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EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

INTRODUCTION

This report has been prepared by LAB Services on behalf of the Mine Subsidence Board (MSB) as part of the ongoing 2008-2009 Internal Plan. This review examines the controls and procedures for the management of Board repairers.

OBJECTIVE

The objective of the review was to provide management with confidence that property repairers are selected and managed appropriately by the Board.

The particular items identified as significant items of interest for the purpose of examining controls and procedures were:

- Probity issues surrounding the appointment of approved repairers, including the advertising, assessing in terms of pre-established criteria, maintenance of adequate records, and awarding of contracts to approved repairers to the Board.
- Whether regular checks are conducted on approved repairers to ensure they have a fair trading licence and current insurance/s.
- The rotational policy of selecting repairers for specific jobs in each District, including the different procedures used for high-value and low-value repair work.
- Reporting to the Board each month on the use of repairers and repair work performed.
- Procedures for managing contractors in relation to repair work performed that may require further rectification.
- Ensuring that overall governance practices over the management of repairers is sound, and that any opportunities for fraud/corruption are minimised.

Where we have identified that particular enhancements can be made to internal controls to mitigate risk, we have made appropriate recommendations.

METHODOLOGY AND SCOPE

A risk-based methodology was adopted for this review to evaluate internal controls and procedures in place for the management of contractors.

Our review involved:

- An examination of documentation including advertising notices surrounding the application process for approval to act as a contractor to the Board.

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- Full review of all “claim” and “elimination of danger” transactions from the financial records for 2008 and 2009 to test whether suppliers were in fact bona fide Board approved contractors.
- Interviews with key staff members involved in the management of Board repairers.
- A review of policy documentation for the management of Board repairers.
- A review of a sample of contract works in Property Management System (PMS) and of identified financial transactions with files held on site at Newcastle.

Though we considered within the review the tendering process for large scale works or the engagement of professional consultants, any further analysis around these engagements was considered beyond the scope of this review.

It is important to note that there is an unavoidable risk in any assurance project that fraud or irregularity may not be detected. This is due to the sample basis upon which our testing is conducted and the inherent limitations of any system of internal control. This review should therefore not be relied upon to disclose fraudulent activities.

REVIEW SUMMARY

Overall we were satisfied that there were effective controls and systems of review given the size and nature of the works undertaken by contractors on behalf of the MSB.

We considered the selection of contractors, the review and checking of contractors, reporting to the Board and the minimization of opportunities for fraud, to be areas of *Moderate* risk and we have recommended further strategies to mitigate this risk. In particular we have recommended changes be made to:

- Incorporate where appropriate new contractors to the approved Board repairer list in order to enhance the monitoring of work opportunities for all contractors and allocation of specific work.
- Incorporate new reporting practices around the rotational policies and necessary currency of insurances and licenses as well as improve the capacity of the Board to assess whether there are inconsistencies in the manner in which work opportunities are allocated.
- Establish a methodology and reporting strategy to rate available contractors who are approved Board repairers in relation to the specific qualities required for this type of work.

ACKNOWLEDGEMENT

We would like to thank staff within the Mine Subsidence Board for their kind assistance and cordiality throughout the review.

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ACTION PLAN

A summary of the recommendations contained within the report is presented in *Attachment A*. This summary is presented in the form of an *Action Plan* that is designed to allow management to more readily monitor the implementation of audit recommendations.

An exit interview was conducted by telephone with Mr Michael Clarke on 22 June 2009. He expressed general agreement with the matters raised.

ACCOUNTABILITY AND RESPONSIBILITY

IAB Services takes responsibility for this report, which is prepared on the basis of the limitations set out below.

The matters raised in this report are only those that came to our attention during the course of our review and are not necessarily a comprehensive statement of all the weaknesses that exist or all improvements that might be made. The Mine Subsidence Board should assess recommendations for improvements for their full commercial and operational impact before they are implemented.

This report is confidential, has been prepared solely for the use of Mine Subsidence Board and ownership of the report and any attachments lies with your organisation. It is the responsibility of your organisation to determine if you wish to release this report, in whole or in part. However, this should not occur without our prior written consent. Costs of any Freedom of Information requests or Subpoenas arising from actions taken by individuals or groups as a result of this report will be passed on to your organisation.

No responsibility to any third party is accepted as the report has not been prepared, and is not intended, for any other purpose.

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DETAILED REPORT OF FINDINGS

RISK RATING

We have given each finding in this report a risk (significance) rating on the following basis.

Extreme	Extreme risk, immediate action required.
High	High risk, urgent management attention is needed.
Moderate	Moderate risk, management responsibility must be specified.
Low	Low risk, manage by routine procedures.

1. SELECTION OF CONTRACTORS

The principles associated with engaging contractors for a government entity generally revolve around having fair and open engagement processes which promote both opportunities to seek the best value for money and are seen to operate on fair and impartial basis within the community.

We noted several internal controls within the MSB aimed at being accountable in this regard. These include:

- Having an open process to place interested contractors on the list of approved contractors to be called upon for works estimated to be worth less than \$20,000.
- Using this list as the basis for engaging contractors on jobs not put out to open tender.
- Adhering to government guidelines to advertise at an appropriate level for larger contracted works.
- Having a rotational policy to allow for the greater number of different approved tenderers offered the opportunity to quote on work valued at between \$5,000 and \$20,000.

It is worth noting however, that there may be mitigating factors which need to also be taken into account when reviewing the efficacy of such controls. Such factors would include:

- The quality of the relationship that a particular contractor may be able to engender with an aggrieved householder who is likely to be upset by the circumstances affecting their own quality of life following a mine subsidence incident.
- The proven reliability and availability of particular contractors to respond to circumstances quickly and at odd times and to adequately put in place action to eliminate potential danger.
- The general availability of contractors to satisfactorily complete restorative works in a continuous and timely manner.

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- The need to engage someone to fix an immediate problem, such as leaking sewerage or a bent door frame.
- The need to provide a more constant stream of work to ensure a measure of continuity in the contractor's availability.
- The specialised nature of the work in regard to applying solutions to mitigate future safety risks.

In this regard, the use of the control mechanisms should not inhibit the capacity of District Managers and Supervisors to use discretion to achieve the speedy resolution of problems that are part and parcel of responding to mine subsidence events.

TWO YEARLY APPLICATION PROCESS

The MSB conducts a comprehensive appointment process every two years for approved repairers. At the time of this review such a process was well underway. We noted that the MSB sought applications through advertising within local papers covering a wide area in and around the major areas of subsidence activity. Interested parties were each mailed a full application kit.

The assessment of applications is conducted by at least two senior officers appointed by the Board's Selection Committee. The application process also covered contractors previously listed on the prior period of approved contractors.

Selection of contractors is based on the following criteria:

- a) Satisfactory performance reports (Form FO10) – copy attached) for contractors who have been selected previously
- b) Suitability of contractors for the defined area of repairs
- c) Suitable references
- d) Availability to work in relevant Mine Subsidence Districts
- e) Licence checks with the Department of Fair Trading
- f) Suitable insurances.

We noted, however, that near the end this process out of 250 application packs sent out there were only 80 applicants processed successfully. The anecdotal evidence suggested that the majority of application packs sent out were not completed and returned.

The purpose of this application process is to establish an ongoing list of approved contractors for future work. In this application process there was increase of 60% in the number of approved contractors from the prior application process.

In our opinion this process is open and fair. The low response given the significant population around the subsidence areas and the downturn in the economy perhaps is perhaps indicative that this type of work is not necessarily a preferred option for tradespeople working in the building industry.

GENERAL ASSESSMENT OF THE USE OF CONTRACTORS FROM THE APPROVED LIST OF CONTRACTORS

An examination of the financial records under the relevant account codes (Account Codes for contract work "Elimination of Danger" and "Claims") revealed that only 12% of services were provided by contractors on the Selected Tenderer List for 2008-2009. The value of the Selected Tenderers' work in fact represented only 9.7% of the total value of supplier payments.

Further questioning and analysis of job files on this matter revealed that:

- All contracts with an estimated value of over \$20,000 were put out to open tender and that these were by nature normally beyond the scope of works that could be taken from the list of approved contractors.
- That a range of these works also included work undertaken by a range of specialist consultants.
- That payments also related to particular purchases of remedial supplies such as concrete and specialist products.
- That some of the works were for specialist and infrequent types of work such as repairs and replacement of assets such as water tanks, swimming pools, fencing, etc.
- That many of the Selected Tenderers were in fact not included as they had signed up with specific trades such as painting or plastering and that in many cases these types of repairs were managed by building contractors who engage their own subcontractors for such work.

It is worth noting that though there now is as many as 80 contractors on the Selected Tenderers List for 2010-2011, many of these repairers will continue to be restricted as per the above examples. This may mean that such tradespeople may be offered little work competing with builders who are able to undertake and facilitate all of the required tasks for completing a particular job.

We further note that the MSB is using a range of specialist contractors on a more frequent basis such as suppliers of specialist space filling products, fencers, swimming pools and other special services. Many of these contractors have not gone through the normal application process to be listed as preferred Board contractors.

We would think it would be appropriate that such service providers become included on the preferred Board contractors list, if it appears that will be engaged in ongoing work. This would allow both a mechanism for further reviewing the engagement of contractors by the Board as well as reinforcing the legitimacy of having a preferred tenderer process and application process.

THE ROTATIONAL POLICY FOR SELECTING CONTRACTORS AT A DISTRICT LEVEL

The MSB Policy Statement on Tenders states that:

"For work less than \$5,000, only competitive tender is required. For jobs between \$5,000 and \$10,000, three competitive tenders are to be sought with those returned being evaluated. For work from \$10,000 to \$20,000 inclusive, three competitive tenders are required to be submitted."

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This policy is formulated around seeking the best price, as well as ensuring that workload is equitably shared around with all available and approved contractors. A further operational interpretation of the policy is that District Supervisor will use the policy to seek quotations from alternative contractors on the approved list, as a means to ensure that work is not only being offered to particular contractors.

The present method for monitoring the use of the rotational policy is built into PMS which allows for detail on three quotes to be entered. It would be anticipated that where a job worth between \$10,000 and \$20,000 is raised in the system that there would also be a corresponding set of entries showing the three quotations and, where less value works are raised, there might be more than one entry made in the quotation fields. Both from observation and from anecdotal evidence this facility in PMS is not consistently used.

Without direct reference to each job file it is difficult ascertain whether the rotational policy is properly followed. We would suggest that in order to better monitor that different contractors are given more opportunity to quote on jobs, an additional tracking mechanism is put in place.

A suggested approach might be to use a spreadsheet listing approved contractors within a particular district, create a field for each new job and record any attempts made to seek interest from contractors on list. This would enable management and the Board to more easily review the rotational policy in action over a sustained period of time.

RISK RATING**MODERATE****RISK IMPLICATIONS**

- Perception of preferential treatment for particular contractors.
- Perception of collusion between staff and contractors.
- Potential loss of more cost effective options.
- Potential for any onerous procedures to inhibit the retention of a sustainable core base of appropriate contractors.

RECOMMENDATIONS

- 1.1 Incorporate specialist contractors with ongoing work into the list of approved Board contractors.
- 1.2 Construct and utilize a register to monitor the application of the rotational policy and the general utilization of the Selected Tender List.

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2. CHECKING AND REVIEW OF CONTRACTORS

We found there were sufficient checks and follow up to ensure that:

- Contractors engaged by the Board have up to date insurances and licenses prior to commencement of works.
- An inspection of the work is carried out by the inspector and approval is sought from the householder or business prior to any payment being made for work carried out.
- At this stage any further rectification work is identified by the inspector and further works are carried out prior to the status being raised on PMS that the repairs are complete.

The major check and review of contractor details is carried out every second year alongside the application process. Details of insurances, licenses and renewal dates for both are recorded following the receipt of copies of these details.

A secondary review occurs on each occasion where a contractor will bid for a job worth more than \$5,000. This review once again checks on the status of currency of licenses and insurance.

In our opinion there is evidence that sufficient inspection and sign off procedures are in place prior to payment being made for work completed.

RISK RATING

MODERATE

RECOMMENDATION

No recommendations.

3. REPORTING TO THE BOARD

All relevant quotations for work over \$5,000 are considered by the Board. Quotations by approved Board contractors are evaluated against an inspector's costing, which is generated using the Cordell valuation model. Anecdotal evidence suggests that the lowest price is generally favoured by the Board.

Over time we would expect that the Board would come to build up some knowledge regarding the work carried out by different contractors. However, in our opinion the judgement of quotations could be further enhanced by each of the identified contractors having an associated rating code or codes based on an assessment of:

- Known expertise in relation to the type of work carried out.
- Known history of response time to commencing prior work.
- History of client relationships.
- The Known reliability of the contractor in completing work.

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- Consideration of applicant's history in respect to management of issues of safety and the elimination of danger.

Such a rating system might enable Board members to better assess the quality of tenders as well as build up a better understanding of the methodology used by inspectors and district managers to favour the use of particular contractors. We believe the use of such ratings may add further transparency to the procedures underlying the use of some contractors over other available contractors.

RISK RATING**LOW****RISK IMPLICATIONS**

- Incomplete detail to make quality assessment on tenders
- Incomplete knowledge on Board approved contractors
- Open to suggestions of favouritism towards particular contractors

RECOMMENDATIONS

- 3.1 Develop an evidence based rating system to assess any current knowledge of approved contractors working for MSB.
- 3.2 Utilize these ratings when reporting to the Board for further consideration of tenders.

4. MINIMIZATION OF OPPORTUNITIES FOR FRAUD

We consider that there could exist at a district level, some low level opportunities for collusion between District Managers and Supervisors with preferred contractors or even a perception, that unfavourable treatment is given to specific contractors to the detriment of others.

From our discussions with key staff we found that there existed a strong client focus based around resolving issues of danger and client inconvenience in the most expedient manner. The potential to achieve such operational aims is by necessity, contingent upon having a reliable and responsive pool of contractors. In a normal business setting this would typically involve rewarding effort with a more continuous stream of work or opportunities for work. In this context it is unwise to over prescribe controls that affect the MSB's capacity to develop and sustain longer term practical working relationships with contractors.

The key to minimising any opportunities for fraud in this setting involves the Board and management having the capacity to clearly compare and articulate the value of particular contractors in light of other interested stakeholders. In this regard the incorporation of the recommendations to:

- incorporate all ongoing contractors to the approved list
- use tracking processes matched to this list to review who is being offered work on a district basis
- develop a contractor rating system

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will enhance the capacity of the MSB to minimize opportunities for collusion and fraud.

RISK RATING


MODERATE

RISK IMPLICATIONS

- There is collusion between employees and contractors to gain unfair access to particular work.
- Loss of competitive pricing opportunities.
- Loss of reputation.

RECOMMENDATION

No further recommendations. Recommendations made earlier in this report address the issues discussed above.


END OF REPORT

ATTACHMENT A – ACTION PLAN FOR IMPLEMENTATION OF REPORT RECOMMENDATIONS

No	Summary of Recommendation(s)	Risk Rating	Management Response(s)	Responsible Manager(s)	Target Implementation Date(s)
1 SELECTION OF CONTRACTORS					
1.1	Incorporate specialist contractors with ongoing work into the list of approved Board contractors.	Moderate			
1.2	Construct and utilize a register to monitor the application of the rotational policy and the general utilization of the Selected Tender List.	Moderate			
3 REPORTING TO THE BOARD					
3.1	Develop an evidence based rating system to assess any current knowledge of approved contractors working for MSB.	Low			
3.2	Utilize these ratings when reporting to the Board for further consideration of tenders.	Low			



