

10. REPORTS

Councillor Jennifer Nevard disclosed an impartiality Interest in Item 10.3.1.

10.3 STRATEGIC DIRECTION 3: ENVIRONMENT (BUILT AND NATURAL)

10.3.1 Tender 9/2021 "Provision of Recreation and Aquatic Facility Project Management - City of South Perth"

File Reference: D-22-29347
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Reporting Officer(s): Mark Taylor, Director Infrastructure Services

Summary

At the December 2021 Ordinary Council Meeting, the officer recommendation to endorse Tender 9/2021 for the Provision of Recreation and Aquatic Facility (RAF) Project Management – City of South Perth was lost.

Appointment of an independent Project Manager (PM) by 1 July 2022 is a requirement of the Federal Funding Agreement (FFA) for the RAF project. Should this not occur, the City will not meet the requirements for a milestone payment of \$7m and risks forfeiting \$20m secured from the Federal Government for the RAF project.

Any expenditure on the PM contract will be subject to future Council approvals for the RAF. The PM contract can be terminated at any stage by the City with no financial penalty.

This report recommends that Council approve the Officer Recommendation for Tender 9/2021.

Officer Recommendation

Moved: Mayor Greg Milner
Seconded: Councillor Stephen Russell

That Council:

1. Accepts the tender submitted by Donald Cant Watts Corke Pty Ltd for the Provision of Recreation and Aquatic Facility Project Management – City of South Perth in accordance with Tender 9/2021.
2. Delegates the Chief Executive Officer authority to negotiate with Donald Cant Watts Corke Pty Ltd prior to entering into a contract, to reduce the scope of the contract.
3. Accepts the tender price included in **Confidential Attachment (a)**.
4. Notes that the tender price will be included in the Ordinary Council Meeting Minutes.
5. Notes that no expenditure will be incurred on this contract without prior Council endorsement for the RAF Project to proceed to the next phase.

During debate on the Item Mayor Greg Milner was granted an additional five minutes to speak.

COUNCIL DECISION

0622/076

Moved: Councillor Glenn Cridland

Seconded: Councillor Carl Celedin

In accordance with Clause 8.10 of the City of South Perth Standing Orders Local Law 2007 Mayor Greg Milner be granted an additional five minutes to speak.

CARRIED (9/0)

For: Mayor Greg Milner, Councillors André Brender-A-Brandis, Carl Celedin, Mary Choy, Glenn Cridland, Blake D'Souza, Ken Manolas, Jennifer Nevard and Stephen Russell.

Against: Nil.

During debate on the Item Councillor Blake D'Souza was granted an additional five minutes to speak.

COUNCIL DECISION

0622/077

Moved: Mayor Greg Milner

Seconded: Councillor André Brender-A-Brandis

In accordance with Clause 8.10 of the City of South Perth Standing Orders Local Law 2007 Councillor Blake D'Souza be granted an additional five minutes to speak.

CARRIED (9/0)

For: Mayor Greg Milner, Councillors André Brender-A-Brandis, Carl Celedin, Mary Choy, Glenn Cridland, Blake D'Souza, Ken Manolas, Jennifer Nevard and Stephen Russell.

Against: Nil.

Officer Recommendation AND COUNCIL DECISION

Moved: Mayor Greg Milner

Seconded: Councillor Stephen Russell

That Council:

1. Accepts the tender submitted by Donald Cant Watts Corke Pty Ltd for the Provision of Recreation and Aquatic Facility Project Management – City of South Perth in accordance with Tender 9/2021.
2. Delegates the Chief Executive Officer authority to negotiate with Donald Cant Watts Corke Pty Ltd prior to entering into a contract, to reduce the scope of the contract.
3. Accepts the tender price included in **Confidential Attachment (a)**.

4.	Notes that the tender price will be included in the Ordinary Council Meeting Minutes.
5.	Notes that no expenditure will be incurred on this contract without prior Council endorsement for the RAF Project to proceed to the next phase.
LOST (4/5).	
For:	Mayor Greg Milner, Councillors Carl Celedin, Glenn Cridland and Stephen Russell.
Against:	Councillors André Brender-A-Brandis, Mary Choy, Blake D'Souza, Ken Manolas and Jennifer Nevard.

Background

Request for Tender (RFT) 9/2021 for the Provision of Recreation and Aquatic Facility Project Management – City of South Perth was advertised in The West Australian on Saturday 23 October 2021 and closed at 2pm on Tuesday 16 November 2021.

Tenders were invited as a Lump Sum Contract with a Schedule of Rates for variations.

At the close of the tender advertising period six submissions were received, tabled below:

TABLE A – Tender Submissions

Tender Submission
1. Brett David Investments Pty Ltd T/A Successful Project
2. Bridge42 Pty Ltd
3. Core Business Australia Pty Ltd
4. Donald Cant Watts Corke Pty Ltd
5. Engineering Project Management (EPM) Pty Ltd
6. GHD Pty Ltd

Tenders were reviewed by an Evaluation Panel and assessed according to the qualitative criteria detailed in the RFT, as per Table B below.

TABLE B - Qualitative Criteria

Qualitative Criteria	Weighting %
1. Demonstrated Experience in completing similar projects	30%
2. Skills and Experience of key personnel	30%
3. Respondent's Resources	20%
4. A Demonstrated Understanding of the Required Tasks	20%
Total	100%

Based on the assessment of all submissions received for Tender 9/2021 Provision of Recreation and Aquatic Facility Project Management – City of South Perth, the City recommended that the tender submission from Donald Cant Watts Corke Pty Ltd be accepted by Council.

More detailed information about the assessment process is available in the Recommendation Report – **Confidential Attachment (a)**.

At its meeting held 14 December 2021, Council voted to not support the Officer Recommendation to award a contract for RFT 9/2021.

Comment

One of the requirements of Milestone 2 of the FFA is that a suitably qualified Project Manager is appointed by 1 July 2022. Supplementary clause 17.3.1 of the Agreement stipulates that the Project Manager must be independent of the City.

Satisfactory completion of this milestone will result in a payment of \$7m to the City (to the Major Facilities Reserve). This would not be drawn down unless approved by Council. Failure to meet the requirements for Milestone 2 puts the FFA at risk.

Acceptance of the Officer Recommendation fulfills the requirements for Milestone 2. It does not bind Council to proceed with the RAF project, nor does it commit the City to future expenditure on this contract.

RAF Project Management Contract

The contract has been designed to minimise financial risk to the City. The RAF Project Manager contract is a lump sum contract with gateway approval stages and termination clauses attached to all gateways at the City's sole discretion.

As some of the work associated with PM contract has been completed, the City will negotiate for a reduction in scope and associated costs prior to contract award.

Consultation

Public tenders were invited in accordance with the *Local Government Act 1995*.

Concept Briefings about the RAF and the RAF Project Management contract were provided to Councillors on 8 February 2022 and 20 June 2022.

Policy and Legislative Implications

Section 3.57 of the *Local Government Act 1995* - tenders for providing goods or services:

- (1) *A local government is required to invite tenders before it enters into a contract of a prescribed kind under which another person is to supply goods or services.*
- (2) *Regulations may make provision about tenders.*

Regulation 11 of the Local Government (Functions and General) Regulations 1996 - when tenders have to be publicly invited:

- (1) *Tenders are to be publicly invited according to the requirements of this Division before a local government enters into a contract for another person to supply goods or services if the consideration under the contract is, or is expected to be, more, or worth more, than \$250 000 unless subregulation (2) states otherwise.*

Regulation 20 of the Local Government (Functions and General) Regulations - Variations of Requirement before entering into Contract:

- (1) *If, after it has invited tenders for the supply of goods or services and chosen a successful tenderer but before it has entered into a contract for the supply of the goods or services required, the local government wishes to make a minor variation in the goods or services required, it may, without again inviting tenders, enter into a contract with the chosen tenderer for the supply of the varied requirement subject to such variations in the tender as may be agreed with the tenderer.*

The following Council Policies also apply:

- Policy P605 - Purchasing and Invoice Approval
- Policy P607 -Tenders and Expressions of Interest

Financial Implications

There are no financial expenditure implications with the appointment of the Project Manager unless approved by Council. When State funding has been secured, the City will seek approval for expenditure on this contract and other approvals associated with commencing the next phases of the RAF project.

All respondents to Tender 9/2021 agreed to hold their price until 30 June 2022. Once the contract is executed, the price contained in the Recommendation Report (lump sum plus gateway stages) applies for the duration of the contract.

As part of the tender evaluation, the City considered the likely total cost of the PM contract for the duration of the RAF project (all gateway stages), including potential costs associated with variations. The City is confident the recommended tender represents best value for money not only for each specific gateway stage but for any variations that might arise. Furthermore, the City has a range of internal governance and approval mechanisms to maintain control over expenditure on this contract.

The Council will retain oversight and approval over expenditure on the RAF Project through project Gateways, the annual budget process and mid-year reviews. As noted previously, the City has the discretion to terminate the contract at the end of each Gateway. Should the RAF project not proceed, the City can terminate the contract with no financial penalty.

Federal Funding Agreement

One of the requirements of Milestone 2 of the FFA is that a suitably qualified and independent Project Manager is appointed by 1 July 2022. The City has completed all other requirements for Milestone 2. Should a Project Manager not be appointed, the City will fail to meet the requirements of Milestone 2 and will not qualify for the \$7m payment.

Should the City consistently fail to meet the requirements for each milestone (not all are linked to payments), and the project not proceed, the funds would need to be returned to the Commonwealth, with the possibility of interest payments.

Earlier this year, the City successfully renegotiated the due date for Milestone 2. The City has been advised that it is not possible for another extension to be granted for Milestone 2.

Key Risks and Considerations

Risk of Not Accepting the Officer Recommendation

<p>Risk Event Outcome</p>	<p>Financial Loss</p> <p>An adverse monetary impact on the City as a consequence of a risk event occurring. A grading is assigned to different levels of potential loss relative to the significance of the impact on the City's ongoing operations and its ability to deliver expected services</p> <p>Reputational Damage</p> <p>Deals with adverse impact upon the professional reputation and integrity of the City and its representatives whether those persons be appointed or elected to represent the City. The outcome can range from a letter of complaint through to a sustained and co-ordinated representation against the City and or sustained adverse comment in the media.</p> <p>Project Time</p> <p>This relates to any project exceeding the project deadline. Ranging from exceeding the deadline by up to 10% to 30% and over.</p> <p>Project Cost</p> <p>This relates to any project exceeding the project budget. Ranging and exceeding the budget by up to 10% to 30% and over.</p>
<p>Risk rating</p>	<p>High</p>
<p>Mitigation and actions</p>	<p>The City has already negotiated an extension for Milestone 2 and has been advised that further extension cannot be granted.</p> <p>Appointment of the PM carries little risk for Council as expenditure on the PM contract will be subject to future approval of the RAF project. Should Council not appoint the PM, there is a risk that the \$20 million FFA will be forfeited as the City has not met a key milestone.</p>

Strategic Implications

This matter relates to the following Strategic Direction identified within Council's [Strategic Community Plan 2021-2031](#):

Strategic Direction:	Community
Aspiration:	Our diverse community is inclusive, safe, connected and engaged is inclusive, safe, connected and engaged
Outcome:	1.2 Community infrastructure
Strategy:	1.2.3 Plan for and promote the development of recreation and aquatic facilities to service City of South Perth needs

Attachments

10.3.1 (a): Recommendation Report (*Confidential*)