

**Item 9.****Exemption from Tender and Contract Variation - Construction Services - Joynton Avenue and Zetland Avenue**

**File No:** X009530

**Summary**

The contract for the upgrade of Joynton Avenue and the construction of Zetland Avenue (East), was awarded to Ford Civil Constructions Pty Ltd by Council on 6 May 2019. Site works commenced in June 2019 and are expected to finish in early 2021.

Due to additional site complexity and latent conditions during the construction period, the scope has changed with a re-programming of the roadworks to meet both the City's and Gunyama Park Aquatic and Recreation Centre (GPARC) time lines.

The additional scope includes new electrical services from the hospital site to Gunyama Park Aquatic and Recreation Centre, provision of new sewer infrastructure from Gunyama Park Aquatic and Recreation Centre to the existing Sydney Water main sewer line, and the replacement of the water supply system which is nearing the end of its effective design life. Latent ground conditions are also being managed during the current site works.

The additional requirements have resulted in cost increases and required the creation of Separable Portions, after the contract was awarded, to enable practical and contractual control of the works. The scope changes and associated costs are being negotiated with the contractor as they arise during construction.

This report is seeking a Council approval for an exemption from tender for the costs of the additional scope.

## Recommendation

It is resolved that:

- (A) Council approve an exemption from tender for the provision of construction services and approve the increase of contract contingency for the Joynton Avenue and Zetland Avenue, Zetland project due to extenuating circumstances;
- (B) Council note the reasons a satisfactory outcome would not be achieved by inviting tenders are:
  - (i) a contractor for the construction works has already been appointed in accordance with the City's procurement processes; and
  - (ii) the additional cost required to establish another contractor on site is not considered value for money;
- (C) Council approve a transfer of surplus funds from the Zetland East budget to cover a shortfall in the Joynton Avenue budget, noting these two projects have been combined into a single construction contract; and
- (D) authority be delegated to the Chief Executive Officer to negotiate, execute and administer any documentation required for the purpose of effecting the increase to the contract contingency referred to in (A) above.

## Attachments

- Attachment A.** Financial and Contractual Implications to the Existing Ford Civil Contracting Contract (Confidential)

## Background

1. This project is part of the City's Green Square Town Centre development program, which is the centre of the Green Square urban renewal area. Joynton Avenue and Zetland Avenue are located in the suburb of Zetland.
2. The project works include a public domain upgrade, new cycleway and road construction, raising of the existing road, and the installation of associated services, including a deep water stormwater drainage system.
3. In May 2019, Council awarded Ford Civil Contracting Pty Ltd a civil and roadworks construction contract to complete the project. Site works commenced in June 2019 and are expected to be completed in early 2021.
4. Additional costs have arisen after the contract was awarded due to additional scope requirements, latent conditions, and the necessary creation of two Separable Portions as noted below:
  - (a) the contract was split into two Separable Portions to enable coordination with the Gunyama Park Aquatic and Recreation Centre construction program. Separable Portion 1 reached Practical Completion in June 2020. Separable Portion 2 will be completed in early 2021;
  - (b) additional works, including new sewer, water and electrical infrastructure, are required to supply the Gunyama Park Aquatic and Recreation Centre; and
  - (c) latent conditions encountered to date include unsuitable soil that required relocation off site. It is likely further latent conditions will be encountered during the remaining site works.

## Financial Implications

5. There are sufficient funds within the current year's capital works budget to complete the project.

## Relevant Legislation

6. Exemption from tender for The Joynton Avenue and Zetland Avenue project at Zetland is recommended in accordance with Local Government Act 1993, section 55(3)(i).
7. Local Government Act 1993, the Local Government (General) Regulation 2005 and the City's Procurement and Contract Management Policy.
8. 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.

9. Attachment A 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.
10. 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**

11. The contract date for practical completion for all remaining works is currently 30 January 2021.

### **Options**

12. An alternative option would be to tender the additional works, however, this would lead to significantly increased costs and further delay project completion.
13. It is therefore recommended to undertake the additional work by the current contractor, as this will provide significantly better value for money and allow the project to meet critical timelines.

### **Public Consultation**

14. Public consultation is ongoing with the Green Square community.

### **AMIT CHANAN**

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