

## Exemption from Tender and Contract Variations - Sydney New Year's Eve

**File No:** X080346.003

**Tender No:** 1704 and 1722

### Summary

This report seeks to vary and extend two contracts associated with the Sydney New Year's Eve event for a further year due to extenuating circumstances.

The City produces the Sydney New Year's Eve event with support from a number of government agencies. The event is one of the largest annual celebrations in the world, attracting over one million spectators along the foreshores of Sydney Harbour pre-pandemic and a global audience of more than 425 million.

The provision of the fireworks displays is an essential element of the event.

Barges are required as the main firing platforms for the fireworks displays on Sydney Harbour, along with tugs to move the barges to and from their allocated positions.

In June 2017, the City entered into an agreement with Foti International Fireworks Pty Ltd for the provision of pyrotechnics for the 2017 and 2018 Sydney New Year's Eve events, with the option to extend for a further term to cover the 2019 - 2021 events.

In August 2017, the City entered into an agreement with Polaris Marine Pty Ltd as Trustee for Polaris Marine Trust No 1 for the provision of barges and tugs for the 2017 and 2018 Sydney New Year's Eve events, with the option to extend for a further term to cover the 2019 - 2021 events.

The option to extend the further term was exercised for both contracts in June 2019.

In 2020, due to the Covid-19 pandemic the Sydney New Year's Eve event was produced by the NSW Government through the NSW Department of Premier and Cabinet's Partnerships and Engagement branch which resulted in both contracts being novated from the City. Following this event, a new contract for the remainder of the term was entered into by the City with each contractor, so as to complete the final year of the original contract option period.

The contracts are aligned to expire on 30 June 2022 following the 2021 Sydney New Year's Eve event. To achieve operational efficiencies, the intention was for the scope of services for pyrotechnics and barge and tug hire to be combined into one contract for the 2022 Sydney New Year's Event and the aim was to go to market no later than September 2021 for the provision of these services. The ongoing pandemic and related uncertainty around the format for the event in future has delayed the timeline to release this procurement.

An exemption to tender for the 2022 Sydney New Year's Eve event will provide the City with the additional time needed to review the format and develop a more accurate scope and combine the scope of services for pyrotechnics and barge and tug hire before going back to market for the provision of services for the 2023 Sydney New Year's Eve event (and respective Further Terms applicable to the agreement).

As such, after careful consideration of the available options, the City is seeking approval to vary and extend both contracts for an additional one year to cover the 2022 Sydney New Year's Eve event.

## Recommendation

It is resolved that:

- (A) Council approve an exemption from tender to enter into a one-year agreement with Foti International Fireworks Pty Ltd for the provision of pyrotechnic services for the 2022 Sydney New Year's Eve event;
- (B) Council approve an exemption from tender to enter into a one-year agreement with Polaris Marine Pty Ltd as Trustee for Polaris Marine Trust No 1 for the provision of barges and tugs for the 2022 Sydney New Year's Eve event;
- (C) Council note the reasons a satisfactory outcome would not be achieved by inviting tenders is due to the following extenuating circumstances:
  - (i) uncertainties relating to the event caused by the Covid-19 pandemic, the City's procurement timeline has been delayed for the provision of these services;
  - (ii) the delivery of the 2022 event would be impacted if a tender process were to be undertaken
- (D) Council approve the variation of the contract for the provision of pyrotechnic services for Sydney New Year's Eve for the price outlined in Confidential Attachment A to the subject report, for a period of one year to cover the 2022 Sydney New Year's Eve event;
- (E) Council approve the variation of the contract for the provision of barges and tugs for Sydney New Year's Eve for the price outlined in Confidential Attachment A to the subject report, for a period of one year to cover the 2022 Sydney New Year's Eve event; and
- (F) authority be delegated to the Chief Executive Officer to finalise negotiations and enter into any necessary documentation to give effect to these resolutions.

## Attachments

**Attachment A.** Financial Implications (Confidential)

## Background

1. The City produces the Sydney New Year's Eve event with support from a number of government agencies. The event is one of the largest annual celebrations in the world, attracting over one million spectators along the foreshore of Sydney Harbour and a global audience of more than 425 million.
2. The focus of the annual event is the fireworks displays. The displays are broadcast live nationally and internationally, and feature heavily in media coverage both prior to and following the event.
3. Barges are required as the main firing platforms for the fireworks displays on Sydney Harbour, along with tugs to move the barges to and from their allocated positions. These firing positions are in addition to the use of the Sydney Harbour Bridge and Sydney Opera House.
4. In June 2017, the City entered into an agreement with Foti International Fireworks Pty Ltd for the provision of pyrotechnic services for the 2017 and 2018 Sydney New Year's Eve events, with the option to extend for a further term to cover the 2019 - 2021 events.
5. In August 2017, the City entered into an agreement with Polaris Marine Pty Ltd as Trustee for Polaris Marine Trust No 1 for the provision of barges and tugs for the 2017 and 2018 Sydney New Year's Eve events, with the option to extend for a further term to cover the 2019 - 2021 events.
6. Following the 2018 event, the option to extend for a further term was exercised for both contracts.
7. In 2020, due to the Covid-19 pandemic the Sydney New Year's Eve event was produced by the NSW State Government through the NSW Department of Premier and Cabinet's Partnerships and Engagement branch which resulted in both contracts being novated from the City. In April and September 2021 respectively, the City re-engaged both suppliers to complete the final year of the original arrangement, to 30 June 2022.
8. Both contracts were aligned to expire on 30 June 2022 following the 2021 Sydney New Year's Eve event, with an intention to invite responses to a new tender combining pyrotechnic and barges and tug requirements under one contract to achieve operational efficiencies and potential savings no later than September 2021.
9. Due to uncertainties relating to the event caused by the ongoing pandemic, the City's procurement timeline has been unavoidably delayed.
10. Issuing a tender any later than October 2021 would not reasonably allow any supplier adequate time to source firework supplies in time for the 2022 Sydney New Year's Eve event. In addition, it would not enable a supplier to accommodate the long lead time required for delivery, including anticipated shipping delays as a result of Covid-19.
11. Collectively, these risks have the ability to impact numerous operational variables and invite unplanned event delivery constraints that would significantly impact the the City's ability to successfully deliver the 2022 Sydney New Year's Eve event.
12. The current suppliers have existing arrangements in place and are well placed to be able to mitigate these risks and ensure supply.

13. As a result, exemption from tender is sought to enter into a one-year agreement with Foti International Fireworks Pty Ltd for the provision of pyrotechnic services and a one-year agreement with Polaris Marine Pty Ltd as Trustee for Polaris Marine Trust No 1 for the provision of barges and tugs for the 2022 Sydney New Year's Eve event as outlined in Confidential Attachment A.

### **Key Contract Terms**

14. The two existing contracts will be extended for one year until 30 June 2023.
15. No further options to extend the contracts will be offered as the requirements in both contracts will be merged and retendered in 2022 to cover the 2023 Sydney New Year's Eve event (and the respective Further Terms applicable).

### **Performance Measurement**

16. Key Performance Indicators are set out in the contracts for both suppliers as follows:
  - (a) delivery of all elements of the services;
  - (b) quality of work;
  - (c) time;
  - (d) reporting;
  - (e) communication; and
  - (f) WH&S compliance
17. Performance of the suppliers is to be evaluated regularly, at least annually following each Sydney New Year's Eve event, and on completion of the contract.

### **Financial Implications**

18. The two suppliers have submitted a proposal to continue delivery of the services for the further one-year period and have indicated that they are able to meet the requirements. Details are outlined in Confidential Attachment A.
19. The contract amounts outlined in Confidential Attachment A will be accommodated by the City's future-year forward estimates and drawn from the total approved 2022/23 Sydney New Year's Eve operating budget which will be approved under appropriate delegation.

### **Relevant Legislation**

20. The exemption from tender process has been conducted in accordance with the Local Government Act 1993, the Local Government (General) Regulation 2021 and the City's Procurement and Contract Management Policy.

21. 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.
22. Confidential 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.
23. 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**

24. The term of the amended contracts will commence 1 July 2022 and conclude on 30 June 2023.
25. The extension of the term will enable the City to invite tenders for the new contract in early 2022 and have the contract for the combined services implemented with sufficient lead times for transition in/out periods, including adequate time to procure fireworks for future events.

### **Options**

26. Not proceeding with extending the terms of agreement for the existing suppliers will put at risk the City's ability to deliver the Sydney New Year's Eve event in 2022. The firework displays are the most significant creative element of the show delivered on Sydney Harbour.

**Public Consultation**

27. Public consultation is not required for the extension of this service.

**EMMA RIGNEY**

Director City Life

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