

ADDENDUM – ORDINARY COUNCIL MEETING - 24 AUGUST 2021

10.3.5 Lake Brearley Dredging

Responsible Branch:	Sustainability, Environment and Waste
Responsible Directorate:	Works and Infrastructure
Authority/Discretion:	Executive/Strategic
Voting Requirement:	<i>ABSOLUTE MAJORITY REQUIRED</i>

ADDITIONAL INFORMATION

City officers have undertaken a review of the tender process, and an issue has been identified in relation to the price submitted for the tender. The tender request was for a lump sum price for carrying out the dredging requirements, however, only one tender response was received, being from Apex Environmental (Apex), which was based on a schedule of rates.

The tendering regulations allow for alternative submissions to be considered, provided that they are accompanied by a conforming tender. On that basis, the tender response from Apex has been reviewed and determined to be non-conforming, as a conforming tender was not also submitted.

Notwithstanding the above, there are several exemptions under the tendering regulations which provide avenues for direct negotiation with a supplier or contractor.

In particular, regulation 11 (2) (f) of the *Local Government (Functions and General) Regulations 1996* provides an exemption if:

“...the local government has good reason to believe that, because of the unique nature of the goods or services required or for any other reason, it is unlikely that there is more than one potential supplier...”

The City's tender request for the dredging works at Lake Brearley was advertised for seven weeks, which was well in excess of the minimum requirement of two weeks. Despite strong initial interest which resulted in the downloading of 14 tender requests by various organisations, Apex was the only organisation to formally lodge a tender submission.

Normally, a lump sum price is preferred for major projects, as it provides certainty for the City of the final costs, however, on occasions where there is a higher level of risk transferred to the tenderer, it can result in the City paying a premium for the service requested.

Whilst a schedule of rates approach can result in lower overall costs, it also means that the project has to be more carefully managed to ensure it stays within budget.

With the water quality in the lakes still being a significant concern for community members, and the apparent early commencement of the midge season, there is time pressure to complete the dredging works as part of the overall water quality improvement strategy for the lakes.

Whilst it is acknowledged that the tender process has not resulted in a lump sum amount for the project, it is noted Apex is the only organisation to have indicated an interest in the project and is available to complete the works in a reasonable timeframe. In addition, Apex has completed projects of a similar nature in Western Australia, and as they are based in Perth, the City is exposed to less risk than if a company outside the State was engaged, due to current border restrictions initiated due to the COVID-19 pandemic. Officers therefore consider it unlikely that the services can be obtained from another supplier.

The project will be carefully managed and the initial calculations indicate an end cost of approximately \$450,000, which is within budget.

It is therefore recommended that Council declines the non-conforming tender from Apex, and authorises the Chief Executive Officer to negotiate with Apex directly, in accordance with the relevant tender exemption detailed above, and given that it is unlikely there is another supplier to provide the appropriate services.

RECOMMENDATION IMPLICATIONS

In light of the above, the Officer's Recommendation is amended to read as follows:

That Council:

- 1. Declines the tender response from Apex Environmental, as on further review, it has been determined that it does not conform to the City's stated requirement for a lump sum price.**
- 2. Authorises the Chief Executive Officer to enter into direct negotiations with Apex Environmental under the provisions of regulation 11 (2) (f) of the *Local Government (Functions and General) Regulations 1996*, subject to the project not exceeding the approved budget limit.**
- 3. Authorises the Chief Executive Officer (by Absolute Majority) to award the negotiated contract (estimated at \$450,000), to Apex Environmental.**