

28 January 2022
Peter Church
Head of Rail Delivery
TfNSW

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**).

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

The purpose of this letter is to give notice to TfNSW under clause 11.2, and clause 3.4(a) of Schedule 1, of the TAP Contract of the details of conduct involving one of Downer's former employees, Vlad Stanculescu, who was employed in connection with the provision of services under the TAP Contract (**Former Employee**).

By way of further explanation, we note as follows:

1. On 13 July 2021, Downer received a confidential internal complaint regarding the Former Employee's previously undisclosed relationship with Dalski Pty Ltd (**Dalski**) ACN 107 119 442.
2. Dalski was a successful tenderer for building works in respect of Banksia Station upgrade. The Former Employee was the business lead and main scorer for that tender, and between February and November 2021, the Former Employee was the Project Manager for the Banksia Station upgrade.
3. Immediately upon receipt of the complaint Downer commenced an investigation into the Former Employee's conduct and relationship with Dalski which concluded on 3 December 2021.
4. Downer's investigation determined that:
 - a. the Former Employee has a relationship (previously unknown to Downer) with Dalski in which the Former Employee has provided advice to Dalski, used various Dalski email accounts, and posted favourable reviews of Dalski on online forums;
 - b. the Former Employee authored or modified documents submitted by Dalski as part of its tender submission in respect of the Banksia Station upgrade;
 - c. the Former Employee submitted Dalski's tender in respect of the Banksia Station upgrade using a user profile associated with Dalski personnel;
 - d. after Dalski's competitor submitted its tender in respect of the Banksia Station upgrade, the Former Employee re-submitted Dalski's original tender submission and at a price lower than the competitor's price (again using a user profile associated with Dalski personnel);
 - e. the Former Employee authored or modified documents submitted by Dalski as part of the post-tender clarification process, ensuring that Dalski submitted a revised price which was lower than the competitor's revised price;

- f. the Former Employee scored Dalski higher than other tenderers in relation to non-pricing tender criteria;
 - g. during the course of tender clarifications, the Banksia Station upgrade works were split into two packages:
 - i. Dalski was selected as a winning tenderer in respect of certain Banksia Station upgrade works;
 - ii. the competitor was selected as a winning tenderer in respect of other Banksia Station upgrade works (namely, roofing and temporary hoarding).
 - h. on 5 February 2021, TfNSW approved Downer to engage Dalski under a lump sum contract with a contract price of \$1,378,900.64. On the same day, TfNSW also approved Downer to engage the competitor for the remaining works.
5. Further particulars regarding the findings of the investigation are set out in Schedule 1.
 6. The Former Employee was stood down on 18 November 2021 after the preliminary results of the investigation were determined.
 7. The Former Employee responded to the preliminary findings of Downer's investigation on 26 November 2021 and in doing so:
 - a. did not deny any of the findings of the investigation contained in Schedule 1;
 - b. admits that he is a friend of Jackson Sensicle of Dalski and that he should have disclosed the friendship to Downer;
 - c. accepts that he provided assistance to Dalski in relation to its tender submission;
 - d. maintains that he provided assistance to Dalski for the purposes of procuring the best contractor at the lowest procurement price; and
 - e. says that he has not been employed by Dalski in any way nor received any benefit from his association with Mr Sensicle or Dalski.
 8. Downer terminated the Former Employee's contract of employment on 16 December 2021.
 9. Downer is not aware of any other instances of misconduct by the Former Employee. However, Downer is aware that Dalski was engaged as a subcontractor on other projects, including the Mortdale Maintenance Facility and that the Former Employee has approved various invoices raised by Dalski on those projects. Downer is now investigating all its dealings with Dalski.
 10. 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).

Next steps

Downer will continue to consider the outcome of the investigation and the actions required to be taken to appropriately respond to that outcome. In the meantime, the following actions are being implemented:

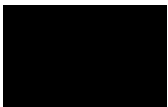
- a. Downer will report the findings of its investigation to the New South Wales Police;
- b. Downer will review all tenders in which the Former Employee was a key decision maker;

- c. Downer is considering the implications of the matters set out above for Dalski, including in relation to the Banksia Station subcontract and any other projects in which Dalski has been engaged. Downer will not engage Dalski on any further work in the future;
- d. Downer is considering 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;
- e. Downer will ensure that all employees in this line of business have received appropriate Code of Conduct and Anti-Bribery and Corruption training.

Downer would welcome the opportunity to meet with TfNSW to discuss this letter.

Please do not hesitate to contact me directly should you have any questions or if you require any further information.

Yours faithfully,



Karl McCarthy

General Manager – Southeast Region

Downer Infrastructure Projects

Schedule 1

Downer's investigation – factual findings

1. Between 10 September and 2 December 2020, Infrastructure Projects South East Region, administered a tender for the Building Works subcontract as part of Contract No. 150312 – Transport Access Program 3 Banksia Station with Transport for NSW. The initial tender period occurred between 10 September and 6 October 2020, with a post tender clarification process concluding on 2 December 2020. The tender was administered using ARCUS, a web based online tender platform. A total of 10 subcontractors were invited to submit a tender response, of which five submitted a response.
2. The Former Employee's involvement in the tender included scoping the project requirements, tenderer selections, administration of the tender in ARCUS, assessing/scoring tender submissions throughout the entire tender process, communicating with tenderers, as well making a final recommendation.
3. At 11:49AM on 6 October 2020, a PDF document named "Dalski Pty Ltd _Organisation Chart" was uploaded on behalf of Dalski into ARCUS at Question 9.4 of the Request for Tender questionnaire by the ARCUS user 'Jackson Sensicle'. The properties of this document record the author as "Vlad Stanculescu" and that the document was created at 11:48AM on 6 October 2020.
4. At 12:26pm on 6 October 2020, a PDF document named "Dalski Pty Ltd _Organisation Chart" was uploaded on behalf of Dalski into ARCUS at Question 7.53 of the Request for Tender questionnaire by the ARCUS user 'Jackson Sensicle'. The properties of this document record the author as "Vlad Stanculescu" and that the document was created at 11:48AM on 6 October 2020. One of the Dalski personnel identified in the organisation chart was not employed by Dalski.
5. At 4:59PM on 6 October 2020, the user 'Jackson Sensicle' uploaded into ARCUS on behalf of Dalski a Microsoft Excel spreadsheet named "*Dalski Pty Ltd_Completed Pricing Schedule and Schedule of Rates*".
6. At 5:19PM pm 6 October 2020, Dalski's main competitor, Mainland Roofing and Building Pty Ltd (**Mainland**) submitted its tender response (including pricing). Mainland's price was \$2,286,660.00.
7. At 6:16PM on 6 October 2020, the Former Employee changed the status of Dalski's tender submission in ARCUS from 'Submitted' to 'Unsubmitted'.
8. At 6:23PM on 6 October 2020, the user 'Jackson Sensicle' resubmitted a Microsoft Excel spreadsheet named "*Dalski Pty Ltd_Completed Pricing Schedule and Schedule of Rates*" into ARCUS at 6:23PM on 6 October 2020 which replaced the earlier version uploaded at 4:59PM. The properties of this (6:23PM) document record the last modified user as 'Vlad Stanculescu' and that the document was last modified at 6:22PM. Dalski submitted a price of \$2,204,356.26
9. On 6 October 2020, ARCUS captured a log of edits and additions by users, recording the date and time and a description of the activity, as well as the unique Internet Protocol (IP) address assigned to the user at the time of their recorded activity. The ARCUS audit logs record the same IP addresses used by the Former's Employee's user profile and the user profile of 'Jackson Sensicle' throughout the day of 6 October 2020. The audit logs record that the Former Employee used access privileges to view Mainland's tender response.
10. The following documents were attached to emails which were sent to the Former Employee's Downer email address from the email address assigned to 'Jackson Sensicle' (jackson@dalski.com.au):

- f. email sent at 11:34AM on 22 October 2020, which included the Microsoft Excel spreadsheet named "*Final Price- Rev4 - Following Downer Meeting 16-10-2020*". The properties of this document record the last modified user as 'Vlad Stanculescu', and that the document was last modified at 11:18AM on 22 October 2021; and
 - g. email sent at 12:27PM on 26 October 2020, which included three PDF documents which all record the author as 'Vlad Stanculescu', including the document named "Dalski - Capability Statement 2020-10-25" created at 4:16PM on 25 October 2020, the document named "Dalski - Current Projects 2020-10-25" created at 4:14PM on 25 October 2020 and the document named "Dalski Newsletter Sept - 2020" created at 12:25PM on 20 September 2020.
11. At 3:59AM on 21 October 2020, the Former Employee received an email from Mainland submitting their revised price of \$2,130,410.
 12. At 11:34AM on 22 October 2020, the Former Employee received an email from 'Jackson Sensicle' of Dalski submitting a revised price in the amount of \$2,048,685.00. The email attached a Microsoft Excel spreadsheet which records 'Vlad Stanculescu' as the last modified user at 11:18AM on 22 October 2021.
 13. At 4:59PM on 26 October 2020, the Former Employee received an email from Mainland with their final price of \$1,989,500.00.
 14. At 10:17AM on 27 October 2020, the Former Employee received the final price submitted by Dalski of \$1,978,683.21 via an email from 'Jackson Sensicle'.
 15. The Former Employee scored Dalski 92 out of a possible score of 95, ahead of Mainland which he scored 89. This included scoring Dalski 9 out of 10 in respect of the criteria Key Personnel and Experience, even though Dalski's proposed Project Manager was not employed by Dalski.
 16. On 5 February 2021, TfNSW approved Downer to engage Dalski under a lump sum contract with a contract price of \$1,378,900.64 in respect of the building works associated with the Banksia Station upgrade works.
 17. On 5 February 2021, TfNSW approved Downer to engage Mainland under a lump sum contract with a contract price of \$615,001.82 in respect of the roofing and temporary hoarding works associated with the Banksia Station upgrade works.

Relationship with Dalski

18. In May and June 2018, the Former Employee created a plan/sketch for an office refurbishment for Dalski's client and communicated with the client in relation to the selection of Dalski as the preferred subcontractor.
19. Between 4 September and 20 November 2020, the Former Employee was sent emails from various Dalski employees and invited to various meetings with Dalski employees for the local pool renovation project for Dalski's client Muswellbrook Shire Council. One email, which was sent from the email address *contact@dalski.com.au*, was signed "Kind regards Vlad".
20. On 25 September 2020 and 21 October 2020, the Former Employee sent emails to Dalski personnel regarding working with Dalski to hire a Project Manager for the Banksia upgrade project. The 25 September 2020 email attaches a Dalski branded email signature block of "*Vlad Stanculescu Construction Services Dalski Construction & Infrastructure*" identifying the Former Employee's mobile number as 0425699531 and email as "*contact@dalski.com.au*". The mobile number matches the Former Employee's personal mobile number as recorded on Downer's intranet.

21. In May 2020 and in October 2021, the Former employee posted positive online comments about Dalski.
22. The Former Employee is a common Facebook friend of "Jackson Sensicle".