

Supplementary report

Agenda item 6.2

Publishing Tender Recommendations

Council

Presenter: Michael Tenace, Chief Financial Officer

10 December 2019

Background

1. At its meeting on 29 October 2019, the Council resolved to defer this matter to the 26 November 2019 Council meeting and requested that additional advice and options be provided to the Council at that time. This included reviewing the feasibility and ramifications of a tender awarding model that provides transparency of decisions made in open session of Council, while ensuring all tender commercially sensitive information provided remains confidential.

Supplementary information

2. After a further review of the current practice and options and the need to balance transparency with confidentiality and commercial considerations, it is recommended the current practice is maintained. That is, the default position remains for Tender Reports to be considered in the 'open' session of Council, unless it is deemed by the Chief Executive Officer there are commercial or other sensitivities requiring the matter to be considered in 'closed' session.

Recommendation from management

3. That Council notes the current practice of considering Tender Reports in 'open' session will continue, unless the Chief Executive Officer deems it necessary to consider the report in 'closed' session, due to commercial or other sensitivities with the tender.

Attachment:

1. Agenda item 6.6, Council Meeting 29 October 2019

Management report to Council

Attachment 1
Agenda item 6.6
Council
10 December 2019

Publishing Tender Recommendations

Presenter: Michael Tenace, Chief Financial Officer

Purpose and background

1. The Council's General Delegation Policy requires all contracts over \$2 million must be approved by Council. When contracts are proposed to be entered into that commit expenditure beyond the current financial year, Council approval must also be sought pursuant to the *Local Government Act 1989*.
2. In seeking Council approval, the current default position is that tenders are considered in open session of Council where practicable with the report made public on the Thursday prior to this meeting. This report contains the detail of the recommended supplier and de-identified unsuccessful suppliers plus potentially 'commercial in confidence' information, in particular pricing information.

Key issues

3. There are legal, commercial and reputational risks with the current practice:
 - 3.1. Publishing commercial in confidence pricing information contained in recommendation reports could expose Council to the risk of potential litigation from suppliers. Tender documentation may indicate that the price information will be made public, however suppliers almost always mark their response 'commercial in confidence'.
 - 3.2. In addition, the market can develop competitor market intelligence based on the pricing schedules from tender reports and purchase order (PO) information, further exposing Council to litigation and reputational damage from suppliers.
 - 3.3. Publishing purchase order information can compromise future commercial outcomes. A supplier may price below the incumbent (knowing the PO value) to 'win' the business, and then try and negotiate a price increase at a later date (generally at the exercising of options).
 - 3.4. Potential reputational damage due to suppliers being able to view recommendations before official award is completed.

Recommendation from management

5. That Council:
 - 5.1. Notes that future tender reports will generally be considered in the closed meeting of Council.
 - 5.2. Notes that where future tender reports are submitted to the open meeting of Council the details of non recommended tenderers and pricing information except for the recommended supplier and total contract value will not be provided.
 - 5.3. Publishes awarded contracts and supplier names on a quarterly basis on Council's website.

Attachments:

1. Supporting Attachment (Page 1 of 2)

Supporting Attachment

Legal

1. Section 89(2) of the *Local Government Act 1989* provides that a Council or special committee may resolve that a meeting be closed to members of the public if the meeting is discussion specified matters including 'contractual matters'.

Finance

2. There are no direct financial implications arising from the recommendation in this report.

Conflict of interest

3. No member of Council staff, or other person engaged under a contract, involved in advising on or preparing this report has declared a direct or indirect interest in relation to the matter of the report.

Health and Safety

4. In developing this proposal, no Occupational Health and Safety issues or opportunities have been identified.

Stakeholder consultation

5. Internal consultation has been undertaken including with the Chair of the Finance and Governance portfolio.

Relation to Council policy

6. Delegation policy and Procurement policy.

Environmental sustainability

7. There is no Environmental sustainability impact of the recommendation