandate the use of a third-party procurement specialist (independent of the project delivery team) to administer the ARCUS system and procurement process for the TAP project teams. This will significantly reduce the possibility of project engineers influencing the procurement process.