

Item 13**Direct Contract Negotiations - Street Furniture, Out-of-Home Media and WiFi Services****File No: 2020/228444****Proposal No: RFP0119****Summary**

This report provides details of the offers received as part of the Request for Proposal for Street Furniture, Out-of-Home Media and Wi-Fi Services.

The City of Sydney entered into a Supply and Maintenance of Street Furniture Agreement with JCDecaux Australia Pty Ltd (JCDecaux) in January 1997. The Supply and Maintenance of Street Furniture Agreements include the design, supply, installation and management of street furniture across the Local Government Area, 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.

On 6 August 2018, Council resolved to extend the term of the Supply and Maintenance of Street Furniture Agreements to 31 January 2020, which also included a transition period for street furniture services to be completed within a two-year timeframe post contract expiry (i.e. up till 31 January 2022).

Following an extensive formal open Expression of Interest and subsequent Tender for Street Furniture, Out-of-Home Media and Wi-Fi Services, Council resolved in May 2019 to cancel the Tender as no satisfactory commercial offer was received at the end of the tender process. It also resolved 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 and authorised the Chief Executive Officer to enter into direct negotiations with suitable and interested service providers, for the purpose of determining the alternative options for delivery of any or all of the Street Furniture, Out-of-Home Media and Wi-Fi Services.

Ten suitably qualified services providers were requested to offer proposals on all or part of the above services. Following initial submissions and presentations from eight interested parties, the City Of Sydney shortlisted three service providers of Street Furniture and Out-of-Home Media services and two Wi-Fi service providers for further negotiations.

Given the nature of the shortlisted proposals, a decision was taken to consider the Wi-Fi services proposal after finalising the Street Furniture and Out-Of-Home Media services contract. The next phase of the Wi-Fi services negotiations is expected to re-commence in quarter 1 of financial year 2020/21.

The negotiations with three shortlisted proponents for the provision of Street Furniture and Out-of-Home Media have now concluded, and the terms of a contract have been agreed with a preferred service provider.

This report recommends that Council accepts the offer for the provision of Street Furniture and Out-of-Home Media received from the preferred proponent and enter into a contract with this service provider.

This report recommends that Council accept the offer of Service Provider A for Street Furniture and Out-of-Home Media.

This report further recommends that Council confirm that it is appropriate to proceed with the contract for the provision of Street Furniture and Out-of-Home Media without an additional tender process. The Council resolved to proceed in this way in May 2019 and gave its reasons why there were extenuating circumstances meaning that a satisfactory result would not be achieved by inviting fresh tenders. There has not been any change in circumstances since May 2019 that would lead Council to change its approach. The passage of time since May 2019 is a further reason to maintain this approach.

Recommendation

It is resolved that:

- (A) Council note that in May 2019 it resolved to grant an exemption from tender for Street Furniture, Out-of-Home Media and Wi-Fi Services in accordance with section 55(3)(i) of the Local Government Act 1993 (NSW) on the basis that a satisfactory result would not be achieved by inviting tenders, due to a lack of competitive tenders and current market conditions for Street Furniture, Out-of-Home Media and Wi-Fi Services;
- (B) Council confirm that the extenuating circumstances noted in clause (A) continue to apply, that the passage of time since May 2019 is a further reason to maintain this approach and that it is appropriate to proceed with the contract for the provision of Street Furniture and Out-of-Home Media without an additional tender process;
- (C) Council accept the offer of Service Provider A for Street Furniture and Out-of-Home Media for a period of 10 years, with the option of an extension of five years if appropriate;
- (D) authority be delegated to the Chief Executive Officer to finalise, execute and administer the contracts relating to the tender;
- (E) authority be delegated to the Chief Executive Officer to exercise the option referred to in clause (C), if appropriate, and negotiate the price to extend the contract accordingly; and
- (F) Council note that negotiations for Wi-Fi services are still ongoing with two shortlisted service providers.

Attachments

- Attachment A.** Evaluation Summary (Confidential)
- Attachment B.** Summary of Key Terms (Confidential)
- Attachment C.** Probity Report (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 Leichardt 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 - up until 31 January 2022). This transition period will allow for the successful Service Provider 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 is 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. The extension of the Supply and Maintenance of Street Furniture Agreements expired on 31 January 2020 and the transition period has now commenced. In line with the Extension Agreement the City issued the first Removal Notice for Street Furniture on 31 March 2020 for seats and bins to be removed from 1 August 2021 until 1 November 2021. Further Removal Notices are to be issued by 31 October 2020 for the removal of bus shelters, kiosks, toilets and poster bollards, with a likely removal period from mid-2021 until 31 January 2022.
9. 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 an Expression of Interest, followed by select tender incorporating an Early Contractor Involvement process.

10. 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.
11. At the completion of the expression of interest evaluation, three service providers were short-listed to participate in a select tender process.
12. In May 2019, Council resolved to cancel the Tender as no satisfactory commercial offer was received at the end of the tender process. It also resolved 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. Council authorised the Chief Executive Officer to enter into direct negotiations with suitable and interested service providers, for the purpose of determining the alternative options for delivery of any or all of the Street Furniture, Out-of-Home Media and Wi-Fi Services. This is in accordance with the Local Government Act 1993, the Local Government (General) Regulation 2005, the NSW Office of Local Government Tendering Guidelines for NSW Local Government and the City's Contracts Policy.
13. In July 2019, the City issued a Request for Proposals requesting interested parties to submit responses for the providing services for any or all of the Street Furniture, Out-of-Home Media and Wi-Fi Services. To prioritise the Street Furniture and Out-of-Home components, a decision was made to proceed solely with those components over the Wi-Fi services, which will re-commence shortly. The Street Furniture and Out-of-Home components include:
 - (a) the design of kiosks, toilets, shelters and communications pylons and the prototyping, installation and ongoing maintenance of kiosks, toilets, shelters, and communications pylons and seats and bins. The new designs for shelters, kiosks, communications pylons and toilets are required to complement the City's existing Sydney Suite designs of seats and bins; and
 - (b) the display of advertising (both static and digital) on certain street furniture items (bus shelters, kiosks, automated public toilets and communication pylons).
14. As part of the preparation for the negotiations and to ensure the City's accountability during the process, a Negotiation Plan was prepared and signed by the negotiation team. A probity advisor was engaged to oversee the process and a Probity Plan prepared.

Subsequent Negotiations and Request for Proposal (RFP)

15. Following initial meetings with a number of suitable potential service providers, a Request for Proposal (RFP0119) was issued to ten proponents. Eight Service Providers decided to participate and submitted initial presentations outlining their proposals.

Request for Proposal Submissions

16. Eight submissions were received from the following organisations offering the shown services:
- ENE-HUB Pty Ltd - Wi-Fi services;
 - HUB GROUP - Street Furniture services (Seats and Bins);
 - JCDecaux Australia Pty Ltd with Telstra Corporation Ltd - Street Furniture, Out Of-Home Media and Wi-Fi services;
 - OneWiFi - Wi-Fi services;
 - oOh!Media Assets Pty Ltd - Street Furniture and Out-Of-Home Media services;
 - Optus - Wi-Fi services;
 - QMS Media Ltd - Street Furniture and Out-Of-Home Media services; and
 - TPG Network Pty Ltd - Wi-Fi services

Request for Proposal Evaluation

17. The Evaluation Panel consisted of four senior staff with access to an Out-Of-Home Media services consultant. All members have signed Pecuniary Interest Declarations. No pecuniary interests were noted.
18. Upon review of initial presentations and submissions received, the City issued clarifications and met proponents on multiple occasions to discuss their updated offers and further refine proposals in more detail and to better meet the City's requirements.
19. In October 2019, the Negotiation Team assessed the submissions against the criteria in the RFP documentation and Negotiation Plan and agreed to shortlist three Street Furniture and Out-of-Home (OOH) media providers and two Wi-Fi providers for further consideration. At this point during the negotiation process, the City put the Wi-Fi component of the procurement on hold so it could focus on Street Furniture and OOH media services. These services were a priority because the existing contract would expire in January 2020. The next phase of the Wi-Fi services negotiations are expected to re-commence in quarter 1 of financial year 2020/21.
20. All offers were assessed in accordance with the approved evaluation criteria shown in the Negotiation Plan being:
- (a) aligned with City's project objectives;
 - (b) commercial criteria;
 - (c) capability; and
 - (d) methodology.

21. At the completion of this first evaluation, the following service providers were shortlisted to participate in further negotiations to develop their proposal in detail:

For Street Furniture and Out-Of-Home Media services:

- (a) JCDecaux Australia Pty Ltd with Telstra Corporation Ltd;
- (b) oOh!Media Assets Pty Ltd; and
- (c) QMS Media Ltd.

For Wi-Fi services:

- (d) ENE-HUB Pty Ltd; and
- (e) OneWiFi.

Further Negotiations for Street Furniture and Out-of-Home Media Services

22. Given the complexity of services, design considerations and commercial risk sharing arrangements, further negotiation meetings were held with the three shortlisted service providers for Street Furniture and Out-Of-Home services until December 2019.
23. In early 2020, the Street Furniture and Out-Of-Home services proponents were requested to provide their best and final offers (BAFO) taking into account the clarifications and feedback provided by the City during the negotiation process.
24. Following receipt of the BAFO submissions, the Negotiation Team updated its evaluation against the criteria above and agreed to progress the highest ranked proponent to the contract drafting stage of the negotiation process.
25. Debriefs with the three Street Furniture and OOH media providers were held in March 2020, where each proponent was advised of the outcome of their proposal.
26. There has been a number of negotiation meetings around the design process, timelines for the transitioning and contract terms with the preferred service provider for Street Furniture and Out-Of-Home Media. A summary of the key contract terms is attached at Confidential Attachment B.
27. It is now recommended that Council accept the offer received from the preferred service provider for Street Furniture and Out-of-Home Media Services, for the reasons set out in Confidential Attachment A, and that authority be delegated to the Chief Executive Officer to execute and administer the contract for the services referred.

28. It is also recommended that Council confirm that it is appropriate to proceed with the contract for the provision of Street Furniture and Out-of-Home Media without an additional tender process, for the reasons given by Council in the May 2019 resolution. The process of engaging with potential service providers and RFP0119 have not revealed any change in circumstances since May 2019 that would lead Council to change its approach. The fact that more time has passed without putting in place arrangements for the ongoing provision of Street Furniture and Out-of-Home Media services is a further reason reinforcing the conclusion that the extenuating circumstances mean that a satisfactory result would not be achieved by inviting tenders. For this reason, it is recommended that Council resolve to confirm that in the circumstances it is appropriate to enter into the contract without an additional tender process. An updated analysis of the extenuating circumstances applying to this contract is set out in Confidential Attachment A.

Financial Implications

29. 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 adjusted to reflect the new contract and included in future iterations of the City's Long Term Financial Plan.

Relevant Legislation

30. The Original EOI, Tender, Tender Cancellation and subsequent negotiations with suitable Service Providers has been conducted in accordance with the Local Government Act 1993, the Local Government (General) Regulation 2005, the Office of Local Government Tendering Guidelines for NSW Local Government and the City's Procurement and Contract Management Policy.
31. 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.
32. Attachments A, B and C contain confidential commercial information of the proposals from Service Providers, and details of Council's 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.
33. 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

34. The existing contract for Street Furniture Services expired on 31 January 2020, with an up to 2 year transition period expiring on 31 January 2022.
35. The first removals of existing street furniture items and their replacement with new street furniture will likely commence in mid-2021 and be completed by 31 January 2022.
36. The proposed contract duration is for ten years from the start of operations of the new Street Furniture and Out-Of-Home Media services, with the option of one extension of five years, subject to satisfactory performance and operational requirements.

Options

37. Council has the following options in regard to this offer:
 - (a) accept the offer that has been assessed to be the most advantageous, or
 - (b) decline to accept any of the offers.
38. One of the circumstances in which Council could decline to accept any offer is if Council considered it appropriate to conduct a further tender process. For the reasons set out above, it is not recommended that Council make that decision. Rather, Council should be satisfied that it is appropriate to proceed as resolved in May 2019.
39. It is not recommended to decline the offer by the preferred service provider as the market has been thoroughly tested throughout this process and it is unlikely that a better offer would be received. The current agreement with the incumbent requires the City to transition to a new provider from April 2021 onwards. This timeline cannot be met if new offers are called for.
40. It is recommended that Council accept the offer by the preferred service provider for the reasons set out in Confidential Attachment A.

Public Consultation

41. There will be public consultation prior to the replacement of the existing street furniture and temporary arrangements will be made for the period from commencement of removal of an item of furniture and the installation completion of its replacement.

KIM WOODBURY

Chief Operating Officer

Bill Carter, Chief Financial Officer

Ian Rudgley, Chief Procurement Officer

George Angelis, Chief Engineer

Ruth Leiminer, Project Manager