

Exemption from Tender and Contract Variations – Catering Services – Compass Group (Restaurant Associates)

File No: X079066

Tender No: T1628

Summary

This report seeks an exemption from tender for Catering Services due to extenuating circumstances resulting from the impact of the ongoing Covid-19 pandemic and requests Council approve contract variations for catering services with Compass Group B&I Hospitality Services Pty Ltd (Restaurant Associates).

Restaurant Associates have been contracted to the City for over 15 years, providing catering services for external events in Centennial Hall, Lower Town Hall and Barnet Long Room. Restaurant Associates' current contract commenced 3 July 2017 following a tender process whereby they were the successful tenderer.

The City's current contract with Restaurant Associates expires on 2 July 2021. Under the contract, the City may extend the contract for maximum of three further terms of two years each.

At the start of the Covid-19 pandemic in 2020, Restaurant Associates informed the City of the financial difficulties they were facing due to the dramatic changes in market conditions, and the financial arrangements under the contract were temporarily modified to accommodate these unexpected changes.

With the Covid-19 pandemic still presenting significant uncertainty and risk in the market, the City considers that extending Restaurant Associates' contract for a further term based on the original payment terms would not be viable. In addition, it is considered that tendering the service in the current environment would not deliver a satisfactory result for the City. Further, it is expected that, while 2022 may start to see some recovery in the gala / catering sector, this will not be substantial. Any indication of this pick-up is unlikely to be seen until at least October 2021 at the earliest, but more realistically from February 2022 onwards, with only some benefit in the 2021/22 Financial Year.

After careful consideration of the available options, the City is seeking approval to vary the financial terms of the contract, and extend the contract for an additional two years based on these varied terms. This will ensure continuity of service through the period of the ongoing Covid-19 pandemic without exposing the City to the need to go to tender in a highly risk-averse market.

Recommendation

It is resolved that:

- (A) Council approve an exemption from tender in accordance with section 55(3)(i) of the Local Government Act 1993 to extend the duration of the existing contract to 2 July 2023 on the terms set out in Confidential Attachment A to the subject report, for the management of the City's Catering Services, by reason of extenuating circumstances, noting that a satisfactory result for the City would not be achieved by inviting tenders at this time;
- (B) Council note the reason that a satisfactory result for the City would not be achieved by inviting tenders is the high levels of uncertainty and risk in the market as a result of the ongoing Covid-19 pandemic, which will not result in value for money;
- (C) Council note that the financial arrangements under the existing contract were temporarily modified by the Chief Executive Officer in 2020 in accordance with the City's Covid-19 recovery response to accommodate the effects of the Covid-19 pandemic as further detailed in Confidential Attachment A to the subject report;
- (D) Council approve a variation to the contract for Catering Services to vary the financial arrangements as further detailed in Confidential Attachment A to the subject report for the period 1 July 2020 until 2 July 2023; and
- (E) authority be delegated to the Chief Executive Officer to finalise negotiations and enter into any necessary documentation to give effect to the resolutions above.

Attachments

Attachment A. Financial and Contractual Implications (Confidential)

Background

1. Restaurant Associates have been contracted to the City for over 15 years, providing catering services for external events in Centennial Hall, Lower Town Hall and Barnet Long Room. Their current contract commenced 3 July 2017 following a competitive tender process.
2. Restaurant Associates' contract expires 2 July 2021, unless extended by the City. The current contract provides for a maximum of three further terms of two years each.
3. This report seeks an exemption from tender for Catering Services to enable a variation of the terms of the current contract due to extenuating circumstances resulting from the impact of the ongoing Covid-19 pandemic, and requests Council approve contract variations for catering services with Compass Group B&I Hospitality Services Pty Ltd (Restaurant Associates).
4. In response to the Covid-19 pandemic, and in line with the announcement by the Prime Minister that indoor public gatherings would be limited to 100 people only, the City started receiving event cancellations from 13 March 2020 for events taking place from 14 March 2020 onwards. Due to the imposed restrictions, Restaurant Associates were forced to cease operating as the ban on public gatherings required closure of the City's venues.
5. Since that time, despite restrictions incrementally lifting and events being permitted, there has been little to no demand for catered events, and the primary revenue driver for Restaurant Associates has been through the provision of packaged food to service returned travellers in quarantine hotels.
6. In response to venue closures, Restaurant Associates applied to the City for reimbursement of monies pre-paid to the City as per their contracted financial commitment to Council. This was approved by the Chief Executive Officer under delegation in accordance with the City's Covid-19 recovery response to accommodate the effects of the Covid-19 pandemic, with the monies reimbursed on a pro-rata basis.
7. It is recommended that the existing contract is extended to 2 July 2023, with a change to the financial arrangements of the existing contract. No further options to extend the contract will be offered, with the management service to be retendered at the end of the extended contract period. All current service levels and operating conditions will be retained.
8. It is expected that there will be little to no catering-orientated business in 2021 (July to December) in the City's landmark venues due to limited availability. Any catered events that do take place are unlikely to have large numbers of attendees due to ongoing Covid-19 restrictions and lowered demand. In most cases, the caterer would be providing beverage service to performance events only, generating significantly lower revenues.
9. It is expected that 2022 may start to see some recovery in the gala / catering sector, but that this will not be substantial. Any indication of this pick-up is unlikely to be seen until October 2021 at the earliest, but more realistically from February 2022 onwards, with only some benefit in the 2021/22 financial year.
10. The City expects that the impact of Covid-19 will be ongoing with some restrictions on venue capacities in place until at least the end of 2022.

Key Contract Terms

11. The existing contract will be extended until 2 July 2023 (refer to Confidential Attachment A).
12. A change to the financial arrangements of the existing contract is proposed (refer to Confidential Attachment A).
13. No further options to extend the contract will be offered, with the management service to be retendered in January 2023 with a view for a new contract to commence in July 2023.
14. All current service levels and operating conditions will be retained.

Performance Measurement

15. Operational and financial performance targets are monitored on a monthly, quarterly and annual basis and through a combination of meetings, audits, inspections and reporting.

Financial Implications

16. Funding estimates as set out in Confidential Attachment A have been included in the City's draft 2021/22 Budget and future forward year estimates, the subject of a separate report in the current reporting cycle.

Relevant Legislation

17. The exemption from tender process 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 55 (3)(i) provides an exemption from tender for a contract where, because of extenuating circumstances, remoteness of locality or the unavailability of competitive or reliable tenderers, a council decides by resolution (which states the reasons for the decision) that a satisfactory result would not be achieved by inviting tenders.
19. 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.
20. Attachment A contains confidential commercial information of the contractor 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.

21. 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

22. The current contract expires 2 July 2021. The terms of the amended contract would extend the contract to conclude 2 July 2023.
23. A new tender process is proposed to commence in January 2023.

Options

24. Alternative options are considered below and are not recommended for the reasons set out.
25. The implications of not approving the variations to the existing contract are that the City would be required to either release a tender to the market immediately and make an appointment of a new provider by 1 July 2021, or to extend the current contract on its original terms, which would place the caterer in a financially unviable position and would not be a viable option.
26. The City considered several options in this process:
 - (a) Do nothing. This would require the current caterer to pay upfront fees irrespective of their ability to generate revenue through events. This option was deemed unsuitable as the current market does not have enough demand to provide suitable capacity for the current caterer to generate revenues from events.
 - (b) Not engage a caterer. This would leave the City without a contracted caterer, and would enable hirers to use their preferred caterer or source one on an 'as needs' basis. This option is unacceptable as it would reduce the City's control over venues, making it difficult to maintain consistency and cleanliness and impacting on the City's reputation as a venue manager.
 - (c) Ad-hoc single supplier engagement or panel of caterers, which would see the City forgo a contract with any one single contractor and instead engage caterers on an ad-hoc as-needs basis. This option was considered unacceptable as it would not be cost effective to engage a caterer on an as-needs basis and induct them each time, with an inability to ensure consistency of food that may adversely affect the City's reputation as a venue manager.

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