

## March 2018: City of Onkaparinga - Misconduct and maladministration in public administration

The Ombudsman received an ICAC referral alleging misconduct and maladministration in public administration in relation to the management of a project concerning reform of the information and communication technology systems (**the ICT Reform Project**) of the City of Onkaparinga (**the council**).

It was alleged that the Elected Members had been encouraged to select a particular vendor without a competitive tender process and without efficiencies in the vendor's product being demonstrated, despite the estimated costs being extremely high. It was also alleged that Mr Mark Dowd, Chief Executive of the council, has a background in Information Technology, was driving the ICT Reform Project and had misrepresented information in order to have procurement with the vendor approved. In undertaking this investigation, it was not the Ombudsman's role to adjudicate or determine whether negotiations with the vendor should proceed.

Information provided to the Ombudsman demonstrated that the council administration had been researching ICT reform options since 2014 and that several external assessments had concluded that reform will result in a more effective and efficient system for the council. It became evident to the Ombudsman that a decision had not yet been made to enter into a procurement agreement with the vendor. Rather, the matter had been put to the Elected Members at a Special Council Meeting, where a resolution was made to enter into negotiations directly with the vendor on the basis that there was no other comparable vendor in the market offering a product suitable to the council's needs.

The Ombudsman found that not holding a competitive tender process in this case did not amount to maladministration in public administration, for the following reasons:

- a practice, policy or procedure of the council had not resulted in substantial mismanagement of public resources on the basis that:
  - the council's Procurement Policy recognises there may be circumstances where a competitive tender process is not suitable and provides a process by which application of the Procurement Policy may be waived
  - although the projected costs are high, the council administration had undertaken sufficient research which had been provided to the Elected Members for their consideration
  - ultimately the Elected Members democratically considered and determined whether to proceed with negotiations with the vendor
  - the Elected Members still have the opportunity to make a final decision in relation to the actual procurement of the vendor's product
- given that no procurement had taken place and no public money had been expended on procurement, it was unnecessary for the Ombudsman to consider whether there had been an irregular or unauthorised use of public money
- there was no indication that Mr Dowd's conduct amounted to mismanagement or substantial mismanagement. The Ombudsman considered that Mr Dowd, in accordance with his obligations as Chief Executive, had ensured that extensive research had been undertaken so that the Elected Members were provided with sufficient information in order to make an informed decision.

Further, the Ombudsman found that Mr Dowd's conduct did not amount to misconduct. Mr Dowd had complied with his obligations under the Employee Code of Conduct. The Ombudsman noted that Mr Dowd's previous experience in the IT Industry may be beneficial to the council in relation to selecting an appropriate product and it did not appear that Mr Dowd had personal ties to the vendor company.