



LATE ITEM

Ordinary Meeting 27 March 2014

Held at Ballina Shire Council Chambers
40 Cherry Street Ballina

Table of Contents

11.	Civil Services Group Reports	1
	11.11 Tender - Replacement of Asbestos Materials - Ballina Naval Museum	1

11.11 Tender - Replacement of Asbestos Materials - Ballina Naval Museum

11. Civil Services Group Reports

11.11 Tender - Replacement of Asbestos Materials - Ballina Naval Museum

Delivery Program Operations Support

Objective To obtain Council approval not to call tenders for the replacement of asbestos materials on the Ballina Naval Museum due to extenuating circumstances and to accept a tender received for the work.

Background

Council has received several reports in relation to the deteriorating asbestos roof at the Ballina Naval Museum with the last report being provided to Council at the Commercial Services committee meeting on 18 February 2014.

In response to the Committee's recommendation, Council resolved to *"confirm the budget of \$190,000 to replace the asbestos roof and other associated works with the General Manager authorised to call tenders / quotations for the work"*. This budget comprises \$95,000 of NSW Government funding provided under the Community Building Program.

In response to this recommendation, staff issued a request for tender to eight specialist contractors on the 6 March 2014. At the close of tenders on the 20 March 2014, three tenders were received. The reasons for this short tender period are discussed below.

This report provides the outcomes from the tender evaluation process.

Key Issues

- Award the contract in accordance with the Local Government (General) Regulations 2005.
- Engage a suitably licensed and experienced contractor that having regard to all circumstances provides the most advantageous tender.

Information

To meet the requirements of the grant, this project has a 31 May 2014 completion date. This date has been extended once by the State Government with the original grant completion date being 31 March 2014.

Scoping the works and the design of the project has required several reviews and reports to Council resulting in delays to the inception of the project. Therefore it has been necessary to make certain variations to the standard tendering process and these are discussed below.

11.11 Tender - Replacement of Asbestos Materials - Ballina Naval Museum

The Local Government Act, at Section 55, requires Council to call tenders when entering a contract for an amount greater than \$150,000. Further provisions in respect of tendering are set out in the Local Government Regulation (the regulation). These include requirements for Council to decide whether tenders are to be by open tendering or selective tendering, and there are requirements in respect of the length of time for a tender.

Section 166 of the regulation reads as follows;

166 Council to decide whether tenders are to be by open tendering or selective tendering

Whenever a council is required by [section 55](#) of [the Act](#) to invite tenders before entering into a contract, the council must decide which of the following tendering methods is to be used:

- (a) the open tendering method by which tenders for the proposed contract are invited by public advertisement,*
- (b) the selective tendering method by which invitations to tender for a particular proposed contract are made following a public advertisement asking for expressions of interest,*
- (c) the selective tendering method by which recognised contractors selected from a list prepared or adopted by the council are invited to tender for proposed contracts of a particular kind.*

The process to invite this tender does not comply with this regulation as there was no formal public advertising process to select the short listed firms.

Therefore while a tender process has been conducted, as it is a process not compliant with these provisions of the regulation, should Council enter a contract it is necessary to make such a decision having regard to the provisions of Section 55 (3)(i) which enable exemptions in certain circumstances from the requirements of Section 55 (1).

Section 55 (3)(i) is reproduced below.

*This section (meaning S55 (1)) does not apply to the following contracts:
(i) a contract where, because of extenuating circumstances, remoteness of locality or the unavailability of competitive or reliable tenderers, a council decides by resolution (which states the reasons for the decision) that a satisfactory result would not be achieved by inviting tenders.*

The recommendation to this report includes a resolution, if made, which enables Council to meet the provisions of this section. The exceptional circumstances relate to the grant conditions that require the works to be completed by 31 May 2014.

If the contract is awarded without a tender process within the meaning of Section 55, compliance with the provisions in the regulation are not required. However the Council needs to be satisfied that the process it has adopted represents a competitive and fair market providing value for money.

11.11 Tender - Replacement of Asbestos Materials - Ballina Naval Museum

Therefore it is worth noting the following departure from the regulation in addition to the requirement discussed above.

The regulation provides a minimum 21 day tender period for either the open or selective methods.

Where a tender period is required to be shortened section 171 applies and this section is reproduced below.

171 Shortened tender period

(1) A council that believes there are exceptional circumstances rendering inappropriate a deadline that would, but for this clause, be required to be specified in an advertisement under clause 167, 168 or 169 or an invitation under clause 168 (4) or 169 (6) may decide on an earlier deadline. However, the earlier deadline must be a specified time on a date that is at least 7 days after:

(a) the date of the publication or first publication of the advertisement, or

(b) the date of the invitation.

(2) A council must keep a record of:

(a) the circumstances requiring an earlier deadline to be specified in such an advertisement or invitation, and

(b) the name of the staff member who made the decision to change the deadline (if not made by the council).

The Council was able to invite tenders from eight prospective service providers and they were provided 14 days to price the work. While this is shorter than the statutory period, this period was considered sufficient having regard to the specification details and information available for the project.

Also it was assumed that the contractors did not need to find a wide range of sub contractors to be involved in the pricing.

The Council needs to be mindful that short pricing periods can involve a pricing premium if the market needs to manage risk that may be otherwise mitigated if they had more time to develop their price.

Tender submissions were received from:

- HBI Australia Pty Ltd - \$195,992 (ex GST)
- Woollam Constructions – \$263,754 (ex GST)
- Quadracon Building Pty Ltd - \$337,470 (ex GST)

All tenders were initially assessed by staff for conformity with the tender specification.

11.11 Tender - Replacement of Asbestos Materials - Ballina Naval Museum

The tender documentation defined five areas, by which each tender would be assessed:

- Total Price - 50%
- Capability & Experience - 10%
- Risk Management Protocols – 20%
- Construction Program – 10%
- Quality, Safety & Environmental – 10%

The tender evaluation panel, consisting three appropriately qualified staff then assessed each of the tenders against the above criteria.

HBI Australia Pty Ltd scored highest in the evaluation and has provided the lowest priced tender. The amount of \$195,992 is marginally in excess of the budget of \$190,000. HBI Australia Pty Ltd demonstrated they have the required capacity to undertake the works, in particular in regards to the removal and disposal of the asbestos materials.

HBI was also heavily involved in the Lennox Head tornado clean-up and they did an excellent job in managing that event.

Sustainability Considerations

- **Environment**
All works will need to comply with the relevant WorkCover regulations in relation to the removal and disposal of the asbestos materials
- **Social**
The Ballina Naval Museum is an important community facility maintaining the integrity of the building will help to protect the exhibits in the building and ensure safety for those visiting or working in the building.
- **Economic**
The Museum contributes to visitor attraction to the Shire.

Legal / Resource / Financial Implications

This report is provided to assist Council meet its statutory requirements in regards to tendering and procurement.

The current budget of \$190,000 is less than the tendered rate for the work by an amount of \$6,000. Therefore there are risks that latent conditions and design issues can result in variations to the contract amount, which will result in further over budget expenditure for the project. For a project of this type, an amount of 5-10% for variations is typically preferred within the project budget.

The section responsible for delivery of this project is also managing a capital budget for improvements to the Council Administration Centre. Works still outstanding for the Administration Centre include energy efficient lighting and some minor maintenance. Staff are confident savings can be made in that budget and the recommendation is to transfer \$10,000 to the Naval Museum. If additional funds are needed a further report will be submitted to Council.

11.11 Tender - Replacement of Asbestos Materials - Ballina Naval Museum

Consultation

Council has consulted with the Ballina Naval Museum in respect to the current condition of the building.

Options

Should Council not award the contract and not complete the works prior to the end of May 2014, the grant funding from the Community Building Program (CBP) will be lost.

The options available to Council are;

1. Determine not to accept any of the tenders received and invite fresh tenders.

The market response to this process is limited, however a price close to the budget figure has been achieved and the submission is from a contractor assessed as suitable for the work. The Council may prefer to invite fresh tenders in an attempt to increase the market competition for the work.

If Council was to select this option it will be necessary to consult with the NSW Government in respect of the grant to determine if an extension of time is allowed. With Council already having received one extension there are concerns another extension will not be approved.

2. Council may award the contract to HBI Australia Pty Ltd.

The above report discusses the statutory requirements in respect authorising this contract in a timeframe that will support the grant condition.

3. Not proceed with the project.

This option has not been further analysed in this report on the basis of the recommendation of the Commercial Services Committee, and subsequent resolution by Council to proceed.

Option two is recommended as the tender assessment indicates that a satisfactory result has been achieved from the tender process and the assessment by the evaluation panel has determined the highest ranked tender. The recommendations to this report deal with the statutory issues noted above.

RECOMMENDATIONS

1. That Council, in accordance with section 55 (3)(i) of the Local Government Act, not invite public tenders to undertake the Removal and Replacement of Asbestos Materials - Ballina Naval Museum.
2. That Council records the reason for the decision in point one is to ensure compliance with the \$95,000 grant funding opportunity awarded to Council which requires the project to be completed by the end of May 2014.
3. That Council notes the shortened tender period and the selective tendering method adopted to invite tender submissions for this project, with the reason for this approach being the grant funding conditions as per point two.
4. That Council accepts the tender for the Removal and Replacement of Asbestos Materials - Ballina Naval Museum from HBI Australia Pty Ltd for the amount of \$195,992 (ex GST).
5. That Council authorises the Council seal to be attached to the contract documents.
6. That Council approves a transfer of \$10,000 from the Council Administration Centre Capital Improvement budget to the Naval Museum budget to meet the cost of this contract.

Attachment(s)

Nil