

# Misconduct risks at Mid West Ports Authority

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## INTRODUCTION

- [1] This report concerns the actions of officers of the Mid West Ports Authority (MWPA) and the award of a tender for the provision of security services to the Port of Geraldton.
- [2] The MWPA is a body corporate pursuant to the *Port Authorities Act 1999* and its main function is to facilitate trade and commerce within the port, whilst ensuring a safe and efficient operating environment. The MWPA is also responsible for security within the Port of Geraldton, which is a major international trade and tourism gateway into Western Australia.
- [3] From October 2012, Sun City Security Pty Ltd, later to become Forefront Security Pty Ltd (Forefront), provided the security services to the Port of Geraldton, which consisted of one security guard on site, 24 hours a day, 7 days a week, 365 days a year. Forefront is owned by the former Mayor of the City of Greater Geraldton, Mr Shane Van Styn.
- [4] In late 2020, a tender for the provision of security services at the Port of Geraldton was commenced. The previous contract had expired. The tender also provided for an increase in onsite security to two security guards. The contract was to be a maximum of 3 years.
- [5] The tender and contract were awarded to the incumbent security company, Forefront. Elements of the tender process were brought to the attention of the Corruption and Crime Commission (the Commission) which led to the commencement of an investigation to determine whether serious misconduct had or may have occurred in the award of the tender.
- [6] The Commission has jurisdiction over serious misconduct, defined in the *Corruption, Crime and Misconduct Act 2003* (CCM Act) s 4. In this instance the Commission was investigating allegations of serious misconduct, pursuant to CCM Act s 4(b) which requires an element of corruption. The Commission commenced Operation Berwick to investigate the tender award process. At the conclusion of the investigation the Commission has formed no opinion of serious misconduct against any public officer involved in the MWPA tender process. However, the Commission's investigation identified several serious misconduct risks regarding the deviation from standard procurement and tender procedures during the process.
- [7] The purpose of this report is to draw attention to the serious misconduct risks that have been identified. A serious misconduct risk is considered to be conduct, circumstances or lack of governance that may expose an entity to financial or other harm or loss.

- [8] It is emphasised that the investigation found no evidence of impropriety by Forefront or Mr Van Styn.

## **CHAPTER ONE**

### **MWPA20-072 - Tender for Provision of Security Services to the Port of Geraldton**

- [9] Between 9 December 2020 and 19 March 2021, a tender process was completed by MWPA for the provision of security services to the Port of Geraldton. The tender was for two security guards, 24 hours a day, 7 days a week, 52 weeks of the year for a total of three years. The estimated value over the life of the contract was \$3.35 million inclusive of GST.
- [10] Six security companies were invited to tender for the contract. A mandatory site visit was conducted, and the tender closed on 13 January 2021 at 3.00pm. Three of the companies invited to participate in the tender submitted tender applications to the electronic tender box maintained by the MWPA procurement team.
- [11] A tender panel made up of three subject matter experts was formed and, with the assistance of two members of the MWPA procurement team, the tender was evaluated between 2 February 2021 and 4 March 2021.
- [12] The MWPA procurement team were responsible for ensuring the tender applications complied with standard MWPA procurement process, segregating the pricing schedules from panel members until the qualitative evaluation had been completed and evaluating each applicant's response to the Western Australian Industry Participation Strategy (WAIPS).
- [13] The panel members were responsible for evaluating the applicant's response to the following areas, known as the qualitative evaluation:
- Scope Appreciation/Methodology;
  - Corporate Experience;
  - Key Personnel, Organisational Capacity and Support Capability; and
  - Occupational Health and Safety and Industrial Relations.
- [14] At the conclusion of the qualitative evaluation, which included the WAIPS Plan, two security companies, MCS Security Pty Ltd (MCS Security) and Forefront were the highest-scoring applicants; MCS being the highest.
- [15] The financial information was added to the evaluation, with the proposed contract price submitted by MCS Security exceeding Forefront's submitted proposed price by approximately \$168,000 over the contract term. With the qualitative and financial evaluation finalised, MCS Security remained

the highest scoring applicant, with Forefront a close second. Notably, an evaluation recommendation by the tender panel as to the preferred applicant was not recorded at the conclusion of the tender evaluation process, contrary to standard procurement practice.

[16] Following the evaluation, MWPA Procurement Specialist, Ms Julie Higgins, prepared a PowerPoint presentation titled 'Security Tender Evaluation Comments' and presented it at an MWPA Executive Team meeting, following which a decision was made to award the contract to Forefront. The MWPA Executive Team was made up of the following MWPA employees, however records did not establish whether all participants attended the meeting:

- Chief Executive Officer;
- General Manager Operations and Logistics;
- General Manager Trade and Corporate Services - Ms Sandra Pigdon;
- General Manager Asset Development and Strategy; and
- General Manager Sustainability, Culture and People.

[17] A Request Evaluation Form (Evaluation Form) is a document prepared by the MWPA Procurement Team which details the tender process, which includes the scoring of individual tender applicant's submissions, additional clarifications if sought, and an evaluation recommendation from the tender panel.

[18] The Evaluation Form was finalised on 17 March 2021 and signed off by the Tender Panel. The report contained the following recommendation:

*The PowerPoint presentation was delivered to Executives on the 16/03/2021 and the Executives agreed based on the outcome of the evaluation that the works are to be awarded to Forefront Security. It is also to be noted that going forward in the contract that relevant KPI's need to be developed, a process for vetting suppliers' additional personnel to be reviewed by MWPA, regular management meetings over and above monthly meetings are to be held to ensure the strategic direction of the services provided are aligned to MWPA business needs.*

[19] On 19 March 2021, the CEO, Ms Pigdon and General Manager Operations and Logistics endorsed the Evaluation Form. The contract for the provision of security services was executed by the acting CEO of the MWPA on 11 May 2021, with the commencement of the contract to be 1 June 2021. The total value of the security contract was \$2,848,752.00 (excl GST) for the term of three years.

[20] The Commission's investigation could not ascertain a legitimate justification as to why the tender was awarded to Forefront over the highest scoring tender applicant, MCS. The Commission's investigation did identify deviations from standard process, in particular:

- The failure to adhere to the MWPA Corporate Delegations Manual;
- The preparation and presentation of a PowerPoint which included statements that appear to favour the award of the contract to Forefront without justification; and
- The failure to adequately record pertinent information and decisions during the tender process.

[21] The Commission has been unable to identify why these issues occurred. These issues are detailed in the next chapter.

## CHAPTER TWO

### The Corporate Delegations Manual

- [22] The MWPA Corporate Delegations Manual (Delegations Manual) 'QMS-MAN-001' was authorised by the MWPA Board on 30 March 2020, and was in operation during the period of the tender process for, and awarding of, the security services contract MWPA20-072.
- [23] The Delegations Manual detailed the functions within MWPA which are delegated to the Board, CEO or other members of staff. The delegations range from the authority to approve the annual budget through to the approval of the Organisational Structure. If a function is not delegated in the Delegations Manual, then it remains with the MWPA Board.
- [24] The Commission's investigation identified contraventions of the Delegations Manual in awarding the security services contract to Forefront.
- [25] On 19 November 2020, Ms Pigdon sought approval from the MWPA Board, via an Out of Session Decision Paper to advertise tender MWPA20-072 for the provision of security services to the Port of Geraldton, as the estimated spend was \$1.07 million per annum. The MWPA Board approved the advertising of the tender on 9 December 2020, via circular resolution.
- [26] The Delegations Manual does not delegate any function in relation to the authority to approve the award of a tender. As such, the function and ability to award tenders continued to rest with the MWPA Board. The Commission was unable to identify any document submitted by the MWPA Executive to the MWPA Board for approval to award the security tender MWPA20-072.
- [27] Delegation 11 of the Delegations Manual states the CEO has the authority to execute contracts up to the total value of \$1 million.
- [28] The total value of contract MWPA20-072 was \$2,848,752.00 (excl GST) which was above the CEO's delegation of \$1 million. On 11 May 2021, the Acting CEO executed the contract on behalf of the MWPA, contrary to the delegated limit.
- [29] Aside from the request to advertise, the only other reporting which went to the MWPA Board in relation to the tender for the provision of security services was contained within the CEO's April 2021 Report after the tender had been awarded by the MWPA Executive in March 2021. The report stated:

*Security - The security tender was finalized over the reporting period with the incumbent, Forefront Security being awarded the contract with a whole new set of fit-for-purpose KPI's.*

- [30] Having conducted examination hearings of relevant MWPA officers, the Commission understands that a number of the members of MWPA believed that contracts could be executed by the CEO if they were up to \$1 million per annum, regardless of the total value of the contract. Of concern is that senior MWPA staff were provided training in relation to the Delegations Manual in November 2020, a month prior to the tender process commencing.
- [31] The Delegations Manual is an important compliance and governance tool within any organisation but particularly for the Board of Directors. Appropriate delegations allow the employees of an organisation to understand the boundaries in which they can make decisions. The demonstrated failure to follow the delegations as set out by the MWPA Board and the erroneous misinterpretation of the delegations by the MWPA Executive (even after being provided training) is concerning and poses a serious misconduct risk.
- [32] The Commission acknowledges that as of 15 February 2022, MWPA have updated their Corporate Delegations Manual which appears to clearly set out the delegations in relation to tender advertisement, quotation and award of tenders, along with the execution of contracts.

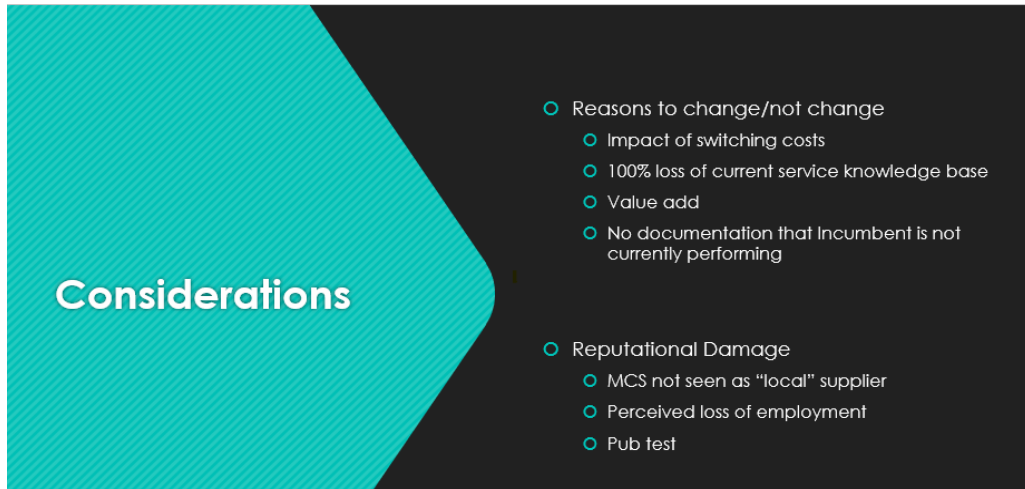
## Preparation and presentation of the PowerPoint to Executive

- # Results
- Pricing
- | Forefront Security |                 | MCS Security |                 |
|--------------------|-----------------|--------------|-----------------|
| Rate               | Total           | Rate         | Total           |
| \$ 54.20           | \$ 2,848,752.00 | \$ 57.40     | \$ 3,016,944.00 |
| \$ -               | \$ -            | \$ -         | \$ -            |
| \$ -               | \$ -            | \$ 50,000.00 | \$ 50,000.00    |
| \$ -               | \$ -            | \$ -         | \$ -            |
| \$ -               | \$ -            | \$ -         | \$ -            |
|                    | \$ 2,848,752.00 |              | \$ 3,066,944.00 |
- ✓ Variance over 3 years \$218,192.00
  - ✓ Switching costs \$50k included

- 8

costs. It appears the \$50,000 in 'switching costs' were arbitrarily added to MCS Security's pricing. The result of course was to make the MCS quote overall more expensive.

[38] Slide 6 of the PowerPoint presentation was titled 'Considerations':



[39] Ms Higgins provided evidence to the Commission that the PowerPoint presentation was put together based on the information out of the evaluation panel meetings and that the evaluation panel saw the presentation before it went to the MWPA Executive. The Commission regards the way in which the majority of these considerations are presented could be interpreted as reasons not to switch from the incumbent to the tender panel's top scoring applicant, MCS Security.

[40] Further, evidence obtained during the Commission's investigation indicated some of the considerations listed were misleading, inaccurate or without justification. In particular:

- MCS Security met the 'Buy Local Policy 2020' and received the identical WAIPS Plan score as Forefront;
- Arising from a clarification issued by MWPA, it was confirmed by MCS Security that the majority of its key personnel resided in Geraldton at the time of the submission and MCS Security had an office located in Geraldton;
- MCS Security confirmed they would liaise with MWPA to ascertain which of the current on-site security staff they would like to retain; and
- MWPA had not conducted any performance or contract management reviews in relation to the incumbent provider (Forefront) and there were no key performance indicators established to measure Forefront's performance.

- [41] The points contained under the heading 'Reputational Damage' did not form part of the qualitative criteria against which the tender panel were asked to score. Ms Higgins gave evidence to the Commission that the considerations contained in the PowerPoint presentation was for the Executive to note that certain matters were talked about during the evaluation process by the evaluation panel. Ms Higgins stated that in relation to several of the considerations, the points contained within the PowerPoint were expanded upon and clarified during the Executive meeting. The Commission has been unable to locate any formal minutes for the meeting where the presentation was given by Ms Higgins.
- [42] Lastly, under the heading 'Reputational Damage' is the dot point 'Pub Test'. It is unclear how this impacted on the decision by the MWPA Executive team to award the contract to Forefront. Ms Higgins gave evidence to the Commission that:
- it was more around people's perception of bringing in a new supplier that in their opinion weren't local, and would that actually pass the pub test.*
- [43] This should not have formed part of either the evaluation process or a process which was designed to inform the MWPA Executive of the recommendation of the tender panel.
- [44] Regardless of the fact that the MWPA Executive team did not have the delegation to award the tender, it is clear they relied on the information contained within the PowerPoint to make their decision to reappoint the incumbent Forefront. Their ability to make an informed decision on behalf of MWPA is significantly reduced when they receive potentially misleading, inaccurate, and irrelevant information.
- [45] The Commission notes the MWPA appear to have amended their practice when it comes to presenting to the Executive team in relation to tender processes which now requires all panel members to be afforded the opportunity to attend the Executive team meeting.
- [46] When making decisions, it is critical the information provided to key decision makers is accurate and truthful. Presenting decision makers with erroneous information is a serious misconduct risk as it can influence the outcome, lead to bias decision making, favouritism and ultimately the selection of vendors who may not be suitable for the agency's needs. Additionally, this can erode trust in an agency's procurement process and damage the reputation of the agency.

## **CHAPTER FOUR**

### **Failure to adequately record pertinent information/decisions during the tender process**

- [47] Throughout the duration of the tender process several critical decisions were not recorded in a transparent and accountable way, including:
- a. The decision by MWPA to accept an updated pricing schedule prepared by Forefront past the tender closing time;
  - b. Contact between MWPA and Forefront both immediately before and after the tender closing time; and
  - c. The reasoning behind the decision to award the contract to Forefront, particularly given the tender panel collectively scored MCS Security higher than Forefront based on the objective criteria stipulated in the request for tender.
- [48] The lack of appropriate recording of key decisions is a serious misconduct risk. A failure to ensure accurate recordkeeping regarding critical decisions can lead to a lack of transparency and accountability. Moreover, it can create opportunities for fraud, corruption, and conflicts of interest to go unnoticed.

## **CONCLUSION**

- [49] The Commission has completed an investigation into the allegations of serious misconduct in relation to the awarding of the security contract MWPA20-072 and did not make a finding of serious misconduct against any MWPA employee. The purpose of this report is to provide information to public authorities to prevent and combat serious misconduct.