

11.2 Confidential – Award of contracts and variations to construct the trade waste scheme plus associated modifications to other elements of stage 1 of Water Proofing the South (WPS1)

This report seeks Council's approval to award contracts and variations to construct the trade waste scheme for stage 1 of Water Proofing the South (WPS1).

This is information seeking Council direction.

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Attachments:	<ol style="list-style-type: none">1. Contract no. 10062 - The Tender Process and Tender Evaluation by Contractor Summary (4 pages)2. Contract no. 10062 Preliminary Probity Audit (Contracting and Tendering Services) (2 pages)3. TRILITY Australia STEDS contract variation proposal to construct its elements of the trade waste scheme (7 pages)

1 Executive Summary

1.1 Topic

This report seeks Council's approval to award contracts and variations to construct the trade waste scheme for stage 1 of Water Proofing the South (WPS1).

1.2 Context

A separate non-confidential report has been included in this agenda that provides tendering background information and a status update to Council on the trade waste element and the allocation of surplus funds and project generated income for WPS1.

Tenders were received through an open tender process and assessed through Council's Contract and Tender Management System (CTMS) Contract No. 10062 OT.

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

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 construction of the Trade Waste scheme, Council:

- a. **accept the tender proposed by Fulton Hogan for Contract No. 10062 for the value of \$2,069,137 (GST inclusive) including those variations to the contract value identified in section 3.1 of this report and authorise the Chief Executive Officer to sign all required documentation to finalise the contract with Fulton Hogan.**
- b. **accept the variation proposed by TRILITY to the CWMS management contract for the value of \$1,091,213 (GST inclusive) as identified in section 3.2 of this report and authorise the Mayor and the Chief Executive Officer to affix the seal and sign all required documentation to finalise the variation.**

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)(k) until the purchase orders have both been placed and confirmed.

Key factors

3 Discussion

3.1 Contract no. 10062 – trade waste pipes and pumps

3.1.1 Details of Tender

In accordance with Council's Contracts, Tenders and Purchasing Policy and Procedures an open tender invitation for Contract no. 10062 was issued through SA Tenders and Contracts.

3.1.2 Number of Tenders Received

Six tenders were received from

- Alano Water
- DSM Services Pty Ltd
- Fulton Hogan Pty Ltd
- Guidera O'Connor Pty Ltd
- Leed Engineering & Construction Pty Ltd
- Power Pumps & Engineering Pty Ltd

3.1.3 Contract and Tender Management System (CTMS)

The CTMS 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.

3.1.4 Tender Assessment

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

- compliance with mandatory criteria.
- rankings of contractor based on the desirable criteria:
 - cost
 - capability
 - capacity
 - methodology (including appreciation of task)

- lowest level of foreseeable risk associated with the contractor, identified through the tender evaluation panel's risk assessment.
- compliance with mandatory criteria.

The tender evaluation panel evaluated the tenders in accordance with the agreed selection criteria, which were made available in the tender document. Specific weightings for 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.

Mandatory Criteria

Table 4 of attachment 1 summarises the tenderers' compliance with the mandatory criteria.

Power Pumps & Engineering was found not to have the required Builders Licence, which was a mandatory criterion. As a result, the tender evaluation panel resolved not to evaluate this tender any further other than to include the cost in the table below.

Weighted criteria

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

The following table summarises the tender amounts received.

Name of Tenderer	Price (inc GST)
MACA Developments (trading as Alano Water)	\$533,269.00
DSM Services Pty Ltd	\$728,520.10
Fulton Hogan Pty Ltd	\$578,100.76
Guidera O'Connor Pty Ltd	\$708,241.60
Leed Engineering & Construction Pty Ltd	\$762,855.60
Power Pumps & Engineering Pty Ltd	\$625,177.63

Outcome

The tender evaluation considered three areas of assessment: mandatory criteria, weighted criteria and risk assessment. In summary:

Name of Tenderer	Mandatory criteria	Weighted criteria	Risk rating
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			Contractual compliance	Specification compliance	Accreditations and Certifications
MACA Developments (trading as Alano Water)**	Pass	53.88	Low	Low	High
DSM Services Pty Ltd	Pass	48.84	Low	Low	Low
Fulton Hogan Pty Ltd*	Pass	79.36	Low	Low	Med
Guidera O'Connor Pty Ltd	Pass	68.00	Med	Low	Low
Leed Engineering & Construction Pty Ltd	Pass	50.92	Low	Low	Low
Power Pumps & Engineering Pty	Fail	-	-	-	-

* Fulton Hogan scored the highest (79.36) and is recommended as the preferred contractor. Their submission included costs for all elements of the project and demonstrated that all necessary accreditations and certifications were in place. It also included a thorough methodology and in turn capability and capacity to undertake the project.

** MACA developments (trading as Alano Water) submitted the cheapest tender, however failed to provide any information regarding their methodology and only demonstrated marginal capability and capacity to deliver the project.

3.1.5 Variations to cost of recommended contractor

Variation no. 1

Tender evaluations were undertaken in September 2010. It was intended that the request for tenders for contract no. 10062 would occur concurrently with negotiations with TRILITY for modifications on the Willunga Wastewater Treatment Plant. It was critical that all information be made available so as to inform the overall business case prior to contractually committing to any one party.

Unfortunately responses and negotiation with TRILITY extended beyond the anticipated timeframe, and the validity period for the preferred tenderers costs lapsed. The conditions of tendering requires a 90 day validity period following the lodgement of tenders under Clause 17 of the Conditions of Tendering. Accordingly

we provided the preferred contractor the opportunity to reconsider its costs, and it has rightfully referred through costs of 5% associated with inflation of material and transportation costs over that period as per the variation below.

To confirm the acceptability of the cost increase, the additional \$28,905.04 cost to Fulton Hogan was input into the CTMS results, and it was found that they were still the highest placed tenderer despite reducing their overall score by 0.39 points:

Variation no. 1: cost escalation of 5% due to material and transportation cost increases \$28,905.04

Variation no. 2

At the time of tender, it was not foreseen that we would require the construction of a transfer line from McLaren Flat to Rifle Range Road. A cost to undertake this work was requested of the preferred tenderer, and then compared against the rates offered by other tenderers at the same time to ensure competitiveness. The table below presents the outcomes of the assessment:

Name of Tenderer	Trench pipe installation (\$/Lm)
Fulton Hogan Pty Ltd	\$122.91
MACA Developments (trading as Alano Water)	\$122.71*
Leed Engineering & Construction Pty Ltd	\$125.28
DSM Services Pty Ltd	\$128.81
Power Pumps & Engineering Pty	\$146.09
Guidera O'Connor Pty Ltd	\$163.27

* excludes spoil disposal beyond 2km noting that the nearest disposal site is approximately 6km away. It is anticipated that this would increase the rate by approximately \$3-\$5/Lm.

We have also sought a cost from TRILITY to supply and install the transfer line, which was approximately 25% higher than the proposed variation.

Variation no. 2: construction of the McLaren Flat to Rifle Range Road transfer line \$870,727

Variation no. 3

At the time of tender, the level of surplus funds and project generated income was not understood, and options for its use were not resolved. The options recently became apparent, and in anticipation of this report to Council, costs have been sought from the preferred tenderer to construct the replacement of the Willunga Effluent Reuse line as part of the trade waste scheme, as the pipe is partially to be laid in the same trench. To ensure that the costing was competitive, it was compared against other tendered rates as per the table above.

Variation no. 3: replacement of the Willunga Effluent Reuse distribution line \$591,404

The following table presents the final contracted cost including those variations identified above. These costs have been rounded and included in the trade waste business case for Council's consideration through the non-confidential item on this agenda:

Item	Cost (including GST)
Original contract submission	\$578,101
▪ VO 1: cost escalation (5%)	\$28,905
▪ VO 2: McLaren Flat transfer line	\$870,727
▪ VO 3: Willunga effluent reuse line replacement	\$591,404
Total contract value (including GST)	\$2,069,137

This report seeks Council's consideration and approval of the award of contract and the variations listed above.

3.2 TRILITY (formerly United Utilities Australia) – variation to STEDS (now CWMS) contract

3.2.1 Background

As presented in the non-confidential item on this agenda, following staff and advisor consideration of an array of alternatives for the delivery of the trade waste scheme, at its 6 October 2009, the former Council confidentially approved the procurement strategy for the element of the trade waste project.

Specifically, the former Council approved:

- 3 *...an exemption to the purchasing policy to allow direct negotiations to take place with the producers of trade waste and the sole provider of the service to treat trade waste*

as Council's procurement policy requires contracts with a value greater than \$50,000 to be let via open tender. The former Council's approval of the exemption fulfils the probity auditing requirements of the Water Proofing the South funding deed.

As TRILITY currently operate the CWMS plant and has a lease over the Council land until 2029, it was proposed to undertake direct negotiations to see if they can deliver the upgrades to the existing CWMS treatment plant within cost constraints for the trade waste element of Water Proofing the South.

At the time the anticipated value of modifications to the existing CWMS plant to provide for 'raw' trade waste was in the order of \$2.5M, which when coupled with responses to the earlier version of contract no. 10062 was not affordable within the

capital budget. The scheme was subsequently revised to the option and business case considered by Council through the non-confidential item on this agenda.

The following section of this report presents the outcomes of the negotiations with TRILITY regarding the current option for the trade waste scheme, and seeks Council's approval to delegate authority to the Chief Executive Officer to execute the variation to the CWMS Contract pursuant to the 6 October 2009 resolution former Council.

3.2.2 Details of offer

The modifications to the CWMS WWTP to receive and treat 'treated' trade waste will be an adjunct to the existing plant within the leased area. Its inclusion within the existing WWTP minimises capital cost and ensures design compatibility to minimise any potential increases in operational costs.

As presented in the non-confidential report, the modification mainly consists of the purchase and installation of subsurface flat plate aeration diffusers using external blowers and associated piping within the two existing sequence batch reactors at the WWTP to evenly distribute oxygen within the tank.

The details of the TRILITY proposal to receive and treat 'treated' trade waste is detailed in attachment 3. TRILITY have estimated the total cost of works to be \$1,091,213 (including GST) including detailed design, project management, supply and installation of components and a 5% contingency allowance.

Council's approval is sought for the full value of the works as submitted by TRILITY however, we will endeavour to work with them to capitalise on the 'value-add' opportunities that may be identified through a joint value engineering workshop prior to project delivery. Any savings achieved will be utilised through increases to maintenance service contracts for WPS1 schemes, as discussed in the non-confidential report on this agenda.

The project schedule highlights a completion date of August 2011, with a significant portion of those works associated with commissioning the modifications. The award of the contract commits those funds for project delivery and expenditure in accordance with the WPS1 funding deed. We will manage project funds by expending external funds first prior to expending Council's contribution. Expenditure associated with Contract no. 10062 and other modifications will be managed in the same way in the event of a schedule overrun (as discussed in the trade waste non-confidential report).

3.3 **Business case, operational costs and funding sources**

The business case, funding sources and operational costs are discussed in the non-confidential item on this agenda.

3.4 Next Steps

Subject to Council's approval of this report, works on the element will commence immediately to fully commit WPS1 funding and aim to achieve the end of May 2011 completion date.

Council will be kept informed of the status of these elements of WPS via Weekly News and the Project Register.