

Attachment 1

Ballina Shire Council

Tender RFT670 - Supply Of Pre-Mixed Concrete 2013/15

Tendered Prices Ex Plant

All prices ex GST

Supplier			
(Plant Location)	Boral Country Concrete & Quarries <small>(Nth Ballina&Alstonville)</small>	Hanson Const Materials P/L <small>(Nth Ballina)</small>	Holcim (Aust) P/L <small>(Nth Ballina&Alstonville)</small>
Product		<small>Price / CuM Ex Gst</small>	<small>Price / CuM Ex Gst</small>
5 Mpa Concrete	\$150.95	\$175.00	\$136.00
10 Mpa Concrete	\$153.95	\$180.00	\$138.00
15 Mpa Concrete	\$158.95	\$185.00	\$144.00
20 Mpa Concrete	\$160.95	\$187.00	\$145.00
32 Mpa Concrete	\$174.95	\$202.00	\$159.00
SP40h	\$221.95	\$230.00	\$190.00
Kerb Mix Concrete	\$172.95	\$205.00	\$157.00
No Fines Concrete	\$162.95	\$185.00	\$129.00
Lean Mix Concrete Sub-Base	\$173.95	\$180.00	\$150.00
Concrete Base	\$198.45	\$190.00	\$171.00
Miscellaneous			
Haulage Rates/ cum	<small>Includes cartage up to 20 kms from plant Extra cartage \$2.50/cu m/km thereafter</small>	<small>Includes cartage up to 15 kms from plant Extra cartage \$1.50/cu m/km thereafter</small>	<small>See Below</small>
0-15km 16-20km 21km+			\$30 \$40 \$40 +\$1.50/km/cum

Note: Surcharge for loads < 3 cum of \$50.00/cum
Note: Plant opening fee applies outside normal operating hours

Note: Surcharge for loads < 4 cum of \$35.00/cum
Note: Plant opening fee applies outside normal operating hours

Note: Surcharge for loads < 3 cum of \$25.00/cum
Note: Plant opening fee applies outside normal operating hours

Normal Hours 6.00am to 5.00pm
Surcharge after hours

Normal Hours 6.00am to 4.00pm
Surcharge after hours

Normal Hours 6.00am to 4.00pm
Surcharge after hours

Weekend surcharges

Weekend surcharges

Weekend surcharges



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5th June 2013

Mr Paul Hickey
General Manager
Ballina Shire Council
PO Box 450
Ballina NSW 2478

Dear Mr Hickey,

Ref: Additional information in relation to the Tender for supply of Premix Concrete

Further to my recent letter to you on 3rd June 2013, we have further reviewed the on-line Ballina Shire e-tendering system. Nucon's subscription to this system is valid until 1st June 2019 under the name of Michael Cooper, our General Manager and with the correct email address.

Our Subscription the Ballina Shire e-tendering system was configured to receive alerts for all request types and on a frequency of "As Added" to the system.

It was through this system that we received the alert on 26th March 2013 in relation to "the provision for the construction of the Ballina Animal Pound", tender no. 666, as referred to in my earlier letter.

We note that the recent Request for Tender (RFT) for the supply of premix concrete, tender no. 670, is also registered in the system yet Nucon received no alert for this very relevant and important entry.

As referred to in my previous letter to you, the opportunity to tender for this work is very important for Nucon and I feel it fair to state that based on the above information, we had a legitimate expectation that the e-tendering process was part of the Ballina City Council's management system and that we could expect a similar alert for entry 670 as per the configuration within our subscription.

I had made reference in my previous letter to the impact on our Ballina operations should it suffer a loss of any work in the current economic climate. When we reviewed our business plan in January 2013, we adopted a strategy to protect our Ballina operation through increased sales presence, additional advertising and more competitive pricing for larger works.

Nucon has recently recruited a new sales rep for the area, has improved its presence on the internet and recently placed an advertisement in the local Northern Star newspaper. Supporting this approach Nucon had also reviewed its pricing in preparation for the approaching tender renewal date.

The unexpected issue and recent closure of RTF 670 now prevents Nucon from accessing the required tender documents for submission.



I still thought it appropriate to submit our offer to you and we have compiled it into a suitable document based on our previous tender submissions to the Ballina Shire. This is attached for your consideration.

The Nucon proposal offers very competitive pricing. Supported by our experience and track record of proven product quality and service reliability in the local area, we believe our proposal supports the Ballina Shire procurement strategy to deliver best value services to the community providing your ratepayers with a competitive opportunity from a very experienced supplier.

We would therefore welcome the opportunity to formally submit a complete tender package for the supply of premix concrete to the Ballina Shire as per RTF670.

Yours Sincerely,



Declan Mackle
CEO



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11.9 Tender - Supply and Delivery of Pre-Mixed Concrete 2013/2015 RFP

Paul Hickey

in reply please quote

13/31541 (C6M12/1)



12 June 2013

Declan Mackle
CEO
Nucrush Group
declan.mackle@nucrush.com.au

Dear Mr Mackle

Re: RFT670 – Supply & Delivery of Pre-Mixed Concrete

Further to your e-mail dated 3 June 2013 I wish to confirm my verbal advice in that your tender response was past the due date and therefore Council has no responsibility to consider your submission as part of the current tender process.

However as per our discussions we are prepared to include details of your response in the report to the elected Councillors on the outcomes from the tender process. It will then be a matter for the Councillors to determine if they wish to take any action in respect to your tender.

I am sorry Council cannot be of more assistance but as you are aware we are in the middle of an official tender process and we have a legal responsibility to assess that tender in accordance with the requirements of the NSW Local Government Act.

We will provide a further response to you once the matter has been reported to Council which will be at either the ordinary meeting scheduled for Thursday 27 June 2013.

Yours faithfully

Paul Hickey
General Manager



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13th June 2013

Mr Paul Hickey
General Manager
Ballina Shire Council
PO Box 450
Ballina NSW 2478

Dear Mr Hickey,

Ref: RFT670 – Supply & Delivery of Pre-mixed concrete

Thank you for your response to my letter dated the 5th June. I appreciate your preparedness to include my concerns in your report to elected Councillors on the outcomes of the tender process.

Could I also please seek your advice on behalf of our sales department in relation to Ballina Shire's e-tender process and as to whether this is used only for selective tendering and should not be used as an official channel for monitoring all RTFs?

I ask this only as we have again received an alert two days ago on 11th June 2013 for Ballina Shire's most recently advertised tender, namely RFT 667.

As referred to in earlier correspondence re RTF670, whilst viewable in the e-tendering database, we received no alert for this against our subscription profile to receive alerts for all added RTFs. I have assumed from this that the process can selectively disable alerts under various circumstances and I would appreciate your advice/confirmation on this.

Yours Sincerely,

Declan Mackle
CEO



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11.9 Tender - Supply and Delivery of Pre-Mixed Concrete 2013/2015 RFP

Chris Allison

in reply please quote

13/33651 (C6M12/10)



25 June 2013

Declan Mackle
Chief Executive Officer
NuCrush Pty Ltd
PO Box 179
OXENFORD QLD 4210
declan.mackle@nucrush.com.au

Dear Mr Mackle

Re: RFT670 – Supply & Delivery of Pre-mixed concrete

Thank you for your letter dated 13 June 2013 in relation to the electronic tender process utilised by Ballina Shire Council and the following is provided for your information.

The eTender process is used for both public and selective tenders issued by Council. All public tenders are viewable and downloadable by any company, although companies must register with the system. Selective tenders are the result of a registration of interest process and are only accessible by those companies who are invited to participate in that tender.

The subscription area within eTendering is “user definable” and allows companies registered with the system to set up to receive email notifications when specific categories of tenders are uploaded to the site.

A review of the database has indicated that although NuCrush have set up the account to receive email notifications, no subscription was set for the category that related to this tender. When setting up subscriptions users need to be specific when selecting a category and all alerts have an expiry date.

Council has no control or direct access to this area of eTendering and therefore cannot warrant that email notifications will be issued when tenders related to a specific category are uploaded.

I hope this provides sufficient information in relation to the eTendering system and if you have any enquiries in regard to this matter please contact Chris Allison on (02) 6686 1442.

Yours faithfully

Paul Hickey
General Manager



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26th June 2013

Mr Paul Hickey
General Manager
Ballina Shire Council
PO Box 450
Ballina NSW 2478

Dear Mr Hickey,

Ref: RFT670 – Supply & Delivery of Pre-mixed concrete

Thank you for your response to my letter dated the 13th June. I apologise for what may appear to be my continued persistence on this matter, however it is of such importance to our business I wish to ensure I have presented all the facts unambiguously and in chronological order as to why we believe we had a legitimate expectation to receive notification of RFT670 through the e-tender process.

1. On Monday 26th May 2008 1:10AM, an e-mail notification was sent to Nucon's Ray Doubikin from the Ballina Shire Council e-tendering system (Account Number 667576) advising of a system reminder re RFT393 – supply of premixed concrete.
2. A tender was submitted by Nucon for RFT393 on 27th May 2008 which was successful.
3. Again in 2010, Nucon's Wade Heggie received notification of RFT511 via the Ballina Shire Council e-tendering system – supply of premixed concrete.
4. A tender was submitted by Nucon for RFT511 on 28th April 2010 which was successful.
5. On Saturday 20th August 2011 8.05AM, an e-mail from Ballina Shire's Chris Allison to multi recipients was received by Nucon advising that as of 22nd August 2011, Ballina Council would be utilising a new internal web site to host its electronic tendering services. It advised that if we wished to receive future notifications we would need to reregister and it laid out brief instructions including that the tender subscription allowed for the nomination of one or more tender categories. As such Nucon chose to be advised on "All Categories" The advice also stated that registration "*will allow you to be notified by e-mail when tenders specific to your areas of interest are posted on e-tendering*"
6. Nucon successfully registered Wade Heggie and subsequently Michael Cooper as advised to do so above.
7. Nucon has received a number of RFT advises via this system since registration.
8. RFT670 is registered in the e-tendering system yet Nucon received no such advice on this request.

In relation to the above facts and your letter dated 25th June 2013 stating "no subscription was set for the category that related to this tender", I have embedded a scanned copy of our subscription profile which indicates that Nucrush had requested to receive alerts for "*All RFTs*" and "*All Categories*":



Ballina
shire council

Search RFX's
Go
Advanced Search

View RFX's
Proposed
Current
Closed
Archived
Awarded
Invited

My Account
Home
Respondent's Details
Account Details
Logout

RFX Subscriptions
My RFX Subscriptions
Create New Alert
RFX Title All
Category -- All Categories --
Preliminary Stages -- All Preliminary Stages --
Alert Expiry Date 1/06/2019
Alert Frequency
As Added
Daily
Summary
Weekly

Test Alert Update Alert Delete Alert

Saved Subscriptions
Below is a list of RFX Subscriptions. You have the ability here to item from the list below to modify an existing RFX Subscription.

Alert Frequency	RFX Title	Category	Preliminary Stage
AsAdded	All		

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On the basis of this subscription profile, supported by the advice above from Ballina Shire’s Chris Allison in 2011 that Nucon would be notified based on this subscription, I believe it is fair and reasonable for Nucon to expect to have been notified via e-tendering in relation to RTF670.

This is further supported by the fact that Nucon has received other notifications since our registration above. The most recent two of these were RTF 666 – opened 26th March 2013 and received on 26th March 2013 i.e. in the period *before* RTF670 and subsequently RTF667 – opened and received on 11th June 2103 i.e. in the period *after* RTF670.

I had requested for Nucon to address the Ordinary Meeting of Council on this matter but note that my request has been declined being seen as lobbying of councillors during a tender process.

As per my previous correspondence to you, my intent has not been to lobby support for a tender submission by Nucon, but rather to seek clarification as to why Nucon were denied an opportunity to tender based on the process it was recommended to follow in regards to receiving All RFTs in All Categories. I would thus request that this letter also be provided to the Council meeting on 27th June 2013 for their consideration.

Yours Sincerely,

Declan Mackle
CEO



E declan.mackle@nucrush.com.au

enquiries refer
Chris Allison
in reply please quote
13/33651 (C6M12/10)



9 July 2013

Declan Mackle
Chief Executive Officer
NuCrush Pty Ltd
PO Box 179
OXENFORD QLD 4210
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Dear Mr Mackle

Re: RFT670 – Supply & Delivery of Pre-mixed concrete

Further to your correspondence dated 26 June 2013 I wish to confirm that Council at the June 2013 Ordinary meeting deferred a decision on this tender to allow staff to review your concerns and also to seek independent advice in respect to the entire tender process.

As a result of this resolution John Truman and Chris Allison have engaged Mr Bob Lewis from NSW Local Government Procurement to provide that review. The outcomes from that review will now be reported to the July Ordinary meeting which is scheduled for Thursday 25 July 2013.

Without predicting the outcome of this review, in respect to some of the points made in your latest correspondence, I wish to advise as follows:

- Tenders RFT393 & RFT511 were submitted under a different e-tendering system to that currently used by Council therefore any comparison is somewhat unfair to the current process.
- You are correct in stating that Council advised “all users” of the former e-tendering system that we would be using a new system for e-tendering services from August 2011. This advice also included basic information on how to set up the system to receive email notifications. The actual wording included in our correspondence is that tender descriptions are designed to allow you to nominate one or more tender categories which are specific to your organisation - for example “Consulting – Architectural Services”. This email was sent as a courtesy to all those companies listed in the previous system.
- The “All Categories” to which you refer is not a category, but rather a heading for a “drop down list” that allows potential tenderers to select one or more specific tender categories. There are over 300 categories in this list including “Construction Materials - Concrete - Readymix”.

In summary we do not agree that Council denied Nucon the opportunity to tender for the supply of pre-mixed concrete as Council has complied with the requirements of the Local Government (General) Regulation 2005 which required Council to advertise in the relevant newspapers. Council also advertised the tender in the Sydney Daily Telegraph, the Northern Star and the Ballina Advocate.

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Page 2
NuCrush Pty Ltd
9 July 2013

The e-tendering system is an optional system utilised by Council to assist potential tenderers in obtaining tender documentation and lodging tenders in a secure electronic environment.

Despite these comments we have engaged Local Government Procurement to review the entire process and we await the outcome of that review for reporting to the elected Council. In the interim if you require any additional information please call Chris Allison or John Truman on 6686 4444.

Yours faithfully

Paul Hickey
General Manager

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10th July 2013

Mr Paul Hickey
General Manager
Ballina Shire Council
PO Box 450
Ballina NSW 2478

Dear Mr Hickey,

Ref: RFT670 – Supply & Delivery of Pre-mixed concrete

Thank you for your letter dated the 9th July 2013. In response to the three points you have raised in relation to my last letter, I would like to clarify the following;

1. In reference to your first bullet point, that tenders RTF393 & RTF511 were submitted under a different e-tendering system, I accept this fact. My reference to the advice from Ballina shire to all users re the system change as of 22nd August 2011 aimed to imply this but I accept that as written this may have been ambiguous. My reference to these earlier RTFs was to indicate that as Nucon had received previous advice on the two earlier related RTFs for premix concrete supply via an e-tendering system, we believed that without advice to the contrary we had a legitimate expectation that this would continue into the future.
2. With reference the second bullet point, that Council advised all users of the former e-tendering system that it would be using a new system for e-tendering services from 22nd August 2011, this notification stated that if users wished to receive future notifications they would need to re-register. The advice also clearly stated that it *"will allow you to be notified by e-mail when tenders specific to your areas of interest are posted on e-tendering"*. Nucon did re-register as advised and the information as stated in the e-mail advice further reinforced Nucon's believe in this process as per point 1 above. As referred to in my earlier correspondence, Nucon selected to be notified in "All Categories"
3. With reference to the third bullet point, that "All categories" is not a category but rather a heading for a "drop down list" that allows potential tenderers to select one or more specific tender categories including Construction materials – concrete Readymix, this has not been the case to date as Nucon had selected to be advised for All Categories and has been receiving alerts from the new system for different categories both before and after, but not including RTF670.



11.9 Tender - Supply and Delivery of Pre-Mixed Concrete 2013/2015.DOC

I have included below extracts from two of these advice notices (one before RTF670 and one after RTF670) which Nucon received from the current e-tendering system. I believe this would not have occurred if the "All Categories" was a heading only.

From: Ballina Shire Council - eTendering <chrisa@ballina.nsw.gov.au>
Sent: Tuesday, 26 March 2013 7:00 AM
To: Michael Cooper
Subject: eTendering :: Your Subscriptions

[PLEASE DO NOT REPLY TO THIS EMAIL]

Hello Michael Cooper

Here are new Tenders matching your subscription:

Number	Title	Description	Preliminary Stage	Category	Opening Date	Closing Date
666	Provision for the Construction of the Ballina Animal Pound	Provision for the Construction of the Ballina Animal Pound	RFT	Construction Works - Minor Works up to \$1.0m	26/03/2013	17/04/2013

Thank you for using the "Open Windows eTendering".

Chris Allison
Ph: +61 2 6686 1442
Email: chrisa@ballina.nsw.gov.au

From: Ballina Shire Council - eTendering <chrisa@ballina.nsw.gov.au>
Sent: Tuesday, 11 June 2013 8:01 AM
To: Michael Cooper
Subject: eTendering :: Your Subscriptions

[PLEASE DO NOT REPLY TO THIS EMAIL]

Hello Michael Cooper

Here are new Tenders matching your subscription:

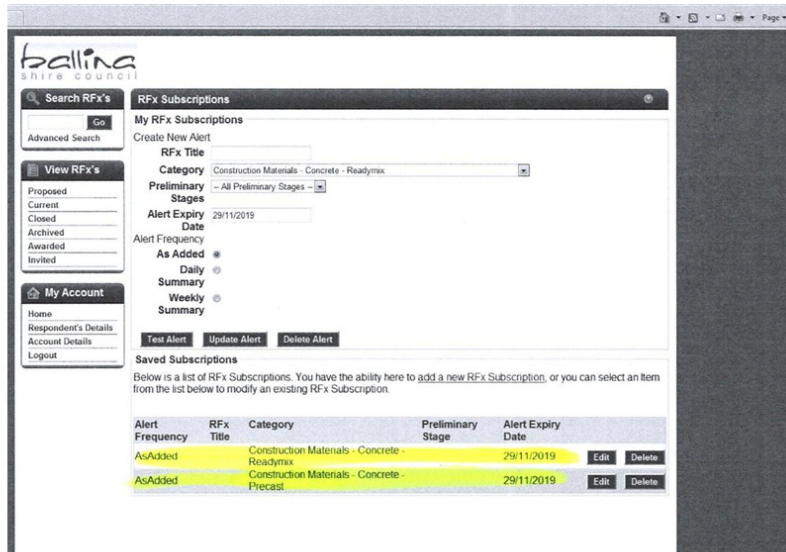
Number	Title	Description	Preliminary Stage	Category	Opening Date	Closing Date
667	Provision for Runway Overlay - Ballina Byron Gateway Airport	Provision for Runway Overlay - Ballina Byron Gateway Airport	RFT	Construction Works - Supply & Laying Asphalt	11/06/2013	16/07/2013

Thank you for using the "Open Windows eTendering".

Chris Allison
Ph: +61 2 6686 1442
Email: chrisa@ballina.nsw.gov.au

In addition to the above, Nucon also recently registered a new business in Ballina Shires e-tendering system and selected two different categories to note how these selections would be summarised for future reference. I refer to the embedded web page overview below and particularly the saved subscriptions area highlighted in yellow which appears for each selection.

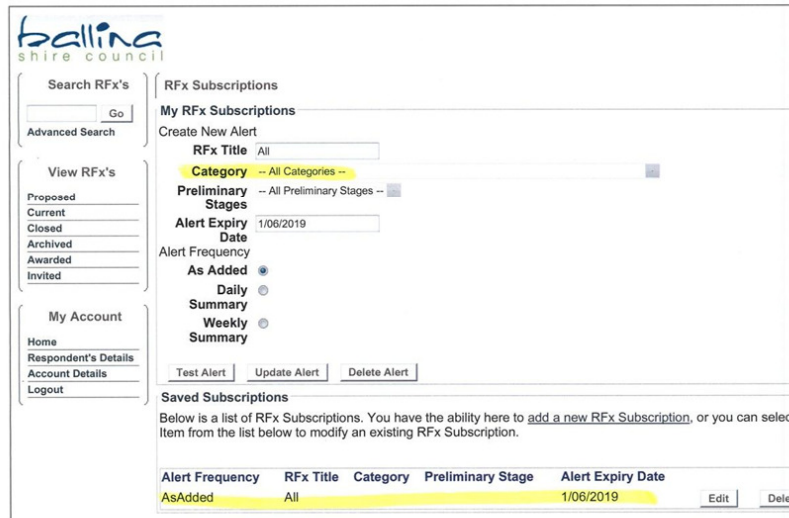
11.9 Tender - Supply and Delivery of Pre-Mixed Concrete 2013/2015.DOC



In comparison, I refer to the embedded web page overview for Nucon below as originally setup on advice from Chris Allison as per his e-mail of the 20th August 2011. Again the saved subscriptions area is highlighted in yellow and indicates all categories as added.

eTendering:: RFx Subscriptions

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http://tenders.ballina.nsw.gov.au/eTendering/supplier/MyTenderSubscriptions.aspx

9/07/2013

By way of completeness, the overview page when opened has no saved subscriptions shown.

I acknowledge that as per your letter dated 9th July 2013, you do not agree that Council denied Nucon the opportunity to tender for the supply of pre-mixed concrete as Council has complied with the requirements of local Government (General) Regulation 2005 which required Council to advertise in the relevant newspapers.

We understood from Council's correspondence 10th May 2010 in regards to "Purchasing-General" (copy attached) that the registration of potential suppliers was introduced to assist council in achieving best value for money.

I do believe that based on the above detail it was fair and reasonable for Nucon to have a legitimate expectation to have been notified in relation to RTF670 via the e-tendering system. Having not received this notification has I believe unfairly disadvantaged Nucon.

I also feel that as one of 4 concrete producers in the Ballina area, excluding Nucon from the process has not enabled a true test of the local market or pricing and as such may not result in Council achieving the best result.

I appreciate that Council are bound by the Local Government Act and as I have indicated in earlier correspondence to you, I respect the regulatory integrity of the process.

I would appreciate that as part of the independent review process, a copy of this letter be provided to Mr Bob Lewis.

Yours Sincerely,



Declan Mackle
CEO



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11.9 Tender - Supply and Delivery of Pre-Mixed Concrete 2013/2015 DCC

John Truman

in reply please quote

Trim Ref: 13/39522, 13/39879



12 July 2013

Mr Declan Mackle
CEO
Nucrush Group
PO Box 179
OXENFORD QLD 4210

Dear Mr Mackle

Re: RFT670 – Supply & Delivery of Pre-Mixed Concrete

Thank you for your letter dated 10 July 2013 being further communications regarding this matter.

As per our previous advice, it is important to Council that we provide fair and transparent opportunities to local businesses to compete for the provision of services to Council. As you have acknowledged, it is also essential that Council is compliant with its' statutory obligations in regard to tender processes.

For these reasons, we have been carefully considering the circumstances regarding your submissions to us and we have noted the contents of your latest letter. We will now move to finalise our assessment and prepare a further report to Council. This report will be considered at the Council meeting scheduled for 25 July 2013. We will provide you with advice of Council's decision after the meeting.

Again, thank you for taking the time to make this further submission.

Yours faithfully,

John Truman
Group Manager
Civil Services