

Item 16.**Exemption from Tender – Parking Machine Service and Maintenance****File No: X006775.019****Summary**

This report seeks an exemption from inviting tenders for the provision of parking meter service and maintenance, inclusive of card payment gateway services, due to the unavailability of competitive or reliable tenderers.

The City owns 1,449 parking machines (with approximately 1,400 operational at any one time) which are serviced and maintained by the supplier of the ticket machines. The parking machines are in excellent condition and do not need replacement and will be functional for the full term of the proposed contract extension. The financial implications of replacing the parking machines is outlined in Confidential Attachment A.

The machines are serviced and maintained pursuant to a contract (No. 2739) which is due to expire on 30 November 2022 (inclusive of all options, which have been exercised).

The machines are programmed and managed remotely using a hosted system developed, maintained and operated by the service provider. In addition, the service provider facilitates payment processing through a third party provider in compliance with various payment card scheme requirements. There are currently no other compliant providers available for this service using the existing hardware within the machines.

There are no providers who could service and maintain the parking machines inclusive of the management systems and payment gateway services other than the original equipment manufacturer, and conducting a tender process would not produce competitive or reliable tenderers.

This report recommends that Council approve an exemption from tender for the provision of service and maintenance of the City's parking machines.

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 noting that, because of the unavailability of competitive or reliable tenderers, a satisfactory result would not be achieved by inviting tenders to provide service and maintenance of the City's parking machines;
- (B) Council note that a satisfactory result would not be achieved by inviting tenders for this work because:
 - (i) going to tender would not deliver a competitive process due to the inability of any other tenderer to provide service inclusive of an integrated management and reporting system using the existing hardware within the machines; and
 - (ii) the service includes provision of compliant payment gateway processing, which can only be enabled by the same provider as that providing the management system;
- (C) Council note that the current parking machines do not need to be replaced and significant cost would be incurred if they were replaced;
- (D) Council approve entering into a contract with the existing service and maintenance contractor for a maximum five year term (three years plus two options of one year each, subject to satisfactory performance); and
- (E) authority be delegated to the Chief Executive Officer to negotiate and approve the terms of the contract of the services agreement with the contractor provided that the contract is consistent with this resolution.

Attachments

Attachment A. Financial Implications (Confidential)

Background

1. The City operates 1,449 parking ticket machines. All 1,449 machines are serviced and maintained pursuant to a contract (No. 2739) which is due to expire on 30 November 2022 (inclusive of all options, which have been exercised).
2. This report seeks an exemption from inviting tenders for the provision of parking machine service and maintenance, inclusive of card payment gateway services, due to the unavailability of competitive or reliable tenderers.
3. The current fleet of machines are all the same type of machine, although purchased at different times.
4. When the City previously tendered, the only responses received for the provision of service and maintenance for the existing machines was from the supplier of the machines.
5. The machines are all in communication with a central management system to enable them to be programmed, communicate with payment systems, report on the status of the machine, and provide transaction information. The provider of the machines has developed this system over a number of years, and currently maintains and operates this management system.
6. The machines are currently only 3G enabled for communication back to the central management system and will need to be upgraded to 4G communication prior to 30 June 2024 as Telstra will be disabling the 3G network on or prior to this date.
7. The management system facilitates links to payment gateway services, and is required to be compliant with various international payment card scheme mandates for security of card data, and processing of payments. Only the supplier of the management system can enable such links. Currently, there is only one approved gateway service which operates in conjunction with the City's transactional bank, Westpac. There may be more in future, however, any such gateway would need to be linked and configured to the management system by the supplier.
8. Technology within the parking industry is constantly changing and has accelerated in recent years with the development of Apps used on handheld phones. As the App market matures there is the potential for the City to reduce the current parking machine footprint across the Local Government Area. Any reduction in the number of new parking machines purchased at the end of the renewed contract would provide a significant financial benefit to the City.
9. No other supplier could provide service and maintenance to the machines to the standard required by the City because:
 - (a) there would be no link to a centralised management and reporting system to identify faults and display automated alarms from the machines;
 - (b) programming of the machines could not take place when tariffs and restrictions change;
 - (c) card payments would not be possible as the centralised communications and management system is required to provide this capability; and

- (d) even if another supplier were to 'reverse engineer' such a management system, the cost of doing so would be prohibitive, and an unacceptable risk to the operation of the machine network.
- 10. Therefore, a satisfactory result would not be achieved by inviting tenders to provide service and maintenance of the City's ticket machines because of the unavailability of competitive or reliable tenderers.
- 11. Accordingly, this report recommends that the existing supplier be engaged to service and maintain the existing ticket machines inclusive of a management and communications system.

Performance Measurement

- 12. Performance measures are in place with the current provider under the current contract. The provider has met the contract requirements, and will be required to meet similar requirements in a new contract.

Financial Implications

- 13. There are sufficient funds allocated for this project, within the current year's operating budget and future years' forward estimates, based on allowances in line with current agreements.
- 14. Market testing of service and maintenance fees as well as payment gateway fees has taken place and confirmed that current fees are in line with other providers.
- 15. The financial implications are outlined in Confidential Attachment A.

Relevant Legislation

- 16. Local Government Act 1993, the Local Government (General) Regulation 2021 and the City's Procurement and Contract Management Policy in respect of the proposed exemption from tender.
- 17. 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.
- 18. Attachment A contains confidential commercial information 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.
- 19. 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

20. The existing service and maintenance contract for 1,449 machines ends on 30 November 2022. It is anticipated that if the recommendations set out in this report are adopted by Council, a new agreement would be in place by that date to enable continuous services to be provided.

Options

21. Council has the option of retendering for the services. This process is likely to take up to six months, which may require the existing contract to be extended month-to-month until the tender process is complete. However, for the reasons set out in this report, a different result is not expected to be achieved. Even if another tenderer provides a response, without the cooperation of the existing provider, there would be a need to:
 - (a) reverse engineer the entire communication and management system which records and reports on events, faults, technician attendance, transactions and alarms;
 - (b) understand and reverse engineer the programming capabilities of the machines in relation to tariffs, rates and timings;
 - (c) certify the credit card facilities with the City's transactional bank for EMV; and
 - (d) obtain a supply of spare parts.
22. Some of the above tasks could be expected to take between six and 12 months and incur significant expense. Refer to Confidential Attachment A for financial implications. During that time, the operation of the City's ticket machine network would be at high risk of failure.

Public Consultation

23. The infrastructure is already in place within the community, therefore no public consultation is required.

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