

10.1 Confidential - Contract Number 10039 – Water Proofing the South stage 2 early contractor involvement – current status of tender assessment

This report presents the current status of the Water Proofing the South stage 2 early contractor involvement tender assessment for Council's information.

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Attachments:	1. WPS2 early contractor involvement contract no. 10039 registration of interest evaluation criteria, summary of outcomes of assessment and interim probity audit (4 pages) 2. WPS2 early contractor involvement contract no. 10039 request for tender evaluation criteria, summary of outcomes of assessment and interim probity audit (3 pages)

1 Executive Summary

1.1 Topic

This report presents the current status of the Water Proofing the South stage 2 early contractor involvement tender assessment for Council's information.

1.2 Context

Since the former Council's consideration of the Water Proofing the South stage 2 prudential report at its 7 September 2010 meeting, and associated approval of the civil aspects of the project being delivered through an early contractor involvement procurement approach the tendering process has commenced. A recommendation report regarding the final award of contract to the preferred contractor is to be referred to Council for its consideration and approval in April 2011 once evaluations are complete.

This report provides information regarding the current status of the tender assessment.

A separate non-confidential report has been included in this agenda that provides background information regarding the Water Proofing the South stage 2 (WPS2) early contractor involvement (ECI) tendering process.

1.3 Suggested Outcome

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

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.

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 Council note this report as information regarding the current status of the Water Proofing the South stage 2 early contractor involvement (Contract no. 10039) tender assessment to date and that a further report recommending the appointment of the preferred contractor will be referred to Council for its consideration in April 2011.

1. 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.

Key factors

3 Discussion

3.1 WPS2 ECI tendering process overview

As outlined in the non-confidential report, the WPS2 ECI tender evaluation process has occurred across the following phases:

- Industry briefing
- Registration of Interest (ROI)
- Request for Tender (RFT)

The following sections of this report outline the outcomes of each of the phases of the assessment to date, and the next steps that will lead to the evaluation panel forming its recommendation regarding the preferred contractor.

3.1.1 Probity auditing

In accordance with requirements of the funding agreement, all phases of the tendering process have been audited by a representative from Contracting and Tendering Services, which has been appointed as our independent probity auditor. The outcomes of its overview of each phase of the assessment are discussed below and presented in the relevant attachments.

3.1.2 Industry briefing

The Industry briefing was held in September 2010 at the South Adelaide Football Club. Invitations were advertised on the TendersSA website. The briefing was attended by approximately 100 people representing 70 different companies.

The WPS2 funding agreement with the state government requires that the prime contractor is accredited under the federal government's occupational health and safety scheme (see www.ofsc.gov.au). Accordingly, this becomes a mandatory criteria for the tender and on this basis of the 70 companies in attendance; 8 would be considered as potential tenderers. The balance was largely made up of complementary services e.g. consultants, suppliers and local contractors.

3.1.3 Registration of interest (ROI)

The objective of the ROI phase of the procurement was to identify a short list (up to three) contractor consortia interested in participating in the second phase of the procurement. This process being a select request for tender (RFT) process to appoint a preferred contractor to enter into an ECI arrangement for the delivery of the civil and landscape elements of WPS2.

The identification of the short list of contractor consortia (up to three) was based on:

- compliance with mandatory criteria
- scores based on the outcomes of the evaluation desirable criteria
- level of foreseeable risk associated with the contractor consortium.

In accordance with Council's Contracts, Tenders and Purchasing Policy and Procedures an open tender invitation was issued through SA Tenders and Contracts.

Seven (7) registrations of interest responses were received. They were from:

- Fulton Hogan Pty Ltd
- Watpac Civil Infrastructure
- BMD Constructions Pty Ltd
- Leed Engineering & Construction Pty Ltd
- Bardavcol Pty Ltd

- McConnell Dowell
- York Civil Pty Ltd

The criteria for assessment of the registration of interest submissions and the final outcomes of the assessment of submissions against those criteria (including an interim probity audit) are presented in attachment 1. In summary, the following contractors (in alphabetical order) were shortlisted to participate in the RFT phase of the assessment:

- Bardavcol Pty Ltd
- BMD Constructions Pty Ltd
- Leed Engineering & Construction Pty Ltd

3.1.4 Request for tender (RFT)

The objective of this phase of the procurement is to test and compare the quality of the processes and people being put forward by the ROI shortlist to achieve the Guaranteed Contract Sum against the overall commerciality associated with the cost to work through this process ie. a quality based procurement method to ensure value for money. This will ultimately identify the preferred contractor consortium to enter into an ECI arrangement for the delivery of the civil and landscape elements of WPS2.

In accordance with Council's Contracts, Tenders and Purchasing Policy and Procedures a select tender invitation was issued through SA Tenders and Contracts to those three tenderers selected following the ROI phase of the purchase.

Three (3) RFT responses were received. They were from (in alphabetical order):

- Bardavcol Pty Ltd
- BMD Constructions Pty Ltd
- Leed Engineering & Construction Pty Ltd

The criteria for assessment of the request for tender responses are presented in attachment 2 along with the status of the assessment to date to the point of shortlisting for commercial alignment discussions. In summary, the following contractors (in alphabetical order) were shortlisted to participate in the commercial alignment phase of the assessment:

- Bardavcol Pty Ltd
- Leed Engineering & Construction Pty Ltd

Based on the results presented in attachment 2, it is reflected in the scoring that there is a clear difference between the quality of process and team alignment methods of the first two tenders when compared against the third. Accordingly, with consideration of the inherent objective to ensure that the evaluation process is thorough and robust, whilst not being particularly onerous on any participating

party, we have shortlisted the top two tenderers at this stage to participate in the commercial alignment negotiation phase of the tender submission.

3.2 Next steps

3.2.1 Commercial alignment negotiation

The aim of the commercial alignment negotiation is to achieve a consortium cost proposal that represents an acceptable level of commerciality (ie. within business industry standards) for works to be undertaken to ensure that we receive value for money through the ECI process.

The business industry standards have been identified based on the three commercial offers received (to ensure competitiveness through negotiations) coupled with industry benchmarks for similar types of work as advised by Business and Risk Solutions, which has been appointed as our commercial and collaboration advisor. The following table presents an example of the criteria and business industry standards that are being considered:

Key Negotiation Areas		Benchmark Industry Standard
Governance Group Members		Do not charge for time for activity related to governance group activities
Salary related increases		CPI increase
Subcontractors		No margin mark-up
Overtime		No overhead on overtime. Direct costs are passed through
Overheads	Design Personnel	Multipliers* between 2.6 and 2.8
	Construction Personnel	Multipliers between 1.9 and 2.1
Margins		Acceptable industry margins being contractor \cong 10 % and designer \cong 12 -14%
Direct Project Expenses		Passed through at cost

* Multipliers are those indexes used by companies against their base rates to ensure that overhead costs (eg: power, tenancy, entitlements) are addressed. Multipliers differ between design and construction personnel as typically, construction personnel have higher utilisation rates (eg. 80% of construction personnel time is billed to projects versus 60% of design personnel time being billed to projects).

The commercial alignment negotiation does not aim to reduce the final cost being \$23M, as any remaining funds are required to be returned to our funding providers. It does though aim to ensure that the greatest level of value for money. That is, contractor's margins and mark-ups are to be reflective of industry benchmarks and

hidden costs (and therefore 'super-profit' opportunities) are understood and removed where possible.

For example, in a traditional contract a contractor makes profit by putting a mark-up on its sub-contractors. Our approach in this instance does not allow for the mark-up on sub-contractors; rather we pay for the time associated with the contractors administration of the sub-contractor. Therefore the contractor makes its profit through margins on its own labour. The overall scale of the project at \$23M makes this outcome possible. This example is demonstrated in the following table:

	Traditional approach	ECI commercial alignment
Sub-contractor cost	\$500,000	\$500,000
Contractor mark-up	\$50,000 (10%)	Nil
Direct charge to client for administration of sub-contractor	Nil	\$2,000 (say 10hours at \$200/hour)
TOTAL Cost to Council	\$550,000	\$502,000
Additional value for money		\$48,000

The request for tender documentation required high-levels of transparency from tenderers in their margins, mark-ups and other commercial terms. Based on the information received to date, and with comparison against business industry standards for works of this type, it is estimated that we have already achieved a 20% benefit for value for money, however through commercial alignment negotiations we hope to achieve a further 5-10%.

These negotiated outcomes are not 'savings' to the project, but rather provide us with greater opportunity to ensure that the \$23M budget is spent on the best possible outcome. For example, in lieu of private sector profits, we could achieve:

- greater investment in components to reduce operational costs and therefore improve the overall project business case
- additional arms of system to service greater demand

3.2.2 Finalising evaluation and referring to Council

Following the completion of the commercial alignment negotiations, the evaluation panel will finalise its evaluation and make its recommendation of the preferred contractor based on the decision rule within the evaluation plan being:

The result is that the contractor which provides the best outcome within commercial constraints and provides an optimal solution is preferred over the contractor who can deliver the project at the lowest possible cost.

The resulting recommendation will be referred to Council for its consideration and approval during April 2011.

