

## Item 12.

### Tender - Legal Services Panel

File No: X034622

Tender No: T-2020-361

### Summary

This report provides details of the tenders received for the provision of legal services through the re-establishment of a legal services panel.

The City uses a combination of in-house and external legal support to assist Council to deliver its services. Historically, panels for ten different areas of law have been established to allow staff to call on external legal support in circumstances where in-house legal support is not appropriate or when additional resourcing is required. Under the current tender, it is proposed to reduce the number of panels to seven, combining several of the areas into a general commercial panel.

The establishment of these legal panels provides the City's internal legal, insurance and workforce services staff with access to an approved panel of legal firms to deliver legal services within the nominated areas of law as and when required. Much of the City's legal work is done by in-house lawyers, but the panel is needed to provide additional support in relation to specialised areas of expertise, support in high volume work areas such as the preparation of leases, for occasions where additional resources are required or in circumstances where a potential conflict of interest arises.

This report recommends that Council accept the tender offers of Tenderers A, B, E, F, G, H, K, M, Q, S, T, Y, BB and CC for appointment to the legal services panels listed in Confidential Attachment A. The identity and number of recommended tenderers vary across the different panels, reflecting requirements for different skills and experience, and to ensure adequate coverage of the City's requirements in the different areas. The report also recommends that authority be delegated to the Chief Executive Officer to enter into individual contracts over \$250,000 without a report to the Tender Review Group for the few engagements when legal fees for a matter are anticipated to exceed that amount.

## Recommendation

It is resolved that:

- (A) Council accept the tender offers of Tenderers A, B, E, F, G, H, K, M, Q, S, T, Y, BB and CC for appointment to the legal services panel in the areas of law noted in Confidential Attachment A to the subject report, and at the rates set out in Confidential Attachment B to the subject report, for a period of four years, with the option of two further extensions, each of one year if appropriate;
- (B) authority be delegated to the Chief Executive Officer to:
  - (i) negotiate, execute and administer all contracts relating to the tender; and
  - (ii) enter into individual contracts with law firms on the legal services panel with a value of over \$250,000 without following the process set out in Delegation 5 of the Instrument of Delegations from Council to the Chief Executive Officer; and
- (C) authority be delegated to the Chief Executive Officer to exercise the option referred to in clause (A), if appropriate, and negotiate the price to extend the contract accordingly.

## Attachments

**Attachment A.** Tender Evaluation Summary (Confidential)

**Attachment B.** Price and Schedule of Rates (Confidential)

## Background

1. On 21 November 2016, Council resolved to appoint various legal service providers to ten legal services panels for a three year initial term, together with two further options, each of one year. The period of appointment to the panel is due to come to an end on 16 December 2020, as the option for the final year has not been exercised.
2. The establishment of a legal services panel allows internal legal, insurance and workplace relations staff efficient access to a pre-approved panel of qualified law firms to deliver legal services within the nominated areas of law.
3. Much of the City's legal work is done by in-house lawyers, but the panel allows staff to access additional support in circumstances including:
  - (a) in relation to specialised areas of expertise;
  - (b) to support in high volume work such as the preparation of leases;
  - (c) in circumstances where additional resources are required; or
  - (d) in circumstances where a potential conflict of interest arises.
4. External law firms are engaged on an "as-needs" basis, with no guarantee being given as to the volume of work provided to any law firm appointed to any panel.

## Invitation to Tender

5. The tender was advertised on 25 August 2020 on Tenderlink, City of Sydney website, LinkedIn and other social media.
6. Tenders closed Tuesday 22 September 2020 at 11am.

## Tender Submissions

7. 30 submissions were received from the following organisations:
  - Ashurst;
  - Bartier Perry;
  - BBW Lawyers;
  - Bird & Bird;
  - Clayton Utz;
  - Craddock Murray Neumann;
  - DWF Law Australia Pty Limited trading as DWF Australia;
  - Ernst & Young;

- Gadens;
  - Hall & Wilcox;
  - Holding Redlich;
  - Jaramer Pty Limited;
  - K&L Gates;
  - KPMG;
  - Kreisson Legal Pty Limited;
  - Love Food Australia Pty Limited;
  - Maddocks;
  - Marsdens Law Group;
  - Massons Commercial Law Pty Limited;
  - Matthews Folbigg Pty Limited;
  - McCabe Curwood Pty Limited;
  - McCulloch & Buggy Pty Limited;
  - McCullough Robertson;
  - Moray & Agnew;
  - Norton Rose Fulbright;
  - PeGFinfo;
  - Pendlebury Workplace Law;
  - Redenbach Lee Lawyers;
  - Thomson Geer; and
  - Wotton & Kearney Pty Limited.
8. No late submissions were received.

### **Tender Evaluation**

9. All members of the Tender Evaluation Panel have signed Pecuniary Interest Declarations. No pecuniary interests were noted.
10. The relative ranking of tenders as determined from the total weighted score is provided in the Confidential Tender Evaluation Summary – Attachment A.

11. All submissions were assessed in accordance with the approved evaluation criteria being:
  - (a) the schedule of rates and any charging models for particular types of legal work;
  - (b) demonstrated experience and expertise of the law firm and the relevant staff in carrying out services of a similar size and nature for each nominated area of law;
  - (c) proposed methodology for providing the services, including but not limited to:
    - (i) demonstrated ability to deliver quality outcomes for clients;
    - (ii) proposed allocation of staff to matters; and
    - (iii) approach to developing and maintaining a relationship with the City;
  - (d) the form of costs agreement;
  - (e) environmental management;
  - (f) Work Health and Safety; and
  - (g) financial and commercial trading integrity, including insurances.

### **Performance Measurement**

12. All law firms appointed to the panel will be required to sign a standing offer deed, which will govern the terms of appointment to the relevant panels, and will set out the performance obligations of the law firms.
13. The decision to extend the term of the panel will be at Council's sole discretion. There is no guarantee that any of the appointed law firms will receive any amount of work as a result of being appointed to a panel.
14. Law firms appointed to the panel will be required to meet minimum service standards, and meet key performance indicators relating to managing their legal spend, regular reporting and continuous improvement.
15. Law firms appointed to the panel who are receiving instructions from the City will be assessed annually against all key performance indicators.

### **Financial Implications**

16. There are sufficient funds allocated for this project within the current year's operating budget and future years' forward estimates.

### Relevant Legislation

17. The tender has been conducted in accordance with the Local Government Act 1993, the Local Government (General) Regulation 2005 and the City's Procurement and Contract Management Policy.
18. 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.
19. Attachments A and B contain 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.
20. 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.
21. It is recommended that Council also delegate authority to the Chief Executive Officer to enter into contracts with law firms without a report being provided to the Tender Review Group for the few engagements when legal fees for a matter are anticipated to exceed \$250,000. It is anticipated that there would be only one or two of these matters per year. Engagement of a law firm for these types of matters are generally time-sensitive and require engagement of a specialised law firm.

### Critical Dates / Time Frames

22. The current legal services panel comes to an end on 16 December 2020.

### Options

23. Legal services could be provided wholly internally by existing internal staff, with ad-hoc request for tender or request for quote processes for each individual engagement of an external law firm. This option is not recommended due to the nature of the legal work required by the panel. The work is either routine and repetitive (for example, leasing work) or urgent and requiring immediate involvement from an external law firm.

**Public Consultation**

24. No public consultation was required for this tender.

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