

## **Cancellation of Tender - T-2022-755 - Exemption from Tender and Contract Variations for Sydney New Year's Eve**

**File No:** X092284.003

**Tender No:** T-2022-755

### **Summary**

This report provides details of the tenders received for the carrying out of fireworks and associated services for the 2023 and 2024 Sydney New Year's Eve (with two 24-month options to extend to cover the 2025 and 2026 events, and further 2027 and 2028 events).

Sydney New Year's Eve is a local and global celebration that reaches an audience of more than 425 million people worldwide and is attended by more than one million people around the harbour foreshore. Research conducted found that Sydney New Year's Eve has a direct economic impact of \$280 million to Sydney.

The Event includes two main fireworks displays, an Acknowledgement of Country including a Smoking Ceremony on Sydney Harbour, a Welcome to Country and the 9pm Calling Country fireworks display, in addition to lighting and projections on the Sydney Harbour Bridge.

The provision of the fireworks displays and associated services 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 December 2022, a Request for Tender was released for Firework Displays for 2023 and 2024 Sydney New Year's Eve (with two 24-month options to extend to cover the 2025 and 2026 events, and further 2027 and 2028 events), which included associated services in the scope (provision of tugs, barges and support vessels as well as the delivery of the fireworks loading site). Historically, the City has contracted services for fireworks displays, barges and tug hire, and support vessel hire separately, however, to achieve operational efficiencies and provide contractual benefits, the services were combined into a single contract for delivery in this tender. On close of the tender and evaluation of the submission received, no conforming offers were received.

This report recommends that Council declines to accept the tender offer, cancels the tender and notes that the City will undertake a new tender process for the delivery of the 2024 Sydney New Year's Eve and future year events, which is anticipated to be in market by the end of April 2023.

It has been identified that further scoping and market research is required to ensure the proposed contract model is viable for the City and suppliers. To ensure fireworks displays and associated services are secured for the 2023 Sydney New Year's Eve event, an exemption from tender and variation to the City's existing agreements is recommended for an additional year. The extension will enable the City to undertake supplier consultation to ensure the proposed or alternate contract models are viable, with consideration to current market constraints, before the new tender is released.

After careful consideration of the available options, the City is seeking approval to vary and extend the following contracts for an additional one year to ensure delivery of the 2023 Sydney New Year's Eve event:

- Contract with Foti International Fireworks Pty Ltd (ABN: 52 092 767 765) for the provision of pyrotechnics; and
- Contract with Polaris Marine Pty Ltd as Trustee for Polaris Marine Trust No 1 (ABN: 84 343 204 460) for the provision of barges and tugs.

## Recommendation

It is resolved that:

- (A) Council decline to accept the tender offer for Firework Displays for 2023 and 2024 Sydney New Year's Eve (with two 24-month options to extend to cover the 2025 and 2026 events, and further 2027 and 2028 events) for the reasons set out in Confidential Attachment A to the subject report;
- (B) Council cancel the tender for Firework Displays for 2023 and 2024 Sydney New Year's Eve (with two 24-month options to extend to cover the 2025 and 2026 events, and further 2027 and 2028 events);
- (C) Council note the City will undertake a new tender process or processes for the delivery of the 2024 Sydney New Year's Eve and future year events which are expected to be in market by the end of April 2023, following further market research and reconsideration of the proposed contract model;
- (D) Council approve an exemption from tender in accordance with section 55(3)(i) of the Local Government Act 1993 for the provision of pyrotechnic services for the 2023 Sydney New Year's Eve event;
- (E) Council approve an exemption from tender in accordance with section 55(3)(i) of the Local Government Act 1993 for the provision of barges and tugs for the 2023 Sydney New Year's Eve event;
- (F) Council note the reasons a satisfactory outcome would not be achieved by inviting tenders is due to the following extenuating circumstances:
  - (i) the City has attempted to undertake a tender process to contract services in time for delivery of the 2023 Sydney New Year's Eve event. However, as the market did not respond as intended, the City will need to cancel the current tender and undertake further market research prior to re-tendering; and
  - (ii) there is insufficient time to undertake a new tender process for the delivery of the 2023 Sydney New Year's Eve event;
- (G) Council approve a contract variation with Foti International Fireworks Pty Ltd 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 2023 Sydney New Year's Eve event;
- (H) Council approve a contract variation with Polaris Marine Pty Ltd as Trustee for Polaris Marine Trust No 1 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 2023 Sydney New Year's Eve event; and
- (I) 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 and Contractual Implications (Confidential)

## Background

1. Sydney New Year's Eve is a local and global celebration that reaches an audience of more than 425 million people worldwide and is attended by more than one million people around the harbour foreshore. Research conducted found that Sydney New Year's Eve has a direct economic impact of \$280 million to Sydney.
2. The Event includes two main fireworks displays, an Acknowledgement of Country including a Smoking Ceremony on Sydney Harbour, a Welcome to Country and the 9pm Calling Country fireworks display in addition to lighting and projections on the Sydney Harbour Bridge.
3. The provision of the fireworks displays and associated services 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. These firing positions are in addition to the use of the Sydney Harbour Bridge and Sydney Opera House.
4. 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.
5. The City has existing contracts 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 to 2021 events, and further extension to cover the 2022 event and 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, and further extension to cover the 2022 event. Both contracts are due to expire on 30 June 2023.
6. To achieve operational efficiencies and achieve contractual benefits, a single Request for Tender (RFT) was released in December 2022 for Firework Displays for 2023 and 2024 Sydney New Year's Eve (with two 24-month options to extend to cover the 2025 and 2026 events, and further 2027 and 2028 events), which included associated services in the scope (provision of tugs, barges and support vessels, as well as the delivery of the fireworks loading site).
7. A mandatory requirement of the tender was to respond to the single contract model.
8. On close of the tender and evaluation of the submission received, a decision has been made to cancel the tender as the market was unable to respond to the single contract model thus deeming them non-conforming.
9. It has been identified further scoping and market research is required to ensure the proposed contract model or alternate models are viable for the City and suppliers.
10. The market research, re-scoping and re-tendering of the services is expected to take three to four months, with the aim to have the new tender(s) in market by the end of April 2023. Unfortunately, this process means there is insufficient time for the City to award a new contract for delivery of the 2023 event.

11. As a result, an 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 2023 Sydney New Year's Eve event as outlined in Confidential Attachment A.
12. The current suppliers have existing arrangements in place and are well placed to be able to mitigate risks and ensure supply.

### **Invitation to Tender**

13. The Request for Tender was available on the City's eTendering portal, Tenderlink, on Monday 12 December 2022. The closing date was 11am on Tuesday 17 January 2023.

### **Tender Submissions**

14. One submission was received from the following organisation:
  - Foti International Fireworks Pty Ltd (ABN 52 092 767 765).
15. No late submissions were received.

### **Tender Evaluation**

16. All members of the Tender Evaluation Panel have signed Pecuniary Interest Declarations. No pecuniary interests were noted.
17. The relative ranking of tenders as determined from the total weighted score is provided in the Confidential Tender Evaluation Summary – Attachment A.
18. All submissions were to be assessed in accordance with the approved evaluation criteria being:
  - (a) the lump sum price and schedule of prices;
  - (b) demonstrated company experience relating to large-scale fireworks design and delivery in a collaborative working environment, which is of a comparable nature to the City's requirements;
  - (c) innovation, creativity and strategic thinking demonstrated in the strategic plan;
  - (d) proposed key personnel and their demonstrated capacity, relevant experience and technical ability to carry out the work/service under the contract;
  - (e) proposed methodology and details of materials;
  - (f) demonstrated commitment to Work Health and Safety, including proposed systems, policies and procedures to ensure the safe delivery of the event;

- (g) demonstrated commitment to environmental management, risk management, corporate social responsibility and quality assurance;
- (h) financial and commercial trading integrity including insurances; and
- (i) material acceptance of the City's standard form contract.

### **Key Contract Terms**

19. The two existing contracts will be extended for one year until 30 June 2024.

### **Performance Measurement**

20. 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
21. Performance of the suppliers is evaluated regularly, at least annually following each Sydney New Year's Eve event, and on completion of the contract.

### **Financial Implications**

22. Subject to negotiations, sufficient funds have been allocated for the delivery of these services within in the City's Long Term Financial Plan (LTFP). Should additional funds be required these will be sought as part of the preparation for the 2023/24 operating budget and the next iteration of the LTFP which is subject to Council approval in June 2023.

### **Relevant Legislation**

23. The tender has been conducted in accordance with the Local Government Act 1993 and the Local Government (General) Regulation 2021.
24. Section 55(3)(i) of the Local Government Act 1993 sets out the circumstances in which Council may grant an exemption from the requirement to follow the legislated tender processes.

25. 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.
26. 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.
27. 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**

28. The term of the amended contracts will commence 1 July 2023 and conclude on 30 June 2024.
29. The extension of the term will enable the City to undertake further market research and scoping of the requirements, invite fresh tenders for the new contract(s) by April 2023, and have the new contract(s) implemented with sufficient lead times for transition in/out periods. It will also ensure the selected supplier has sufficient timeframes to procure fireworks and infrastructure for the 2024 event.
30. In order to ensure fireworks are secured for the 2023 Sydney New Year's Eve event, the existing pyrotechnics Service Provider is required to place an order for the manufacture and transportation of pyro no later than 28 February 2023.

### **Options**

31. Not proceeding with extending the terms of agreement for the existing suppliers will render the City's unable to deliver the Sydney New Year's Eve event in 2023. The fireworks displays are the most significant creative element of the show delivered on Sydney Harbour.
32. Orders are required to be submitted by providers by late February 2023 in order to secure fireworks for the 2023 Sydney New Year's Eve event which means there is not time to engage in reject and negotiate process in relation to this tender.

**Public Consultation**

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

**EMMA RIGNEY**

Director City Life

Stephen Gilby, Producer, Major Events and Festivals

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