

Item 9.**Cancellation of Tender - Street Furniture, Out-of-Home Media and Wi-Fi Services**

File No: X019237

Tender No: 1877

Summary

This report provides details of the tenders received for Street Furniture, Out-of-Home Media and Wi-Fi Services.

The tender is for the provision of Street Furniture, Out-of-Home Media and Wi-Fi Services. It includes the design, prototyping, supply, installation and ongoing operation of kiosks, toilets, shelters, communications pylons, seats and bins. The new designs for shelters, kiosks, communications panels and toilets are required to complement existing Council endorsed furniture.

The service also includes the display of advertising on certain street furniture items and the design, installation and ongoing operation of a free public Wi-Fi service. The equipment installed for the Wi-Fi service may be fixed to street furniture or other City assets and will provide coverage to a limited service area.

This report recommends that Council decline to accept the tender received and cancel the proposal for the contract.

The report also recommends Council note that because of extenuating circumstances a satisfactory result would not be achieved by inviting fresh tenders.

Recommendation

It is resolved that:

- (A) Council decline to accept the tender received for Street Furniture, Out-of-Home Media and Wi-Fi Services, for the reasons set out in Confidential Attachment A to the subject report;
- (B) Council cancel the proposal for the contract the subject of the tender referred to in (A) above due to current market conditions;
- (C) Council note that because of extenuating circumstances a satisfactory result would not be achieved by inviting fresh tenders for the Street Furniture, Out-of-Home Media and Wi-Fi Services;
- (D) Council note the reasons why a satisfactory result would not be achieved by inviting tenders are:
 - (i) given the lack of competitive tenderers available; and
 - (ii) current market conditions,as detailed in Confidential Attachment A;
- (E) Council:
 - (i) note its commitment to the delivery of the Street Furniture, Out-of-Home Media and Wi-Fi Services;
 - (ii) note that the City will consider alternative options for the provision of Street Furniture, Out-of-Home Media and Wi-Fi Services; and
 - (iii) delegate authority to the Chief Executive Officer to approach any person who is a provider of Street Furniture services, Out-of-Home Media services or Wi-Fi Services for the purpose of determining the alternative options for the delivery of any or all of these services;
- (F) authority be delegated to the Chief Executive Officer to negotiate, execute and administer contracts for any or all of the services referred to in (E) above; and
- (G) Councillors be informed of the outcomes referred to in (E) above.

Attachments

Attachment A. Tender Evaluation Summary (Confidential)

Background

1. The City of Sydney entered into a Supply and Maintenance of Street Furniture Agreement with JCDecaux Australia Pty Ltd (JCDecaux) in January 1997.
2. Along with the City of Sydney, the former Leichhardt Council and the former South Sydney City Council also entered into similar agreements with JCDecaux in 1997. These agreements are both applicable for the relevant portion of these former Councils that now form part of the City of Sydney.
3. The Supply and Maintenance of Street Furniture Agreements include the design, supply, installation and management of street furniture across the municipality, including bus shelters, kiosks, automated public toilets, payphones, advertising bollards, seats and street litter bins. As part of these agreements, JCDecaux own and manage approximately 1,155 street furniture items.
4. Under these agreements, JCDecaux are also required to display advertising for an appropriate selection of street furniture. The advertising generates revenue that funds the capital and operational costs for street furniture and provides a valuable revenue stream to the City of Sydney.
5. On 6 August 2018, Council resolved to extend the term and align the expiry date of all three Supply and Maintenance of Street Furniture Agreements to 31 January 2020. This extension allowed for the continuation of street furniture services, while the future street furniture services contracting model was fully developed, tendered and awarded.
6. The extension of the Supply and Maintenance of Street Furniture Agreements also allowed for a transition period for street furniture services to be completed within a two-year timeframe (post contract expiry). This transition period will allow for the successful Tenderer to recruit staff; design, prototype and supply new furniture items; obtain approvals; arrange service connections and complete installation activities. A similar timeframe was required when JCDecaux first installed the street furniture at the commencement of the contract.
7. During the transition period, JCDecaux will be required to continue to maintain furniture and display advertising through to a time when the City and the successful Tenderer are in a position to commence site works. The street furniture is required to be incrementally removed, and this arrangement will ensure the outage time for a particular furniture item is diminished, impacts to the community are minimised, kiosk tenants may continue to trade and revenue to Council is sustained where possible.
8. Due to the complex nature of the Street Furniture, Out-of-Home Media and Wi-Fi service, the City resolved to run a procurement process involving Expression of Interest, followed by select tender incorporating an Early Contractor Involvement process.
9. An initial Expression of Interest process conducted by the City identified that there was interest from the marketplace, as well as benefits for the City to seek for Street Furniture, Out-of-Home Media and Wi-Fi services to be procured from a single service provider. To facilitate this, a subsequent Expression of Interest process proceeded specifically for the combined provision of Street Furniture, Out-of-Home Media and Wi-Fi services.
10. At the completion of the expression of interest evaluation, three service providers were short-listed to participate in a select tender process.

11. The Street Furniture, Out-of-Home Media and Wi-Fi service includes the design, prototyping, supply, installation and ongoing operation of kiosks, toilets, shelters, communications pylons, seats and bins. The new designs for shelters, kiosks, communications panels and toilets are required to complement existing Council endorsed furniture.
12. The service also includes the display of advertising on certain street furniture items, and the design, installation and ongoing operation of a free public Wi-Fi service. The equipment installed for the Wi-Fi service may be fixed to street furniture or other City assets and will provide coverage to a limited service area.
13. All services are based on a schedule of prices fee structure which affords flexibility to cater for changes to the number of street furniture items, advertising displays and Wi-Fi access points that need to operate and be serviced over the contract term.

Invitation for Expressions of Interest

14. Requests for Expressions of Interest were advertised in The Sydney Morning Herald and the Daily Telegraph, and on the City's e-Tender portal on 28 November 2017, and closed on 6 February 2018.

Expression of Interest Submissions

15. Twelve submissions were received from the following organisations:

- Adshel Street Furniture Pty Ltd;
- APN Outdoor (Trading) Pty Ltd;
- Burdens Australia Pty Ltd;
- Communications Design and Management Pty Ltd;
- The Darlinghurst Business Partnership Incorporated;
- ENE-HUB Pty Ltd;
- JCDecaux Australia Pty Ltd;
- Infrastructure Logic Pty Ltd;
- oOh!Media Assets Pty Ltd;
- Smart City Solutions Pty Ltd;
- Telstra Corporation Limited; and
- TPG Network Pty Ltd.

16. No late submissions were received.

Expression of Interest Evaluation

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

18. Upon review of submissions received, the City elected to terminate the Expression of Interest process, on the basis that:
- (a) the Expression of Interest proved highly successful in understanding how the market may be able to provide the services sought;
 - (b) many different approaches were suggested in these submission on how the services may be delivered, and the City needed to consider these options;
 - (c) additional issues not foreseen at the time of Expression of Interest were identified in the submissions received, and the City needed to consider them for inclusion as part of the services;
 - (d) all the services sought may be provided under the one service provider; and
 - (e) due to the additional services and scope proposed, the City was required to end the procurement process, and commence a new Expression of Interest.

Second Invitation for Expressions of Interest

19. A second Request for Expressions of Interest was advertised in The Sydney Morning Herald and the Daily Telegraph and on the City's e-Tender portal on 10 July 2018, and closed on 31 July 2018.

Second Expression of Interest Submissions

20. Three submissions were received from the following organisations:
- Adshel Street Furniture Pty Ltd;
 - APN Outdoor (Trading) Pty Ltd; and
 - JCDecaux Australia Pty Ltd;

21. No late submissions were received.

Expression of Interest Evaluation

22. All members of the Expression of Interest Evaluation Panel signed Pecuniary Interest Declarations. No pecuniary interests were noted.
23. All submissions were assessed in accordance with the approved evaluation criteria being:
- (a) respondent's organisational structure, capability and experience in achieving Council's EOI Objectives.
 - (b) respondent's proven experience in out-of-home media services with a track record of securing sustainable growth in advertising sales revenue with an articulated strategy, funding model and plan for Councils assets;
 - (c) respondent's experience in delivering well-designed and contemporary Street furniture, with the appropriate skills in designing and prototyping, an established supply chain and a viable on-going support structure;
 - (d) respondent's proven experience in high-quality public domain Wi-Fi services, and the respondent's proposed Wi-Fi service; and

- (e) respondent's proposed implementation and transition plan with an appropriately skilled, experienced and resourced project team.
24. At the completion of the Expression of Interest evaluation, three service providers were short-listed to participate in a select tender process, being:
- Adshel Street Furniture Pty Ltd;
 - APN Outdoor (Trading) Pty Ltd; and
 - JCDecaux Australia Pty Ltd;

Invitation to Tender

25. On 1 October 2018, oOh!Media completed the acquisition of Adshel Street Furniture Pty Ltd. The company name was changed to oOh!Media Street Furniture Pty Ltd on 2 December 2018.
26. Requests for Tenders were released to the short-listed tenderers on 2 October 2018, and closed on 15 March 2019.
27. To encourage a collaborative procurement approach, Early Contractor Involvement workshops were conducted throughout October 2018 to February 2019. An independent Probity Advisor was in attendance at every Early Contractor Involvement workshop and evaluation panel meeting throughout the procurement process.
28. On 16 October 2018, APN Outdoor (Trading) Pty Ltd advised the City that it had elected to withdraw from the Tender on the basis that JCDecaux Australia Pty Ltd will be taking 100% ownership of the company. As a result, the two remaining short-listed tenderers were oOh!Media Street Furniture Pty Ltd and JCDecaux Australia Pty Ltd.
29. The Early Contractor Involvement workshops enabled the City to clarify the service and consider where it may be possible to further improve the City's tender documentation. These workshops greatly assisted in the commercial alignment between the City and the proponents on the scope of works and the delivery model. City staff and Tenderers all appreciated the opportunity to participate in the Early Contractor Involvement workshops and considered them to be highly beneficial, particularly for such a complex service.
30. On 28 November 2018, JCDecaux Australia Pty Ltd withdrew from the tender process, citing the risk involved in submitting an offer was too great.

Tender Submissions

31. One submission was received from the following organisation:
 - oOh!Media Street Furniture Pty Ltd (formerly Adshel Street Furniture Pty Ltd).
32. No late submissions were received.

Tender Evaluation

33. All members of the Tender Evaluation Panel signed Pecuniary Interest Declarations. No pecuniary interests were noted.
34. The total weighted score is provided in the Confidential Tender Evaluation Summary – Attachment A.
35. The tender submission was assessed in accordance with the approved evaluation criteria being:
 - (a) resourcing and approach for both the implementation and ongoing delivery which addresses key milestones, a short transition period, minimal community disruption and high-quality customer service;
 - (b) the concept design for the proposed assets addresses the City's design objectives, brief and specification, as well as the tenderers capability to progress the design through to implementation;
 - (c) an established supply chain that ensures reliable and sustainable provision of assets, including an ongoing asset management framework that effectively manages assets and associated records;
 - (d) future-proofed free and funded public Wi-Fi service coverage, capacity, speed, reliability and the ability for the City to access anonymised data and other value added services;
 - (e) a sustainable approach to day-to-day operational and maintenance services that meet to the City's service level requirements;
 - (f) Carrier Licence (mandatory); and
 - (g) financial and commercial trading integrity, including insurances (mandatory).

Performance Measurement

36. Key Performance Indicators were identified in the Request for Tender document. Performance will be assessed throughout the term and upon completion of the contract.

Financial Implications

37. The net income derived from Street Furniture operations is a significant revenue stream for the City. The City's Long Term Financial Plan contains assumptions about the level of income and expenditure relating to Street Furniture operations. These will be revised when the outcome of negotiations are known and included in future iterations of the City's Long Term Financial Plan.

Relevant Legislation

38. The tender has been conducted in accordance with the Local Government Act 1993, the Local Government (General) Regulation 2005, the NSW Department of Premier and Cabinet's Tendering Guidelines for NSW Local Government and the City's Contracts Policy.
39. Attachment A contains confidential commercial information of the tenderer 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.
40. 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

41. The existing contract for Street Furniture Services expires on 31 January 2020.
42. JCDecaux Australia Pty Ltd are entitled to remove payphones, with notice, from April 2019.
43. The proposed contract duration is for ten years, with the option of one extension of five years, subject to satisfactory performance and operational requirements.

Options

44. Council has the following options in regard to this tender:
 - (a) accept the tender that, having regard to all the circumstances, appears to it to be the most advantageous, or
 - (b) decline to accept any of the tenders.
45. It is recommended that Council decline to accept any tenders for the reasons set out in Confidential Attachment A.

46. If the Council decides not to accept any of the tenders it must do one of the following:

- (a) Postpone or cancel the proposal for the contract.

The option to cancel the proposal for the contract is recommended. The City is committed to delivery of the services sought, however the scope of the proposed contract is no longer considered best suited to achieve the City's objectives and suit current market conditions.

- (b) Invite, in accordance with clause 167, 168 or 169 of the Local Government (General) Regulation 2005, fresh tenders based on the same or different details.

This option is not recommended due to current market conditions, as detailed in Confidential Attachment A.

- (c) Invite, in accordance with clause 168 of the Local Government (General) Regulation 2005, fresh applications from persons interested in tendering for the proposed contract.

This option is not recommended due to current market conditions, as detailed in Confidential Attachment A.

- (d) Invite, in accordance with clause 169 of the Local Government (General) Regulation 2005, fresh applications from persons interested in tendering for contracts of the same kind as the proposed contract.

This option is not recommended due to current market conditions, as detailed in Confidential Attachment A.

- (e) Enter into direct negotiations with any person with a view to entering into a contract in relation to the subject matter of the tender.

This option is not recommended due to current market conditions, as detailed in Confidential Attachment A.

- (f) Carry out the requirements of the proposed contract itself.

This option is not recommended as the services tendered require specialist expertise that external providers are best suited to provide.

47. It is recommended that Council cancel the proposal for the contract due to current market conditions.

48. Given the extenuating circumstances, is it recommended that Council:
- (a) note its commitment to the delivery of the Street Furniture, Out-of-Home Media and Wi-Fi Services;
 - (b) note that the City will consider alternative options for the provision of Street Furniture, Out-of-Home Media and Wi-Fi Services;
 - (c) delegate authority to the Chief Executive Officer to approach any person who is a provider of Street Furniture services, Out-of-Home Media services or Wi-Fi Services for the purpose of determining the alternative options for the delivery of any or all of these services;
 - (d) delegate authority to the Chief Executive Officer to negotiate, execute and administer contracts for any or all of the services referred to above; and
 - (e) be informed of the outcomes referred to above.

Public Consultation

49. There was no public consultation prior to this tender being advertised.

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