

Contract Variation and Exemption from Tender - Colliers Property Management Agreement

File No: X020009

Summary

The City of Sydney is responsible for a large and diverse mixed-use property portfolio comprising 251 buildings/assets with replacement cost valued at over \$2 billion. This includes community centres, libraries, public domain, depots, aquatic centres, corporate office and investment properties/assets. The City manages 925 community leases and 269 commercial leases.

On 13 November 2017, Council rejected the tender offers received for Property Management Services following an open tender process carried out in accordance with the Local Government Act 1993. Council also delegated authority to the Chief Executive Officer to negotiate, execute and administer the contract relating to the Property Management Services tender.

Following negotiations, the Chief Executive Officer entered into a Property Management Agreement contract with Colliers International (NSW) Pty Ltd on 3 April 2018 with the estimated 10-year contract amount detailed in Confidential Attachment A. The contract contains a schedule of rates, and the amount payable is dependent on the rental income the City receives, the value of new commercial leases, the number of new community leases, hours worked on valuations, and other one-off works and consumer price index.

Since 2018, several factors have impacted on the estimated 10-year contract amount including:

1. The City has acquired new commercial and community buildings and undertaken refurbishments to several buildings which has increased revenue;
2. Rents have escalated higher than the predicted forecast in 2018, prior to Covid-19;
3. More outdoor dining licences were granted;
4. The pandemic has created a higher than expected turnover of tenants resulting in additional leasing fees; and
5. The pandemic has generated the need for additional assessment work to comply with the National Cabinet Mandatory Code of Conduct which establishes commercial leasing principles in response to Covid-19.

This report seeks approval:

- to increase the total contract sum under the Property Management Agreement with Colliers International (NSW) Pty Ltd to deliver the contracted services; and
- for an exemption from tender to allow the provision of required additional services in enabling the City to comply with the National Cabinet Mandatory Code of Conduct.

The proposed increase to the estimated 10-year contract amount is in accordance with tendered rates and the additional services are within the provisions of the Property Management Agreement.

No additional funds are required in current or future operational budgets due to this contract variation as these funds were anticipated and forecast during the preparation of the 2022/23 budget.

Recommendation

It is resolved that:

- (A) Council approve an increase in the Property Management Agreement contract value with Colliers International (NSW) Pty Ltd as detailed in Confidential Attachment B to the subject report;
- (B) Council approve an exemption from tender in accordance with section 55(3)(i) of the Local Government Act 1993 noting that, because of extenuating circumstances, a satisfactory result would not be achieved by inviting tenders to provide additional services enabling the City to comply with the National Cabinet Mandatory Code of Conduct in response to the Covid-19 pandemic;
- (C) Council note that a satisfactory result would not be achieved by inviting tenders for this work because:
 - (a) it is ancillary to the work already undertaken by Colliers International (NSW) Pty Ltd to manage the City's tenants; and
 - (b) Colliers International (NSW) Pty Ltd has provided rates for the work that are in line with the rates for other work under the contract, and were assessed as value for money as part of the decision to award the contract.
- (D) Council approve the variation to the Property Management Agreement contract with Colliers International (NSW) Pty Ltd for additional assessment work to comply with the National Cabinet Mandatory Code of Conduct established in response to the Covid-19 pandemic as detailed Confidential Attachment B to the subject report;
- (E) authority be delegated to the Chief Executive Officer to negotiate, execute and administer the variation to the existing agreement with Colliers International (NSW) Pty Ltd to give effect to (A), (B) and (D) above; and
- (F) Council note that no additional funds are required are required in current or future operational budgets due to this contract variation as these funds were anticipated and forecast during the preparation of the 2022/23 budget.

Attachments

- Attachment A.** 13 November 2017 Council Resolution - Tender - Reject and Negotiate - Property Management Services
- Attachment B.** Contractual and Financial Implications (Confidential)

Background

1. The City of Sydney is responsible for a large and diverse mixed-use property portfolio comprising 251 buildings/assets with replacement cost valued at over \$2 billion. This includes community centres, libraries, public domain, depots, aquatic centres, corporate office and investment properties/assets. The City manages 925 community leases and 253 commercial leases.
2. On 13 November 2017, Council rejected the tender offers received for Property Management Services following an open tender process carried in accordance with the Local Government Act 1993. Council also delegated authority to the Chief Executive Officer to negotiate, execute and administer the contract relating to the Property Management Services tender.
3. Following negotiations, the Chief Executive Officer entered into a Property Management Agreement contract with Colliers International (NSW) Pty Ltd on 3 April 2018 with an estimated 10-year contract amount as contained in Confidential Attachment A. The contract contained a schedule of rates and the amount payable is dependent on the rental income the City receives, the value of new commercial leases, the number of new community leases, hours worked on valuations, and other one-off works and consumer price index.
4. The Property Management Agreement contract is structured for the City to reimburse Colliers for its work in four distinct categories:
 - (a) Fixed Fee: This is a percentage of the Colliers staffing costs including all overhead and profit margin annually escalating by a consumer price index;
 - (b) Commercial Portfolio Variable Fee: This is a fee based on a fixed percentage of all commercial income collections excluding the Queen Victoria Building (QVB) and the Capitol Theatre. This fee increases if aggregate rental income to the City increases (e.g. market increases or additional commercial space added);
 - (c) Community Portfolio Variable Fee: This This is a variable fee based on a fixed fee per administered active lease. This fee varies with the volume (number) of administered leases, but also annually escalates by a consumer price index;
 - (d) Leasing Fees: This is a fee paid to Colliers as a transactional fee and varied based on the volume of new leases signed up, and as a percentage of the yearly value. Fees will rise if the rental market rises; and
 - (e) Ad-Hoc Services: This fee allows for property valuations and special projects, within the scope of the contract, over the life of the contract.
5. Since 2018:
 - (a) The City has acquired new commercial and community buildings and undertaken refurbishment to several buildings which has increased rental revenue which in turn increases the Commercial Portfolio Variable Fee payable to Colliers in line with agreed contracted rates;
 - (b) Rents have escalated higher than the predicted forecast in 2018, prior to Covid-19 pandemic;
 - (c) More outdoor dining licences were granted;

- (d) The pandemic has created a higher volume turnover of tenants resulting in additional leasing fees; and
 - (e) The pandemic has generated the need for some additional work to comply with the National Cabinet Mandatory Code of Conduct established in response to the Covid-19 pandemic. Colliers has undertaken the initial stages of this work (stage one), and now requires the completion of this work (stage two). An exemption from tender approval is sought from Council to incorporate this scope into the existing contract.
6. The variability of the property market was catered for in the contract. As such, the contract with Colliers is structured on both a fixed and a variable fee basis. The variable fees are calculated in accordance with the number of leases and the total annual revenue. The fee increases due to increased revenue are in excess of original anticipations in the original report to Council.
 7. As a result, it is proposed to increase the estimated 10-year contract amount approved in 2018.
 8. No additional funds are required in the current operational budget and future year forward estimates due to this contract variation as these funds were anticipated and forecast during the preparation of the 2022/23 budget.

Key Implications

Strategic Alignment - Sustainable Sydney 2030-2050 Continuing the Vision

9. Sustainable Sydney 2030-2050 Continuing the Vision renews the communities' vision for the sustainable development of the City to 2050. It includes 10 strategic directions to guide the future of the city, as well as 10 targets against which to measure progress. This report is aligned with the following strategic directions and objectives:
 - (a) Direction 1 - Responsible governance and stewardship.

Entrusted with the stewardship of 251 buildings delivering vast and varied services to the community as well as significant income, the City has partnered with Colliers International (NSW) Pty Ltd utilising a long-term contract which provides tight, transparent and evidenced governance controls including:

 - 47 individual Service Level Measures (SLMs) governing all service provisions delivered by Colliers.
 - These Service Level Measurements are reported on monthly, with report reviewed and uploaded monthly in the City's record system TRIM.
 - The supplier's performance against these Service Level Measurements are trended and tracked in the City's reporting system with these trends discussed monthly
 - Formal monthly and quarterly meetings are conducted between the supplier and the City including senior management of both organisations to discuss and align on the performance of the contract and follow-up actions to improve performance and efficiency.

All of the above ensures that the City is undertaking governance and stewardship of its building portfolio in partnership with Colliers.

Risks

10. The contract fee structure of the Property Management Agreement contract with Colliers International (NSW) Pty Ltd, includes variable fees, the total amounts payable are impacted by changes in the City's portfolio and rental market conditions. Should the proposed increase under the Colliers contract not be approved, the City will not be able to deliver in full the required real-estate services to its community and commercial tenants resulting in significant financial and reputational risks to the City.
11. The proposed fee increases reflect the impacts of current market conditions which were not envisaged and have substantially changed, since original submission to council, mainly driven by:
 - (a) A 30-year high consumer price index as currently experienced.
 - (b) Unprecedented market conditions significantly affecting the retail sector due to a reduced foot traffic brought about by the Covid-19 pandemic.
 - (c) Unanticipated tenant assessment services by Colliers to comply with the National Code of Conduct as mandated by the Federal Government.
 - (d) The volume of new acquisitions and rental market escalations was not anticipated.

Financial Implications

12. There are sufficient funds in the 2022/23 Property Services operating budget and future year forward estimates to meet the additional costs anticipated this contract variation. The Long Term Financial Plan includes estimated funding amounts to allow for the operational impact of cost escalations, ad hoc work services and increased fees and costs associated with additional commercial and community properties.

Relevant Legislation

13. Local Government Act 1993.
14. Local Government (General) Regulation 2021.
15. Local Government Act 1993 - Section 10A provides that the 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.
16. Attachment B contains confidential commercial information and details which, if disclosed, would confer a commercial advantage with whom Council is conducting (or proposes to conduct) business.
17. Discussion of this 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 rate payers.

Critical Dates / Time Frames

18. Approval of these funds are immediately required to enable the City to meet its mandated responsibilities under the National Cabinet Mandatory Code of Conduct established in response to the Covid-19 pandemic and its contractual responsibilities to its tenants.

Options

19. Under the Property Management Agreement contract with Colliers International (NSW) Pty Ltd (Colliers), the City is required to meet its obligations under the contract fee structure, due to changes in the City's portfolio, rental market conditions and works related to the Covid-19 pandemic as outlined above.
20. The City could insource property management services. This option is not recommended as outsourcing these services delivers significant value to the City. This is through access to market data well beyond the City's property portfolio, leverage of additional real estate specialist services including property and rental valuations, commercial and retail leasing and tenant representation.
21. The City could seek fresh tenders for the additional assessment (stage 2) work to comply with the National Cabinet Mandatory Code of Conduct established in response to the Covid-19 pandemic from an alternate supplier. This is not recommended as:
 - (a) a tender process would significantly delay the provision of services placing financial and reputational risk to the City;
 - (b) the introduction of a new supplier at the second stage of the project could increase the risk to the completion/continuation of the assessment work; and
 - (c) a potential increase of internal cost in managing an additional contract to the property service supplier.

Public Consultation

22. No public consultation is required as Colliers is the current supplier under an existing long-term contract.

KIM WOODBURY

Chief Operating Officer

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