

**ITEM 18. TENDER - APPOINTMENT OF AN OPERATOR FOR THE  
CHINATOWN NIGHT MARKETS IN DIXON STREET MALL**

**FILE NO: X005131.001**

**TENDER NO: 1639**

**SUMMARY**

This report provides details of the tenders received for the appointment of an operator for the Chinatown Night Markets, Dixon Street Mall.

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

The purpose of this tender is to appoint a new operator for the Chinatown Night Market using an agreement that is consistent with the City's Markets Policy and complies with the City's legislative obligations regarding road reserves.

This report recommends that Council accept the tender offer of Tenderer 'A' for the operation of the Chinatown Night Markets, Dixon Street Mall, 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 Chinatown Night Markets, Dixon Street Mall 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 contract 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 Chinatown Night Markets have been operating since 1999.
2. An existing development consent (D/2009/803/d) limits the number of stalls to 15 food, 40 new goods, 10 locally produced goods and one other promotional stall. The market attracts about 5,000 patrons per week.
3. The current market operator's term has expired and the Consent granted by the City to the operator is on a holdover arrangement. The new operator will be granted a new Consent by the City for an initial period of 12 months, with two additional option periods of 24 months to be granted to the operator at the City's absolute discretion in accordance with the City of Sydney's Markets Policy.
4. The City of Sydney Markets Policy adopted by Council on 29 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."*
5. Dixon Street Mall, the location of the market, is zoned as a road.
6. The market operates under a development consent from the City D/2009/803/d, which will expire in August 2019. The successful tenderer will need to apply for a new development consent in early 2019.
7. Council staff do not make the application for a new DA consent. The successful tenderer will need to make that application.

## **INVITATION TO TENDER**

8. The Request for Tender was advertised in The Sydney Morning Herald, The Daily Telegraph and the City of Sydney's E-Tendering portal from 15 August 2016 and closed on 6 December 2016.

## **TENDER SUBMISSIONS**

9. Three submissions were received from the following organisations (listed alphabetically):
  - Blue Sky Events Pty Ltd
  - Chinatown Business Association Inc
  - Markets and Event Management Australia
10. No late submissions were received.

## **TENDER EVALUATION**

11. All members of the Tender Evaluation Panel have signed Pecuniary Interest Declarations. No pecuniary interests were noted.
12. The relative ranking of tenders as determined from the total weighted score is provided in the confidential Tender Evaluation Summary – Attachment A.

13. All submissions were assessed in accordance with the approved evaluation criteria being:
- (a) demonstrated capacity to ensure the ongoing delivery of the market through managerial capability, qualifications and experience;
  - (b) the tenderer's overall vision and proposal for the market and how it meets the City's objectives;
  - (c) demonstrated financial capacity and financial plans to ensure the ongoing sustainability of the market;
  - (d) demonstrated operational plans (including risk management) and procedures to ensure the ongoing sustainability of the market whilst continuing to meet the City's objectives and key performance indicators;
  - (e) tenderer's financial viability and the understanding of their capacity to support the financial offer and confirmation that the tenderer is holding the necessary insurance levels; and
  - (f) demonstration of a mature WHS system and procedure and a commitment to continuous improvement.

**PERFORMANCE MEASUREMENT**

14. The appointed tenderer will have its performance assessed against the following specific key performance indicators for the duration of the term of the Consent:
- (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 Consent granted by the City to the operator, as well as any other applicable legislative or planning obligations.
15. The grant of the additional two, 24 month terms 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 initially approved by Council on 29 June 2015 following public consultation/exhibition) and are included in the City's annual Fees and Charges, which are reviewed and approved by Council annually 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 per cent of gross annual revenue capacity, and not-for-profit operators pay 10 per cent. 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. No consultation has been undertaken.

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