

Exemption from Tender and Contract Extension - Self Insurers Claim System

File No: S064539

Summary

In 2014, the City tendered under RFT 1390 for an IT application to record and report Work Health and Safety (WHS) data. The system would assist the City to comply with WHS legislation and NSW WorkCover self-insurance licence requirements. It would also allow incident reporting, workers compensation and injury management information to be captured, stored, analysed and reported, in accordance with prescribed standards and integrated with the in-house developed risk management system.

This system, the Self-Insurers Claims System (SIMS), was procured together with a three-year Maintenance and Support contract with two one-year optional extensions with NTT DATA Figtree Systems Pty Ltd.

In February 2019, with the Maintenance and Support contract expiring and both options having been exercised, the City sought and gained Council approval for a 12-month extension of the contract with the maintenance and support provider of the Self-Insurers Claims System application, NTT DATA Figtree Systems Pty Ltd, from 1 July 2019 to 30 June 2020.

The existing Self-Insurers Claims System application meets the City's current needs, and thus a further three-year agreement for maintenance and support is sought.

The existing supplier of the maintenance and support contract now requiring renewal:

- is the sole provider of the relevant maintenance and support, and a competitive tender process is not possible (because it is not possible to get another supplier to support the bespoke solution developed by NTT DATA Figtree Systems Pty Ltd.);
- was evaluated as best value for money from a competitive tender process, and a repeat tender process is unlikely to yield a different outcome; and
- the maintenance and support payments were in line with the market at the time and have since increased in line with CPI.

The requirement to invite tenders in section 55(1) of the Local Government Act 1993 does not apply to those contracts if Council decides by resolution that, because of the unavailability of competitive or reliable tenderers, a satisfactory result would not be achieved (section 55(3)(i) of the Local Government Act 1993).

This report recommends that Council grant an exemption from tender to enter into a three-year agreement for Maintenance and Support of the Self-Insurers Claims System (SIMS) with NTT DATA Figtree Systems Pty Ltd.

Recommendation

It is resolved that:

- (A) Council approve an exemption from tender to enter into a three-year agreement for Maintenance and Support of the Self-Insurers Claims System (SIMS) upon the expiry of the current contract;
- (B) Council note the reasons a satisfactory outcome is not possible is due to the following extenuating circumstances:
 - (i) significant time and effort has been expended to tailor the existing solution to the needs of the business, and the cost and effort to move to a new system is prohibitively significant compared with the cost of the three-year exemption;
 - (ii) NTT DATA Figtree Systems Pty Ltd is the sole provider of the relevant maintenance and support, and a competitive tender process is not possible (because it is not possible to get another supplier to support the bespoke solution developed by NTT DATA Figtree Systems Pty Ltd.);
 - (iii) NTT DATA Figtree Systems Pty Ltd was evaluated as best value for money from a competitive tender process, and a repeat tender process is unlikely to yield a different outcome; and
 - (iv) the existing system meets the current needs of the City; and
- (C) authority be delegated to the Chief Executive Officer to negotiate, execute and administer the contract with the supplier NTT DATA Figtree Systems Pty Ltd.

Attachments

Attachment A. Maintenance and Support Financials (Confidential)

Background

1. In 2014, the City tendered under RFT 1390 for an IT application, to record and report Work Health and Safety (WHS) data in order to comply with WHS legislation and NSW WorkCover self-insurance licence requirements. The system would also allow incident reporting, workers compensation and injury management information to be captured, stored, analysed and reported in accordance with prescribed standards, and integrated with the in-house developed risk management system.
2. The procurement of a Self-Insurers Claims System (SIMS) along with a three-year Maintenance and Support contract with two one-year optional extensions was entered into by the City with NTT DATA Figtree Systems Pty Ltd.
3. In February 2019, with the Maintenance and Support contract expiring and both options having been exercised, the City sought and gained Council approval for a 12-month extension of the contract with the maintenance and support provider of the SIMS application, NTT DATA Figtree Systems Pty Ltd, from 1 July 2019 to 30 June 2020.
4. The existing SIMS application meets the City's current needs but requires an extension of the Maintenance and Support contract.

Key Implications

Organisational Impact

5. Without access to a Self-Insurers Claims System to record and report WHS data the City would find it difficult to meet its obligations under WHS legislation and NSW WorkCover self-insurance licence requirements.
6. The City has invested resources to become a self-insured Council and the use of the Self-Insurers Claims System is a requirement to maintain the self-insurers licence that provides the City with considerable cost savings (over \$1.7M pa).

Budget Implications

7. There are sufficient funds allocated for the annual maintenance and licencing contractual payments in the draft 2020/21 Annual Budget and future years' forward estimates (the subject of a separate report to Council) as detailed in confidential Attachment A.

Relevant Legislation

8. The report has been prepared in accordance with the Local Government Act 1993 (NSW), the Local Government (General) Regulation 2005 and the City's Procurement and Contract Management Policy.
9. Local Government Act 1993 - Section 10A provides that a council may close to the public so much of its meeting as comprises the discussion of information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.

10. Attachment A contains confidential commercial information of the payments made to the incumbent supplier.
11. 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

12. Council approved an Exemption from Tender dated 11 February 2019 and extended the Maintenance and Support contract with NTT DATA Figtree Systems Pty Ltd for one year to 30 June 2020. A further exemption is required to be approved before the previous exemption expires.

Options

13. The option of undertaking a full tender for these Maintenance and Support services is not recommended due to the following reasons:
 - (a) significant time and effort has been expended to tailor the existing solution to the needs of the business;
 - (b) NTT DATA Figtree Systems Pty Ltd is the sole provider of the relevant maintenance and support, and a competitive tender process is not possible (because it is not possible to get another supplier to support the bespoke solution developed by NTT DATA Figtree Systems Pty Ltd.);
 - (c) NTT DATA Figtree Systems Pty Ltd was evaluated as best value for money from a competitive tender process, and a repeat tender process is unlikely to yield a different outcome; and
 - (d) it could not be completed prior to the existing 30 June 2020 contract expiry date due to the expected duration it will take to perform a procurement and implementation.

Public Consultation

14. No public consultation has been undertaken.

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