

ITEM-104 **CCL 22/11/2022 – TENDER REPORT – CONSTRUCTION OF
DARLING STREET OVAL GRANDSTAND – CONTRACT
2023/010T**

REPORT BY: **CITY INFRASTRUCTURE**
CONTACT: **EXECUTIVE DIRECTOR CITY INFRASTRUCTURE / INTERIM
MANAGER PROJECT MANAGEMENT OFFICE**

PURPOSE

To determine a way forward for the Darling Street Oval Grandstand tender in accordance with Contract No. 2023/010T.

Due to the estimated total value of the contract exceeding \$1 million, the Chief Executive Officer's delegation requires a resolution of Council to accept the tenders.

REASON FOR CONFIDENTIALITY

The confidential attachments have been classified confidential in accordance with the provisions of the *Local Government Act 1993 (Act)* as follows:

- Section 10A(2)(d) of the Act provides that Council can close a meeting to consider commercial information of a confidential nature that would if disclosed prejudice the commercial position of the person who supplied it.
- Section 10B(1)(a) and (b) of the Act provides that the discussion of the item in a closed meeting must only:
 - (a) include as much of the discussion as is necessary to preserve the relevant confidentiality, privilege or security; and
 - (b) occur if the Council is satisfied that discussion of the matter in an open meeting would, on balance, be contrary to the public interest.

GROUND FOR CLOSING PART OF THE MEETING

In respect to section 10D(2) of the Act, the grounds on which part of a meeting is to be closed for the discussion of the particular item must be stated in the decision to close that part of the meeting and must be recorded in the minutes of the meeting. Accordingly, an appropriate resolution to proceed is required first.

MOTION TO PROCEED

The discussion of the confidential attachments take place in a closed session, with the press and public excluded, for the following reasons:

- A The matter relates to tenders for Darling Street Oval Grandstand in accordance with Contract No. 2023/010T.

- B It is contrary to the public interest to discuss tenders in an open meeting because the information provided to Council by tenderers is provided on the basis that it will be treated by Council as commercial-in-confidence. A practice of disclosing sensitive commercial information to the public, including competitors, could result in the withholding of such information by tenderers. This would lead to a reduction in the supply of information relevant to Council's decision. A disclosure of confidential information by Council could result in Council being the subject of litigation for breach of confidence.
- C The closed session involves only as much of the discussion as is necessary to preserve the relevant confidentiality, privilege, or security.
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RECOMMENDATION

- 1 At **Attachment A**.

KEY ISSUES

Tender

- 2 The tender is for the refurbishment of the amenities block and the construction of a grandstand and formal parking facilities at 73 Darling Street Oval, Hamilton South. Newcastle Olympic Football Club (NOFC) is the main user of the facility, which is a community asset owned by City of Newcastle (CN).

Contract Term

- 3 The contract term is proposed to be 10 months, with a 12-month defect liability period. If the contract is not awarded this calendar year it may impact on CN's ability to meet grant conditions stipulated by the Office of Sport, who is contributing \$937,500 to the project.

Advertising of Tenders

- 4 The tender was advertised in the Newcastle Herald on Saturday 8 October 2022, the Sydney Morning Herald on Tuesday 11 October 2022, and nationally on the Tenderlink website.

Tenders Received

- 5 Tenders closed at 2pm on Tuesday 1 November 2022. Tender submissions were received from:
- i) Kingston Building Pty Ltd
 - ii) MRW Building Pty Ltd
 - iii) RTC Construction Pty Ltd

Evaluation Process

6 The tenders were assessed against the following criteria:

i) Supplier Diversity	5%
ii) Work Health and Safety	10%
iii) Relevant Project Experience	10%
iv) Methodology	15%
v) Construction Program	15%
vi) Contract Price	45%

7 Tenders were assessed by a panel consisting of CN's Recreation Projects Coordinator and two Project Managers. The panel was selected based on relevant experience and knowledge of the project.

8 Probity oversight was provided by CN's Contracts Officer, who was present during all panel meetings in accordance with CN's Procurement Policy.

FINANCIAL IMPACT

9 All tender submissions exceeded the allocated construction budget which was determined by a Quantity Surveyor (QS) estimate prior to the tender being advertised.

10 The national construction industry is currently experiencing significant cost escalation which is reflected in the lowest tender price exceeding the project's construction budget by more than 20%.

11 The budget to complete the project is comprised of multiple funding sources including contributions from CN, NOFC, and the NSW and Federal governments:

i) Department of Customer Service	\$300,000
ii) Office of Sport	\$937,500
iii) Federal Member for Newcastle election commitment	\$625,000
iv) NOFC Contribution	\$200,000
v) CN Contribution	\$812,500
Total	\$2,875,000

IMPLICATIONS

Policy Implications

12 The proposed project aligns with the Newcastle 2040 Community Strategic Plan as follows:

Livable

1.1 Enriched neighbourhoods and places

1.1.1 Great spaces

1.1.2 Well-designed places

1.2 Connected and fair communities

1.2.1 Inclusive communities

1.2.2 Equitable communities

Achieving Together

4.2 Trust and transparency

4.2.1 Genuine engagement

Environmental Implications

13 The proposed tenderer has demonstrated an ability to construct the works in a manner utilising best environmental management practices and will be responsible for managing all environmental aspects of the works in accordance with its certified environmental management system.

Ecological Sustainability

14 The proposed tenderer does not have a specific ecological sustainable development policy in place. The proposed tenderer has not been prosecuted for environmental offences, nor is it involved in any of the prescribed activities such as uranium, mining, wood chipping, nuclear energy, or timber harvesting.

IMPLEMENTATION

15 In situations where all tender submissions exceed the budget, the Regulation allows Council to reject all tenders. Under Section 178(3) of the Regulation, if Council chooses to reject all tenders it has the choice of:

i) Cancelling the project and not proceeding (as per s.178(3)(a));

ii) Calling for fresh tenders (as per s.178(3)(b), (c), or (d));

iii) Entering into negotiations with a party with a view of entering into a contract (as per s.178(3)(e)); or

iv) CN carrying out the works of the tender itself (as per s.178(3)(f)).

16 If a Council resolves to enter into negotiations with a party, under Section 178(4) of the Regulation, the Council resolution must state the following:

- i) Council's reasons for declining to invite fresh tenders; and
- ii) Council's reasons for determining to enter into negotiations with a party to form a contract.

CONSULTATION/COMMUNICATION

- 17 Consultation occurred with NOFC throughout the design phase to better ensure the project meets the expectations of a community space operating as a sporting facility, within the nominated budget, and is in alignment with CN's Strategic Sports Plan (2020).

BACKGROUND

- 18 The objective of the project is to improve accessibility, provide safe facilities as well as increase female participation in sport by providing high quality amenities. The proposed grandstand facility aligns with CN's Strategic Sports Plan 2020.
- 19 NOFC approached CN in 2020 to apply for a Greater Cities Sports Facility Fund for the replacement of the existing grandstand and the development of female friendly sporting amenities, change room facilities, club room, canteen and grandstand seating. NOFC was subsequently successful in June 2021 in obtaining a grant from the Office of Sport to the value of \$937,500 with the total project estimate at \$1.73 million. NOFC's submission was based on a QS estimate undertaken at the design development phase that indicated a cost of \$1.73 million
- 20 CN's contribution to the project at this time was \$312,500 (33% of the applied grant). NOFC's contribution was \$200,000 with the remaining cost to be met via a \$300,000 grant secured by NOFC from the Department of Customer Service.
- 21 To ensure confidence that the QS was consistent with current construction rates, CN sought an independent QS in August 2021. This QS estimate identified a total project cost of \$3.72 million, significantly higher than the QS relied on as part of NOFC's grant application.
- 22 CN worked with NOFC to amend the scope of the project to ensure delivery of improved facilities that meet the intention of the grant, but reduced the overall construction cost. The QS for the revised scope of works based on the reduced design by NOFC's second consultant was \$2.9 million.
- 23 The proposed key deliverables of the redevelopment include four gender neutral changerooms, two gender neutral referees' rooms, canteen, spectator viewing facilities and car parking.
- 24 In order to meet the revised \$2.9 million cost, NOFC secured Federal Government funding of \$625,000 with the remaining \$500,000 committed by CN. This has increased CN's total contribution to \$812,500.
- 25 The calling of tenders was in accordance with the requirements of section 55 of the Act. The process followed was in accordance with Part 7 of the *Local Government (General) Regulation 2021* (Regulation). Council is required to accept tenders in accordance with clause 178 of the Regulation (Refer to Options).

OPTIONS

Option 1

26 Council resolves to not accept any tender and enter into negotiations with a tenderer with a view to entering into a contract. Council must state a reason for this in its resolution. This is the recommended option.

Option 2

27 Council resolves to accept the tender that, having regard to all the circumstances, appears to be the most advantageous. This is not the recommended option.

Option 3

28 Council defers a decision at this time to allow further consideration of the tenders received. This is not the recommended option.

Option 4

29 Council resolves not to accept any tender and invite fresh tenders. This is not the recommended option.

Option 5

30 Council resolves not to accept any tender and not proceed with the contract. Council must state a reason for this in its resolution. This is not the recommended option.

ATTACHMENTS

Item 104 Attachment A: Confidential Recommendation.

Item 104 Attachment B: Confidential Tender Evaluation Matrix – Summary

(Attachments A-B refer Confidential Council Meeting Agenda 22 November 2022)