

11.2 Confidential - contract number 10039A – Water Proofing the South stage 2 early contractor involvement – outcomes of tender assessment

This report is seeking Council approval to award contract number 10039A Water Proofing the South stage 2 early contractor involvement.

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Attachments:	<ol style="list-style-type: none">1. WPS2 early contractor involvement contract number 10039 registration of interest evaluation criteria, of outcomes of assessment (5 pages)2. WPS2 early contractor involvement contract number 10039A request for tender evaluation criteria, outcomes of assessment and interim probity audit (5 pages)

1 Executive Summary

1.1 Topic

This report is seeking Council approval to award contract number 10039A Water Proofing the South stage 2 early contractor involvement.

1.2 Context

Following the 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 been undertaken. An update on the status of the ECI procurement process was presented to Council at its 15 March 2011 meeting.

This report presents the outcomes of all stages of the procurement and the tender evaluation panel's recommendation of the preferred contractor for Council's consideration and approval. The recommendation is based on the assessment of tenders received in response to the second phase of the procurement - a select request for tender that was managed through council's Contract and Tender Management System (CTMS) Contract number 10039A OT.

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

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)(d)(i) 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 this report, its attachments and related tender information at the meeting as it contains:**

Section 90(3)(d)(i) commercial information of a confidential nature (not being a trade secret) the disclosure of which -

- (i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and**
- (ii) would, on balance, be contrary to the public interest**
- 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 award the tender proposed by Leed Engineering Pty. Ltd. for Contract Number 10039A as it:

- passed mandatory criteria**
- had higher quality systems and processes**
- had a greater level of team alignment**
- presented a commercially acceptable offer**

That the tender be awarded on a time and expense basis to an upper limit of 15% of the contract value being \$3.6M as outlined in section 3.1 of this report and authorise the Chief Executive Officer to sign all required documentation to finalise the contract.

3. That a further report specifying the guaranteed contract sum required for the completion of the project be submitted for Council's consideration at the conclusion of the Early Contractor Involvement process (phase 1).

- 4. 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 with the exception of part 2 of the recommendation and resolution, 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)(d)(i) until the expiry of the term of the Water Proofing the South stage 2 funding agreement being end of June 2013.**
- 5. That, pursuant to section 91(9)(a), Council delegates the duty to conduct an annual review of the confidentiality order to the Chief Executive Officer, or their sub-delegate.**
- 6. That, pursuant to section 91(9)(c), Council delegates the power to revoke the confidentiality order to the Chief Executive Officer, or their sub-delegate.**

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 the 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 sub-contractors.

3.1.3 Registration of interest (ROI)

The objective of the ROI phase of the procurement was to identify a short list of (up to three) contractor consortiums interested in participating in the 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 consortiums 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.

The following contractors were shortlisted to participate in the RFT phase of the assessment (in alphabetical order):

- 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 through the first phase of the ECI process.

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.

Through the assessment of mandatory criteria and desirable criteria there was a clear difference between the quality of process and team alignment methods of the first two tenders when compared against the third, as summarised in the following table and detailed as part of attachment 2.

	Leed	Bardavcol	BMD
Mandatory	Pass	Pass	Pass
Desirable	81.2	70	54
<i>Quality of process</i>	<i>56</i>	<i>49</i>	<i>42</i>
<i>Team alignment</i>	<i>25.2</i>	<i>21</i>	<i>12</i>
Placing	1	2	Not shortlisted

Accordingly, and as presented to Council at its 15 March 2011 meeting, the following tenderers were shortlisted to participate in the commercial alignment phase of the RFT assessment:

- Bardavcol Pty Ltd (in collaboration with KBR)
- Leed Engineering & Construction Pty Ltd (in collaboration with Parsons Brinkerhoff).

We reserved our rights to negotiate with BMD as the third party should a commercially acceptable offer not be reached with the two shortlisted tenderers.

3.1.5 Request for tender - Commercial alignment negotiation

The aim of the commercial alignment negotiation was to achieve a consortium cost proposal that represents an acceptable level of commerciality (i.e. 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 were identified based on:

- the three commercial offers received from those tenderers shortlisted to the RFT phase. The use of all three offers was to ensure that the context for the negotiations was reflective of the current market costs for similar works and therefore achieving competitiveness
- 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 negotiation considered the following commercial indicators:

Indicators of commercial acceptability	
Governance Group Members	Margins (design)
Personnel Rates	Margins (construction)
Standard Hours	Insurance
Salary related increases	Plant and equipment
Sub Contractors	Direct project Expenses
Overtime payments	Key Personnel Clause
Overheads (Design)	Cross company guarantees (or equivalent)
Overheads (Construction)	Emerging risks
Travel Expenses	

Setting the scene for commercial alignment negotiations

The intent to undertake commercial alignment negotiations was presented to all potential tenderers during the industry briefing in September 2010. Since that time, all documentation that has been presented to the market, has occurred in a manner that clearly presents our expectations regarding how we would receive costs for the delivery of the project with a view towards ensuring that the project maintained an acceptable level of profitability for the tendering contractors, however reduced the possibility of achieving 'super-profits' eg: margins on margins i.e. commercial acceptability.

Outcomes of commercial alignment negotiations

Following the commercial alignment negotiations, both tenderers performed very strongly and were rated as having submitted commercially acceptable offers. The Bardavcol offer has been rated as marginally more commercially acceptable based largely on the plant rates submitted for the project.

However as plant is largely attributed to the phase 2 of the project through negotiations Leed was advised that its internal hire charges were higher than other

bids. It was agreed (subject to award) that these rates would be the subject of a detailed review prior to their consideration for phase 2, and benchmarked against current external market rates at the time of developing the GCS.

Business and Risk Solutions has advised that should Leed's commercial proposal relating to plant and equipment rates be reduced through this review, this will improve Leed's overall commercial acceptability rating bringing it into line with that of Bardavcol.

With regard to the Bardavcol submission, a key point of difference was relating to the costs of insurance for the project. Bardavcol is not able to provide increased levels of insurance beyond the requested \$20M public liability and \$5M professional indemnity limits. Should an increase be required to professional indemnity, a direct cost of \$350,000 will be incurred for the revised policy.

Business and Risk Solutions have advised that should additional insurance be sought the assessment of the overall levels of commercial acceptability will switch between the tenderers as a result of the additional direct project cost. It is not proposed to seek additional levels of insurance coverage.

3.1.6 Recommendation of the preferred contractor

The identification of the preferred contractor to develop the ECI guaranteed contract sum was based on a staged value for money assessment that identifies the proponent with the highest quality of process, greatest level of team alignment and the level of commercial acceptability associated with the resulting costs and terms of contract.

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 following table summarises the outcomes of the two phases of the RFT assessment as presented in attachment 2 and identifies the tender evaluation panels recommended preferred contractor:

	Leed	Bardavcol	BMD
Mandatory	Pass	Pass	Pass
Desirable	81.2	70	54
<i>Quality of process</i>	<i>56</i>	<i>49</i>	<i>42</i>
<i>Team alignment</i>	<i>25.2</i>	<i>21</i>	<i>12</i>
Commercial acceptability	Acceptable	Acceptable	Not shortlisted to negotiation
Placing	1	2	3

Whilst both tenderers have presented outstanding offers, the tender evaluation panel reached consensus opinion regarding the recommendation of the award of contract number 10039A to Leed Engineering Pty. Ltd. Leed presented:

- greater levels of experience in ECI contracting
- higher quality systems and processes
- a greater level of team alignment, and capability to work with council staff.

The assessment of quality of process and team alignment considered an array of indicators. Leed achieved higher scores in both areas by demonstrating the application of its systems and processes (and its experience in their use on similar projects including other ECIs) and teaming techniques directly to the project and its outcomes. Bardavcol demonstrated good responses in all areas, but generally did not apply them to the project in a consistent manner. The evaluation panel(s) were therefore left with greater levels of comfort with how Leed would deliver WPS2 and it was scored accordingly.

It is suggested that this experience, systems and processes would lead to opportunities to realise cost savings in other areas of the project, representing a lower risk to the overall commerciality of the offer. Therefore Leed's systems and processes and team alignment combined with its commercially acceptable offer represent greater value for money to the City of Onkaparinga.

3.2 Next steps

Subject to Council's approval of this report regarding the award of contract, contract documentation will be finalised and executed and the ECI phase will commence immediately with a view towards returning to Council with a report for its consideration presenting the GCS in August/September 2011.

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

