

**ITEM 15. TENDER – APPOINTMENT OF AN OPERATOR FOR THE  
OPERATION AND MANAGEMENT OF THE SATURDAY MARKET IN  
FITZROY GARDENS**

**FILE NO: X005131.002**

**TENDER NO: 1640**

**SUMMARY**

This report provides details of the tenders received for the appointment of an operator for a Saturday market in Fitzroy Gardens, Potts Point.

The agreement with the current market operators has expired and is on holdover arrangements.

The purpose of this tender is to appoint a new operator for the Saturday market using an agreement that is consistent with the City's Markets Policy and complies with the City's legislative obligations regarding community land.

This report recommends that Council accept the tender offer of Tenderer 'A' for the operation of the Saturday market in Fitzroy Gardens, Potts Point, for an initial period of 12 months, with two, additional 24 month options to be granted at the City's sole discretion (a maximum of five years total).

**RECOMMENDATION**

It is resolved that:

- (A) Council accept the tender offer of Tenderer 'A' for the operation of the Saturday Market in Fitzroy Gardens, Potts Point for an initial term of one year, with two, additional 24 month options to be granted at the City's sole discretion (a maximum of five years total);
- (B) authority be delegated to the Chief Executive Officer to negotiate, execute and administer the contracts relating to the tender; and
- (C) authority be delegated to the Chief Executive Officer to exercise the options referred to in clause (A), if appropriate, and negotiate the price to extend the contracts accordingly.

**ATTACHMENTS**

**Attachment A:** Tender Evaluation Summary (Confidential)

**(As Attachment A is confidential, it will be circulated separately from the agenda paper and to Councillors and relevant senior staff only.)**

## **BACKGROUND**

1. The Kings Cross Organic Markets began as a fortnightly market in 2006, and became a weekly market in March 2007. Under the current operator, it has approximately 50 stalls and an attendance of about 5,000 patrons per week.
2. The current market operator's term has expired and the licence between the City and the operator is on a holdover arrangement. The new operator will be required to enter into a licence with the City for an initial period of 12 months, with two additional option periods for 24 months to be granted to the operator at the City's absolute discretion in accordance with the City of Sydney's Market Policy.
3. The City of Sydney Market Policy adopted in June 2015 states:  
  
*"The City will determine the appropriate length of any agreement or consent on a case-by-case basis. No term will be longer than 5 years."*
4. Fitzroy Gardens, the location of the market, is zoned as community land.
5. The market operates under a development consent from the City D/2010/763/E. This consent describes the market as predominantly a food market, with the ratio of food to non-food stalls to be set by Council.
6. The tender document made specific mention that the City would consider proposals for any style of market for the location and day proposed, provided the market provides high quality products and services that complement local businesses, and is professionally managed in accordance with all relevant regulations.

## **INVITATION TO TENDER**

7. The Request for Tender was advertised in The Sydney Morning Herald, The Daily Telegraph and the City of Sydney's E-Tendering portal from 9 August 2016 and closed on 30 August 2016.

## **TENDER SUBMISSIONS**

8. Four submissions were received from the following organisations (listed alphabetically):
  - Choulartons Australia Pty Ltd
  - Markets and Event Management Australia
  - Potts Point Partnership
  - Shane Rice
9. No late submissions were received.

## **TENDER EVALUATION**

10. All members of the Tender Evaluation Panel have signed Pecuniary Interest Declarations. No pecuniary interests were noted.

11. The relative ranking of tenders as determined from the total weighted score is provided in the confidential Tender Evaluation Summary – Attachment A.
12. All submissions were assessed in accordance with the approved evaluation criteria being:
  - (a) tenderer's financial viability and the understanding of their capacity to support the financial offer and confirmation that tenderer is holding the necessary insurance levels;
  - (b) demonstration of mature Workplace Health and Safety and Risk Management systems and procedures and a commitment to continuous improvement;
  - (c) demonstrated capacity to ensure the on-going delivery of the market through managerial capability, qualifications and experience;
  - (d) the tenderer's overall vision and proposal for the market, and how it meets the City's objectives; and
  - (e) demonstrated plans and procedures to ensure the ongoing sustainability of the market while continuing to meet the City's objectives and key performance indicators.
13. The financial return to the City from market operations did not form part of the evaluation (refer Financial Implications section below for additional commentary concerning the setting of market fees generally).

**PERFORMANCE MEASUREMENT**

14. The appointed tenderer will have their performance assessed against the following specific key performance indicators for the duration of the licence:
  - (a) operating the market as an interesting and vibrant destination, focusing on creative and cultural excellence;
  - (b) operating a market that sells products and or services of good quality and represents value for money;
  - (c) maintaining high standards of presentation and quality;
  - (d) ensuring that the market's operation complements and adds value to the existing businesses in the area;
  - (e) professionally organising and managing the market;
  - (f) meeting regularly with the City and submitting performance reports as part of the ongoing review of the market; and
  - (g) ensuring compliance with the requirements of the licence between the City and the operator, as well as any other applicable legislative or planning obligations.
15. The grant of the additional two 24 month terms in the licence will be subject to the performance of the operator, and will be at the absolute discretion of the City.

**FINANCIAL IMPLICATIONS**

16. All fees paid by the market operator are calculated in accordance with the fees and charges provisions of the Markets Policy (as approved by Council on 29 June 2015 following public consultation/exhibition) and included in the City's annual Fees and Charges which are reviewed and approved by Council as a component of the City's Operational Plan.
17. The fee calculation is based on a percentage of gross annual revenue capacity for the market – that is, the maximum number of approved stalls multiplied by the amount charged by the market operator for each stall. The gross annual revenue capacity is calculated at the beginning of each year and divided into 12 equal monthly payments.
18. Commercial market operators pay 20 percent of gross annual revenue capacity, and not-for-profit operators pay 10 percent. Market operators also pay for any damage to the site or additional maintenance required to the market.
19. The fees that individual stall holders pay to a market operator are set by the market operator, not the City.

**RELEVANT LEGISLATION**

20. The tender has been conducted in accordance with the Local Government Act 1993, the Local Government (General) Regulation 2005 and the City's Contracts Policy.
21. Attachment A contains confidential commercial information of the tenderers and details of Council's tender evaluation and contingencies which, if disclosed, would:
  - (a) confer a commercial advantage on a person with whom Council is conducting (or proposes to conduct) business; and
  - (b) prejudice the commercial position of the person who supplied it.
22. Discussion of the matter in an open meeting would, on balance, be contrary to the public interest because it would compromise Council's ability to negotiate fairly and commercially to achieve the best outcome for its ratepayers.

**CRITICAL DATES / TIME FRAMES**

23. There are no critical dates associated with the award of this contract.
24. A transition process between the existing and new contracts will be undertaken once the new operator has been appointed.

**OPTIONS**

25. Not accept the tender offer and continue the current holdover arrangements with the existing operator. This would mean that the arrangement would not be compliant with the City's Markets Policy, or the provisions of section 55 of the Local Government Act.
26. Not accept the tender offer and not continue a market operation on the site. This option is not recommended due to the market's support and popularity (estimated at 5,000 attendees per week), as well as the economic benefits that the current market operation contributes to the local community.

**PUBLIC CONSULTATION**

27. Section 47A of the Local Government Act provides that, if the City proposes to grant a lease, licence or other estate over community land, it is required to notify the public of its intention to grant the lease or licence and publicly exhibit a notice as prescribed by the provisions of the section, for a 28 day period.
28. This consultation period ran from 4 - 31 July 2016. As part of this process, notices were displayed on site, advertisements were placed and letters were sent to the local community. In response to this consultation, only one comment was received which was from the current market operator.

**DAVID RIORDAN**

Director City Operations

Melissa Bajugi, Manager Venue Management