

Item 9.

Exemption from Tender to Appoint Law Firms to the Legal Services Panel

File No: X006353

Tender No: 1658

Summary

In November 2016, Council resolved to accept the tender offers of a number of law firms for appointment to the legal services panel across 10 categories of law. The term of each appointment was three years, with the option of two further extensions, each of one year. Successful law firms were notified and the panel commenced its first term of operation on 17 December 2016. This first term will come to an end on 16 December 2019.

Henry Davis York was the only law firm appointed to the panel for each of the 10 areas of law. This reflected the strong focus of the firm on the local government sector, and its understanding of the unique legal requirements and obligations of the City.

Through a merger arrangement, in November 2017 Henry Davis York transferred its practice to Norton Rose Fulbright Australia (NRFA). Because NRFA is a different entity, the appointment of Henry Davis York to the legal panel did not transfer across to NRFA. For certain categories of law on the legal services panel, lawyers who were at Henry Davis York and who are now at NRFA are still required to represent the City on a number of matters. It is of benefit to the City for these lawyers to be able to assist on new matters.

This report recommends that, for the reasons specified in the report, Council grant an exemption from tender to appoint Norton Rose Fulbright Australia to the legal services panel for the categories of law of property, commercial, construction, administrative, planning and environment and local government and community.

While a significant number of lawyers transferred to NRFA as part of the merger, some lawyers at Henry Davis York instead transferred to different law firms. A team with strong expertise in the work health and safety and workplace relations areas of law moved to McCullough Robertson.

This team has assisted the City in a number of matters, and have an in-depth knowledge of the City and the issues impacting it. McCullough Robertson is already appointed to the panel for the commercial category of law. This report recommends that, for the reasons specified in the report, Council grant an exemption from tender to appoint McCullough Robertson to the legal services panel for the category of law workplace relations.

Recommendation

It is resolved that:

- (A) Council note that, because of extenuating circumstances, a satisfactory result would not be achieved by inviting tenders;
- (B) Council note the reasons why a satisfactory result would not be achieved by inviting tenders are:
 - (i) Henry Davis York and McCullough Robertson already completed the tender process for the legal services panel in 2016 and were appointed to the panel. It is only because of the merger that the appointment of the lawyers formerly with Henry Davis York has been disrupted;
 - (ii) the appointment of Norton Rose Fulbright Australia and McCullough Robertson to the panel for the specified areas of law will provide the City with a continuation of expert advice on specialised matters; and
 - (iii) Norton Rose Fulbright Australia and McCullough Robertson have confirmed that the schedule of rates supplied will apply for the remainder of the term of the panel, representing ongoing value for money for Council that has been supported by a tender process. Value for money is also achieved because of the relevant expertise and comprehensive knowledge the lawyers have of the City's legal obligations and requirements;
- (C) Council approve appointing Norton Rose Fulbright Australia to the legal services panel for the following categories of law: property, commercial, construction, administrative, planning and environment, and local government and community;
- (D) Council approve appointing McCullough Robertson to the legal services panel for the following category of law: workplace relations;
- (E) authority be delegated to the Chief Executive Officer to negotiate, execute and administer the contracts relating to the appointments; and
- (F) authority be delegated to the Chief Executive Officer to exercise the options for the legal services panel in relation to the appointment of Norton Rose Fulbright Australia and McCullough Robertson for the stated areas of law.

Attachments

- Attachment A.** Confirmation of Schedule of Rates from Norton Rose Fulbright Australia and McCullough Robertson (Confidential)

Background

1. In November 2016, Council resolved to accept the tender offers of a number of law firms for appointment to the legal services panel across 10 categories of law. The term of each appointment was three years, with the option of two further extensions, each of one year. Successful law firms were notified and the panel commenced its first term of operation on 17 December 2016. This first term will come to an end on 16 December 2019.
2. Henry Davis York was the only law firm appointed to the panel for each of the 10 categories of law. This reflected the strong focus of the firm on the local government sector, and its understanding of the unique legal requirements and obligations of the City through its work with the City on a number of complex matters across a number of categories of law.
3. Since its appointment on the panel, Henry Davis York has provided legal advice to the City on a number of important matters, including the Surry Hills Library façade dispute, and matters relating to property, construction, procurement, workforce services, and environmental and planning law.
4. In representing the City in these matters, Henry Davis York showed a thorough understanding of the roles and responsibilities of the City, and provided expert advice that assisted in the resolution of matters in a way that successfully managed the City's risks. Through representing the City in these matters, the specific lawyers gained a thorough understanding of the City's obligations and risks, which has improved the ability of these lawyers to effectively represent the City.
5. Through a merger arrangement, in November 2017 Henry Davis York transferred its practice to Norton Rose Fulbright Australia (NRFA). This merger has included the transfer of a significant number of staff from Henry Davis York to NRFA, although some lawyers transferred to different firms instead of proceeding with the merger to NRFA.
6. Because NRFA is a different entity, the appointment of Henry Davis York to the legal panel did not transfer across to NRFA. As a result, the City has lost a law firm from its panel across all 10 areas of law.
7. Lawyers who worked at Henry Davis York and who now work at NRFA or at other firms are still required to represent the City on a number of ongoing matters in specific categories of law.
8. It is of benefit to the City to continue to access the skills and knowledge of lawyers who have a thorough understanding of the City. This is particularly the case when matters are inter-related.
9. For the reasons outlined above, it is recommended that Council grant an exemption from tender to appoint NRFA to the legal services panel for the following categories of law: property, commercial, construction, administrative, planning and environment, and local government and community. It is also recommended that Council grant an exemption from tender to appoint McCullough Robertson to the legal services panel for the following category of law: workplace relations.

10. Value for money is demonstrated because NRFA has committed to apply the tender rates specified in the tender response of Henry Davis York. These rates were assessed to be value for money when the tender was assessed in 2016. McCullough Robertson has committed to apply the tender rates specified in its tender, which represents a lower cost to the City than the rates being charged when the lawyers were at Henry Davis York. Letters from NRFA and McCullough Robertson confirming the rates are attached at confidential Attachment A.
11. Value for money for Council is also achieved because of the relevant expertise and comprehensive knowledge the lawyers have of the City's legal obligations and requirements.

Financial Implications

12. There are no financial implications associated with the appointment of NRFA and McCullough Robertson to the legal services panel. There are sufficient funds allocated to the provision of external legal services within the current year's operating budget and future years' forward estimates.

Relevant Legislation

13. Local Government Act 1993 and Local Government (General) Regulation 2005.
14. Attachment A contains confidential information which:
 - (a) if disclosed, would confer a commercial advantage on a person with whom the City is conducting (or proposes to conduct) business;
 - (b) if disclosed, would prejudice the commercial position of the person who supplied it; and
 - (c) would be privileged from production in legal proceedings on the ground of legal professional privilege.
15. Discussion of the matter in an open meeting would, on balance, be contrary to the public interest because it would compromise the City's ability to negotiate fairly and commercially to achieve the best outcome for its ratepayers.

Options

16. Council could decide not to appoint NRFA and McCullough Robertson to the legal services panel. If the firms are not appointed to the panel, then the City will lose the benefit of expert lawyers with a thorough understanding of the City's current needs and risks. For this reason, this option is not recommended.
17. Another option is for the City to terminate the current panel and re-tender for a whole new panel. This option is not recommended because there is still 18 months remaining on the panel, and it is delivering value for money for Council. While it is possible to re-tender, it is not certain that the City will achieve the same value for money as is being achieved under the current panel.

Public Consultation

18. No public consultation has been undertaken or is required.

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