

Exemption from Tender - Head Contractor - The Crescent Lands at Johnstons Creek

File No: S123802

Tender No: 1868

Summary

The Crescent Lands at Johnstons Creek, Annandale, are part of the Johnstons Creek masterplan, which will create a ribbon of parklands around the Glebe Peninsula. This project will create a skate park and adjacent mini skate ramp, a larger playground, new recreational open space west of the Glebe railway viaduct, picnic areas with seating and barbecues, and conservation works to open up the bays below the Glebe Railway Viaduct.

The tender for construction was awarded by Council to Design Landscapes Australia Pty Ltd on 10 December 2018 and works commenced on site on 6 June 2019.

On 5 December 2019, the City was notified that Design Landscapes Australia Pty Ltd had been placed under Administration, and at a Federal Court hearing on 14 January 2020, were placed into liquidation. The City issued a Letter of Termination to Design Landscapes Australia Pty Ltd on 17 January 2020.

Following advice to Councillors circulated on 13 December 2019, the City has undertaken regular audits and entered into minor contracts to ensure the site remains safe and secure.

The City also entered into discussions with the next preferred supplier (Tenderer A) from the 2018 tender and discussed their capacity and interest to complete the balance of the works remaining in the project. These discussions have been completed with Tenderer A submitting an offer to complete the project.

An exemption from tender is requested and it is recommended that Council accept the offer of Tenderer A for the delivery of the balance of works for The Crescent Lands at Johnstons Creek, Annandale.

Recommendation

It is resolved that:

- (A) Council approve an exemption from tender for the provision of construction services for the Crescent Lands at Johnstons Creek, Annandale, due to extenuating circumstances and accept the contract sum and contingency as stated in Confidential Attachment B to the subject report;
- (B) Council note the reasons a satisfactory result would not be achieved by inviting tenders below:
 - (a) the integrity of the 2018 competitive tender process is still intact to allow negotiation with the next preferred tenderer;
 - (b) this allows for immediate discussion to begin and avoidance of a lengthy re-tender preparation, period and evaluation process;
 - (c) these negotiations can serve to discuss and confirm the balance of works to complete and reduce the final offer in a collaborative manner to achieve value for money; and
 - (d) there is a need for urgent action to recommence works following the liquidation of the previous contractor to reduce the cost of maintaining a dormant construction site and deliver a completed project for our community;
- (C) Council approve the increase in the overall project budget as outlined in Confidential Attachment B to the subject report;
- (D) Council approve the increase of the existing head design consultant contract contingency as outlined in Confidential Attachment B to the subject report; and
- (E) authority be delegated to the Chief Executive Officer to negotiate, execute and administer the contract with Tender A for the provision of construction services for the Crescent lands at Johnstons Creek, Annandale.

Attachments

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| Attachment A. | Context Plan and Refined Design Plan - The Crescent Lands at Johnstons Creek, Annandale |
| Attachment B. | Alternate Head Contractor Recommendation and Financial Summary (Confidential) |

Background

1. The proposed scope of works at The Crescent Lands will deliver new green open space, and constitutes a significant step towards realising the long term Johnstons Creek Parklands Masterplan adopted by Council on 26 August 2013.
2. The project will deliver new recreational open space and a skate space with related works in Federal Park, including refurbished playground and picnic facilities. It will create a freestanding mini skate ramp to replace the existing mini ramp at Chapman Road, a fitness hub located adjacent Federal Park Oval, modifications to Chapman Road south to improve parking arrangements, and path and cycle connections from Chapman Road.
3. On 10 December 2018, Council resolved to accept the tender offer of Tenderer 'B' for the project, as recommended in the Tender Report.
4. The tender for construction was awarded by Council to Design Landscapes Australia Pty Ltd and works commenced on site on 6 June 2019 with an estimated eight-month construction program to reach practical completion on 13 February 2020.
5. As of the end of December 2019, Design Landscapes Australia Pty Ltd had completed approximately 13 per cent of the works under the contract. A large portion of works carried out in the six months of construction related to the management of a latent condition in the form of in-ground asbestos. This scope of works were unknown at time of tender and did not make up the tendered scope of works.
6. On 3 December 2019, Design Landscapes Australia Pty Ltd notified the City that they had gone in to Administration. At a meeting held on 6 December 2019 with the City, Design Landscapes Australia Pty Ltd and their Administrators, the City was told the project would continue with all efforts made to trade out of the financial situation.
7. The Administrator was successful in their application to adjourn the 11 December 2019 scheduled Court Case to a later date of 14 January 2020.
8. A confidential update was circulated to Councillors on 13 December 2019. The update outlined the proposed steps to formally terminate the existing contract should Design Landscapes Australia Pty Ltd be placed into liquidation, to enter into minor work contracts to ensure the site is made safe and secure, and enter into discussion with the unsuccessful tenderers to determine capacity and interest to complete the balance of the works required to complete the project.
9. The Administrator notified the City on 9 January 2020 that the Director of Design Landscapes Australia Pty Ltd had decided to liquidate the company and did so formally at the Court Case held 14 January 2020. The City issued the Letter of Termination to Design Landscapes Australia Pty Ltd and the Liquidators on 17 January 2020.
10. On 21 January 2020, the City entered into discussions with the next preferred supplier (Tenderer A) from the 2018 tender and discussed their capacity and interest to complete the balance of the works remaining in the project.
11. These discussions have been completed with Tenderer A submitting an offer to complete the project.

12. A satisfactory result would not be achieved by inviting new tenders as:
- (a) the integrity of the 2018 competitive tender process is still intact to allow negotiation with the next preferred tenderer;
 - (b) this allows for immediate discussion to begin and avoidance of a lengthy re-tender preparation, period and evaluation process;
 - (c) these negotiations can serve to discuss and confirm the balance of works to complete and reduce the final offer in a collaborative manner to achieve value for money; and
 - (d) there is a need for urgent action to recommence works following the liquidation of the previous contractor to reduce the cost of maintaining a dormant construction site and deliver a completed project for our community.

Financial Implications

13. Additional funds are required for this project as outlined in Confidential Attachment B.

Relevant Legislation

14. Exemption from tender for The Crescent Lands project at Johnstons Creek is recommended in accordance with Local Government Act 1993, section 55(3)(i).
15. Local Government Act 1993, the Local Government (General) Regulation 2005 and the City's Procurement and Contract Management Policy.
16. Attachment B 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.
17. 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

18. If approved by Council, the timeframe for this project is:
- (a) execute contract with successful tenderer - June 2020;
 - (b) commence construction - July 2020; and
 - (c) complete construction - early 2021.

Options

19. An alternative viable option is available to Council in the form of rejecting this offer from Tender A and going back out to the market with another open tender.
20. This option is not recommended after considering the consequential impacts of cost and time on the project to prepare a revised tender package and manage the tender process.

Public Consultation

21. Recent community communication has been undertaken informing the community of the previous contractor's liquidation earlier this year and the steps being undertaken by the City towards engaging another contractor to complete the project.
22. A further update to the community will be provided through new hoarding signage and construction notification letters as required.

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Director City Projects and Property

Brendan Barrett, Project Manager