

11.1 Confidential - contract number 09043 Christie Creek Upgrade Wilfred Taylor Reserve Flood Mitigation, Water Capture and Reuse (design and construction)

This is information seeking council direction.

General Manager: Bruce Williams, General Manager Projects & Services
Report Author: Benjamin Hall, Project Leader
Contact Number: 8384 0595
Attachments: 1. The Tender Process and Tender Evaluation by Contractor Summary (4 pages)
2. Preliminary Probity Audit (Contracting and Tendering Services) (1page)

1 Executive Summary

1.1 Topic

This report is seeking Council approval to award the contract for the Christie Creek upgrade Wilfred Taylor Reserve flood mitigation, water capture and reuse element of Water Proofing the South.

1.2 Context

Tenders were received through an open tender process and assessed through Council's Tender Management System (TMS) Contract No. 09043 OT.

The contract value falls outside the Chief Executive Officer's delegated authority (\$500,000), therefore requiring a decision of Council for approving a tender.

Due to the scale of the project, the value of any variations may fall outside the Chief Executives Officer's delegated authority (\$500,000), therefore requiring a decision of Council to allow the Chief Executive Officer to execute any variations to this contract within the allocated budget.

A separate non-confidential report has been included in this agenda that provides tendering background information and a status update to Council on the Christie Creek upgrade – Wilfred Taylor reserve element of Water Proofing the South.

1.3 Suggested Outcome

It is suggested that Council consider this item in Confidence. Section 90(3)(k) of the Local Government Act 1999 is suggested as the most appropriate to use for this purpose.

This item is presented as a confidential item because it presents commercial tenders for carrying out of works for Council's consideration and award. Our procurement policy and process focuses on ensuring that the confidentiality of all information in the course of tendering is preserved.

The possible implications of not considering this item in confidence could reasonably be expected to prejudice the commercial position of the companies that supplied the information, or to confer a commercial advantage on a third party.

2 Recommendation(s).

1. That

- a. **under the provisions of Section 90(2) of the Local Government Act 1999 an order be made that the public be excluded from attendance at the meeting in order to consider in confidence this item.**
 - b. **the Council is satisfied that it is necessary that the public be excluded to enable the Council to consider the report at the meeting on the following grounds:**
 - **Section 90 (3) (k) tenders for the supply of goods, the provision of services or the carrying out of works.**
 - c. **accordingly, on this basis the principle that meetings of the Council should be conducted in a place open to the public has been outweighed by the need to keep the information or discussion confidential.**
2. **That for the design and construction of the Christie Creek upgrade Wilfred Taylor Reserve flood mitigation, water capture and reuse project, Council accept the tender proposed by Leed Engineering and Construction Pty. Ltd. for Contract No. 09043 for the value of \$13,530,000 (GST inclusive).**
 3. **That Council authorise the Chief Executive Officer to sign all required documentation to finalise and award contract no. 09043 as outlined in recommendation 2 above.**
 4. **That Council delegate authority to the Chief Executive Officer to execute any variations to this contract within the nominated or increased budget.**
 5. **That an order be made under the provisions of Section 91(7) and (9) of the Local Government Act 1999 that the abovementioned document (or part of such document) including the minutes and the report of the Council relating to discussion of the subject matter of that document, having been dealt with on a confidential basis under Section 90 of the Act, should be kept confidential on the grounds of information contained in 90(3)(k) until the purchase order has been placed and confirmed.**

3 Key Factors

3.1 Details of Tender

In order to minimise the resource commitment of potential tenderers, the tendering process for Contract No. 09403 occurred over two phases:

- Phase 1 was an open invitation for tenderers to express their interest in the contract. Tenderers were asked to submit information regarding their capability and capacity to undertake the project. Submissions were evaluated

on a predetermined set of criteria, which resulted in a short list of tenderers for phase 2 of the procurement.

- Phase 2 invited the short list of selected tenderers to prepare a cost submission for the contract. Tenderers were evaluated on a predetermined set of criteria and a preferred contractor was identified.

In accordance with Council's Contracts, Tenders and Purchasing Policy and Procedures the two tender invitations were issued through SA Tenders and Contracts.

3.2 Number of Tenders Received

3.2.1 Phase 1 – Open Tender – Expression of Interest

Six expressions of interest were received from:

- York Civil
- Built Environs
- Bardavcol
- Boulderstone Hornibrook
- LEED engineering
- ABGroup

The tender evaluation panel scored the expressions in accordance with the agreed selection criteria. The selection criteria were made available in the tender document.

As a result of the evaluation the following contractors were short-listed and agreed to participate in phase 2 of the procurement:

- York Civil
- ABGroup
- LEED engineering

3.2.2 Phase 2 – Select Tender

Three tenders were received.

All tenderers were asked to provide a cost submission amounting to \$12.3M (exclusive of GST) which was to include all project elements. The following table summarises the tender amounts received.

Tenderer	Tendered Amount (GST inclusive)	Tendered Amount (GST exclusive)	Scope achieved (see notes)
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York Civil	\$13,530,000	\$12,300,000	No
Leed Engineering	\$13,530,000	\$12,300,000	Yes
ABIGroup	\$16,292,460	\$14,811,327	No

It should be noted that:

- York's submission included an additional 4 prime costs (allowances) amounting to approximately an additional \$450,000 for elements that are required to be delivered with the project scope
- Leed's submission was inclusive of all in-scope outcomes
- ABIGroup identified a second cost proposal that was inline with the \$12.3M contract expectation however did not provide a breakdown of cost elements, nor confirmation of how the proposed methodology was to be changed to account for components not to be delivered.

3.3 Tender Management System (TMS)

The TMS tender evaluation summary (refer attachment 1) reflects the following assessment guidelines:

- compliance with the mandatory criteria is determined by consensus opinion of the tender evaluation panel
- all evaluation scores are determined by the tender evaluation panel based on the weighted criteria selected for this tender
- all risk assessments are determined based on a consensus opinion of the tender evaluation panel.

3.3.1 Tender Assessment

The tender assessment was carried out across three areas. They were:

- compliance with mandatory criteria
- rankings based on the following weighted criteria:
 - appreciation of task represented through the description of their methodology
 - capability in areas of design, construction and operation and maintenance
 - management processes
 - capacity to deliver
- lowest level of foreseeable risk associated with the contractor consortium including:

- delivery of the project scope within the nominated budget, and therefore compliance with the requirements of related funding agreements
- level of contract risk to Council.

The tender evaluation panel evaluated the tenders in accordance with the agreed selection criteria, which were made available in the tender document. Specific weightings of each of the criteria are presented in attachment 1. The outcomes of all three areas of assessment were combined to identify the preferred tenderer.

A representative from Contracting and Tendering Services (CTS) was present to audit the tender process. CTS are engaged as probity advisor/auditor for all major procurements relating to Water Proofing the South. The auditing role ensures that the award of contracts process is fair and transparent. A copy of the preliminary probity audit for the procurement is contained in attachment 2.

A representative from the Adelaide and Mount Lofty Ranges Natural Resources Management Board participated in the evaluation. The Board is contributing \$1,000,000 toward the construction of the project.

Mandatory Criteria

All three tenderers complied with the mandatory criteria.

Weighted criteria

The outcomes of the weighted criteria assessment are available in attachment 1.

York Civil scored the highest (61.5). Their submission:

- demonstrated a very good appreciation of the task however the submission did not offer for operation and maintenance other than the handover training regime
- provided very good work methodology statements
- demonstrated a good capability to design the project, however only briefly mentioned community engagement processes and cultural heritage interpretation
- demonstrated a very good construction capability, addressing all elements of the construction of the project except for landscape amenity.
- did not budget for the schemes operation and maintenance, however did provide a response to the maintenance of the harvesting and distribution electrical system
- demonstrated a good capacity to undertake the project, identifying all resources required to perform the project and completion by the end of June 2010.

Leed Engineering scored the second highest (61.4). Their submission:

- demonstrated a very good appreciation of the task as all elements of the project had been responded to

- provided very good generic templates as their work methodology statements, which required tailoring following the award of contract
- demonstrated a very good design capability, addressing all design elements
- demonstrated a good construction capability, addressing all construction elements
- demonstrated a very good operation and maintenance capacity
- demonstrated an adequate capacity to undertake the project although it did not provide the requested monthly cashflow. Additional resources were proposed to be put to the project from interstate offices in the event of design schedule creep.

ABIGroup scored the third highest (31.7). Their submission

- did not identify an adequate response to the appreciation of task. It did not make an allowance for development approval and there was limited detail with regard to design resourcing, resulting in the tender evaluation panel determining that ABIGroup had understated the level of resourcing required to deliver the project, hence had a limited appreciation of the task. This opinion was highlighted by ABIGroup's submission of a cost proposal exceeding the nominated \$12.3M budget.
- did not provide a project plan for assessment
- demonstrated a good capability to design the project, however only briefly mentioned community engagement processes and cultural heritage interpretation
- did not identify on-ground staff and site supervision. Structural, civil and earthmoving capability was good, but there was no apparent capability to undertake landscape and environmental elements of the project.
- provided a 12 month defects liability maintenance period on all elements of the project, however did not make mention of wetland maintenance.
- demonstrated that the capacity is dependent on the reallocation of resources from the desalination plant project, or from other states. The submission did not demonstrate a design capacity. The monthly cash flow provided did not reflect the total value of the tender offer.

Risk Assessment

The outcomes and detailed reasoning for rating of the risk assessment are presented in attachment 1. In summary:

Tenderer	Project Risk	Contract Risk
York Civil	High	Unacceptable
Leed Engineering	Medium	Low
ABIGroup	Extreme	Unacceptable

Outcome

As discussed earlier, the tender evaluation considered three areas of assessment: mandatory criteria, weighted criteria and risk assessment. In summary:

Tenderer	Mandatory Criteria	Weighted Criteria	Risk assessment	
			Project risk	Contract risk
York Civil	Pass	61.5	High	Unacceptable
Leed Engineering	Pass	61.4	Medium	Low
ABIGroup	Pass	31.7	Extreme	Unacceptable

While not the highest ranking in terms of the assessment of weighted criteria (0.1 lower than highest), when combined with the outcomes of the risk assessment, it is the recommendation of the tender evaluation panel that the contract be awarded to Leed Engineering as:

- the proposal was the only one that will deliver the full scope of works within the nominated budget of \$12.3M
- the proposal presents the lowest level of risk to Council
- the weighted criteria assessment provides assurance that they are capable of delivering the project.
- Whilst York's proposal was ranked the highest following the assessment of weighted criteria they are not recommended due to the level of risk associated with their proposal, in particular:
 - an additional \$450,000 in funding being required beyond \$12.3M to deliver the core elements of the shared use path, landscape and amenity and operation and maintenance
 - contract compliance. York's proposal sought to limit the level of insurance liability.

ABIGroup were not considered for recommendation as a result of the outcomes of assessment against weighted criteria and risk assessment.

3.4 Budget details and allocation

The cost for the delivery of the Christie Creek upgrade Wilfred Taylor reserve element is \$12.3M of the \$15.2M (excluding GST) allocated through Water Proofing the South. This element is funded by the Federal Government, the Adelaide and Mount Lofty Ranges Natural Resource Management Board, the Department of Planning and Local Government (formerly Planning SA) and Council.

The table below summarises the distribution of the budget across the various elements of the Christie Creek upgrade element of Water Proofing the South:

Component	Allocation
Investigations	\$685,000
Morrow Road construction	\$1,400,000
Managed Aquifer Recharge	\$285,000
Superintending – council cost	\$290,000
Minor contingency	\$177,205
Wilfred Taylor reserve detailed design and construction	\$12,300,000*
Risk assessment and revision of flood models	\$100,000

It is intended that all remaining funds for Water Proofing the South be expended on this element to avoid any unspent federal and state funds being returned to the funding agency.

In the event that additional funds be made available for the project either via transfer from other elements of Water Proofing the South or additional funding support from other programs - the scope of the project may be increased to include:

- improved system functionality and operation ie better technology
- increased levels of landscape and amenity ie additional planting, playgrounds, paths and trails etc.

Typically variations are approved at an officer level. Due to the overall scale of this particular project, these variations may exceed the Chief Executive Officer's delegation of approval and therefore require Council's approval. Due to the stringent timelines to deliver this project together with the scale of works and risk of losing fund savings, should funding not be expended by 30 June 2010, this report seeks Council's approval to delegate authority to the Chief Executive to execute any variation to this contract if within the nominated or increased budget.

3.5 Next Steps

Subject to Council's endorsement of this report regarding the award of contract, works on the element will commence immediately to achieve the end of June 2010 completion date.

Design and construction works will be complemented by an extensive program of community engagement predominantly providing information to surrounding communities. This follows from earlier community engagement in the development and selection of the preferred outcome for this project.

Council will be kept informed of the status of this element of the Project via Onka, Weekly News and the Project Register.

4.1 Report of Chair - Chief Executive Officer Review Panel 2008/09

Report by the chair of the Chief Executive Officer Review Panel (CEO Review Panel) on the Chief Executive Officer's (CEO) Annual Remuneration Review.

This is a regular or standard report.

Report Author: Mayor Lorraine Rosenberg, Chair Chief Executive Officer
Review Panel
Attachments: Nil

1 Executive summary

1.1 Topic

Report by the chair of the Chief Executive Officer Review Panel (CEO Review Panel) on the Chief Executive Officer's (CEO) Annual Remuneration Review.

1.2 Context

Council has established a Chief Executive Officer Review Panel to undertake, in accordance with the conditions of the Employment Contract, the annual review of the Chief Executive Officer's remuneration.

1.3 Suggested outcome

That Council considers and accepts the recommendations of the CEO Review Panel in accordance with the minutes of 5 August 2009.

It is suggested that this report is considered by Council in confidence as it relates to the CEO's personal remuneration. Section 90 (2)(a) (personal affairs) is recommended as the most appropriate section of the Local Government Act 1999 to use for this purpose. If the report is not considered in confidence, the personal affairs of the CEO could become publicly available.

2 Recommendation(s).

1. That:

- a. **under the provisions of Section 90(2) of the Local Government Act 1999 an order be made that the public be excluded from attendance at the meeting in order to consider in confidence this item.**
- b. **the Council is satisfied that it is necessary that the public be excluded to enable the Council to receive and consider the information/report at the meeting on the following grounds:**

Section 90(3)(a) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);

- c. **accordingly, on this basis the principle that meetings of the Council should be conducted in a place open to the public has been outweighed by the need to keep the information or discussion confidential.**
2. **That Council considers and accepts the recommendations of the CEO Review Panel in accordance with their minutes of 5 August 2009.**
3. **That an order be made under the provisions of Section 91(7) and (9) of the Local Government Act 1999 that the abovementioned document (or part of such document) including the minutes and the report of the Council relating to discussion of the subject matter of that document, having been dealt with on a confidential basis under Section 90 of the Act, should be kept confidential on the grounds of information contained in 90(3)(a) until 31 December 2011.**

Key Factors

3 Discussion

It is with pleasure that I table the chair's report of the 2008/09 CEO Review Panel on behalf of the panel members – Deputy Mayor Cr Dale Mazzachi, Cr Trevor Fletcher, Cr Sharon Nash and Cr Yvonne Wenham. The panel was aided in its deliberations by Hender Consulting.

The panel began deliberations in March 2009 and had as its key aims:

- meeting schedule to ensure that the CEO Review was brought back into line with the review year
- timely appointment of a mutually acceptable consultant
- development of strategic performance objectives (SPO's) for 2009/10
- decision about levels of involvement of Council and improvements to the process.

The purpose of the review is to ensure:

- the satisfactory performance of the CEO in all facets of his duties
- remuneration requirements of the contact are reviewed
- required professional development needs are identified and implemented.

The panel conducted the current review based on core principles of the contract 'key performance indicators' and the job description. To this end, the review survey distributed to all councillors included a revised set of key performance questions and ratings on which to base the review.

We believe this is a far more rigorous methodology and aligns far better with a review of strategic outcomes rather than the operational based SPO's of previous reviews.

Hender Consulting aided the panel through the survey of councillors and collated the final report. The survey results aided the panel's decision making, and as in previous years will be made available for viewing by councillors.

As chair of the CEO Review Panel I am pleased to report that the CEO has again performed very well in all areas of the review survey document. Our CEO continues to be rated as one of the highest performing of his peers.

The following comments were included in the final letter from Hender Consulting:

'It is clear from this report that the incumbent continues to perform very well in the position. The most common rating within the appraisal survey was 'very good' with the second most common being 'excellent'. There was also not a single criteria where the average ratings fell below the 'good' classification. Where they felt equipped to assess Jeff, participants rated him as 'good' or better in over 86% of their responses. This is highly commendable given the complexities of the role.

From our experience conducting analyses of this nature, Jeff's overall ratings would classify him in the better performing CEOs in equivalent positions.

We recommend that Jeff be congratulated and thanked for his commitment to the City and performance managing the diverse and challenging portfolio under his control. We also recommend that this report is now tabled as contextual information in regard to ongoing discussions regarding matters such as professional development, remuneration, tenure, work life balance, succession planning and overall strategy.'

I commend the work of the panel and the outcomes of the CEO Review for 2008/09.

4.2 Chief Executive Officer Review Panel Minutes

General Manager	:	Beth Davidson-Park, General Manager Corporate and Community
Report Author	:	Kate Harmon, Manager Employment and Customer
Contact Number	:	8384 0682
Attachments	:	1 CEO Review Panel Minutes 5 August 2009 (5 pages)

A meeting of the CEO Review Panel was held on 5 August 2009.

There following items require a resolution of Council.

3.1 5.2 Chief Executive Officer Review 2008/09

1. (a) *That under the provisions of Section 90(2) of the Local Government Act 1999 an order be made upon the basis of Section 90(3)(a) of the Act that the public be excluded with the exception of the consultant assisting the Panel from attendance at the meeting in order to consider in confidence this item.*
- (b) *That the Chief Executive Officer Review Panel is satisfied that it is necessary that the public be excluded to enable the Chief Executive Officer Review Panel to receive and consider the information/report at the meeting on the following grounds:*
 - (a) *information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);*
2. *That accordingly, on this basis the principle that meetings of the Chief Executive Officer Review Panel should be conducted in a place open to the public has been outweighed by the need to keep the information or discussion confidential.*
3. *That Council note that the performance appraisal process has undertaken negotiations with regard to CEO remuneration package, the outcomes of those negotiations has resulted in no change to the salary component of the CEO remuneration package of 2008/09.*
4. *That Council endorse the items listed in Schedule 4 of the Chief Executive Officer's contract of employment are increased by 1.6% (reflecting Adelaide CPI June 2009 quarter).*
5. *That an order be made under the provisions of Section 91(7) of the Local Government Act 1999 that:*

- (i) the report of the Chief Executive Officer Review Panel relating to discussion of the subject matter (including the attachments to the report being Clause 9 and schedule 4 and Clause 10 of the Chief Executive Officer's Contract of Employment), having been dealt with on a confidential basis under Section 90(3)(a) of the Act, be kept confidential until 31 December 2011.*
- (ii) the minutes of the Chief Executive Officer Review Panel relating to discussion of the Chief Executive Officer's remuneration, having been dealt with on a confidential basis under Section 90(3)(a) of the Act, be kept confidential until the matter has been determined by Council.*

The business of the meeting is for noting by Council and is included in the minutes of the meeting (Attachment 1).

5 Closure

6 Declarations of Interest

Council Meeting Date:		Councillor:
Item No. (e.g. 3.1)	Declaration of Interest <i>(where a member has an interest that does not lead to a conflict)</i>	Declaration of Conflict of Interest <i>(where a member has an interest that leads to a conflict)</i>