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**CITY OF BUSSELTON**

**MINUTES FOR THE SPECIAL COUNCIL MEETING HELD ON 8 SEPTEMBER 2017**

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## MINUTES

MINUTES OF A MEETING OF THE A SPECIAL MEETING OF THE BUSSELTON CITY COUNCIL HELD IN THE COUNCIL CHAMBERS, ADMINISTRATION BUILDING, SOUTHERN DRIVE, BUSSELTON, ON 8 SEPTEMBER 2017 AT 12.00PM.

**1. ATTENDANCE, APOLOGIES & LEAVE OF ABSENCE**

Apologies

Cr Coralie Tarbotton

Cr Ross Paine

Media:

Nil

Public:

Nil

**2. PRAYER**

Nil

**3. PURPOSE OF MEETING**

To consider a tender included at item 71 on the agenda.

**4. PUBLIC QUESTION TIME**

Nil

**5. DISCLOSURE OF INTERESTS**

Nil

**6. PRESENTATIONS BY PARTIES WITH AN INTEREST**

Nil

## **7. COMMUNITY AND COMMERCIAL SERVICES REPORT**

### **7.1 RFT11/17 Design and Construction of Landside Civil and Services Infrastructure at Busselton-Margaret River Airport**

<b>SUBJECT INDEX:</b>	Busselton-Margaret River Airport
<b>STRATEGIC OBJECTIVE:</b>	Assets are well maintained and responsibly managed.
<b>BUSINESS UNIT:</b>	Commercial Services
<b>ACTIVITY UNIT:</b>	Airport Development
<b>REPORTING OFFICER:</b>	Project Officer Contracts and Tendering - Ben Whitehill
<b>AUTHORISING OFFICER:</b>	Director, Community and Commercial Services - Naomi Searle
<b>VOTING REQUIREMENT:</b>	Absolute Majority
<b>ATTACHMENTS:</b>	Attachment A Confidential Tender Evaluation and Recommendation Report

#### **PRÉCIS**

The City of Busselton issued RFT11/17 to engage experienced design and construct contractors and consultants with the necessary expertise to undertake design and construction of the landside civil and services infrastructure and landscaping at Busselton-Margaret River Regional Airport.

The City received four submissions in response to the request for tender. This report summarises the tender responses and makes a recommendation for the appointment of preferred tenderers.

#### **BACKGROUND**

The Airport Development Project, is a capital project with \$55.9 million of State Government funding and \$9.78 million of Federal Government funding. The capital works associated with the various stages of the project include the airside and landside infrastructure. The design and construction of the airside infrastructure works were awarded in November 2016.

The landside civil and services infrastructure at Busselton-Margaret River Regional Airport is to be designed and constructed in accordance with the City's requirements set out in the tender documentation and must satisfy the requirements of the City's funding partners. The specification and contract was prepared by City officers, APP and Herbert Smith Freehills.

The design and construct works consist of the following items:

- Vasse Highway and Neville Hyder Drive intersection works;
- Neville Hyder Drive upgrade including lighting to MRWA standards;
- Internal access roads;
- Car hire and short/long term car parking areas including all services;
- Integrated car parking system to both car parks, including entry/exit boom gates, pay machines in appropriate car park locations and terminal building; integrated system that allows for flexible pricing structures and comprehensive reporting;
- New service zone for utilities (water/fire, sewer, power, NBN network and Telstra, irrigation);
- Code 3 General Aviation (GA) Precinct access roads and all services;
- Relocation of existing works depot from existing FIFO car park to adjacent to Terminal Building;
- Reconnection of services of existing terminal and external buildings;
- Soft and hard landscape elements;
- Irrigation systems;
- Utility services provision (water/fire, sewer, power, data, sewerage, irrigation) to new Terminal Building and GA Precinct and existing buildings.
- Inclusion of HV infrastructure (RMU and HV switchgear) to serve commercial premises.

The tender also provided for an optional scope item providing roads and services to the commercial precinct.

Whilst all tenders received were within the overall landside project budget the State Government's Value Optimisation Review will have an impact on the amount awarded which will require some negotiations with the preferred tenderer. The tender documentation was set out to enable value management opportunities to achieve this such as reducing the Vasse Highway intersection upgrade requirements, road surfacing requirements and landscaping.

This report proposes that such variations should be classified as minor variations pursuant to Regulation 20 of the *Local Government (Functions and General) Regulations 1996*. Council approval is sought that the variations proposed, both separately and together, constitute a minor variation for the purpose of Regulation 20. The statutory framework for the variation of requirements before entry into contract is set out in more detail under the STATUTORY ENVIRONMENT section of this report.

### **STATUTORY ENVIRONMENT**

Part 4 (Tenders) of the *Local Government (Functions and General) Regulations 1996* requires that tenders be publicly invited for such contracts where the estimated cost of providing the total service exceeds \$150,000. Compliance with the section 3.57 of the *Local Government Act 1995* is required in the issuing and tendering of contracts.

Regulation 20 of the *Local Government (Functions and General) Regulations 1996* permits a local government, after inviting tenders and having chosen a successful tenderer, to make a minor variation in the goods or services required and enter into a contract with the successful tenderer for the varied requirement without again inviting tenders. A minor variation is defined as a variation that the local government is satisfied is minor having regard to the total goods or services that tenderers were invited to supply.

Regulation 21A of the *Local Government (Functions and General) Regulations 1996* prevents a contract for the supply of goods or services from being varied with a successful tenderer unless the variation is necessary in order for the goods or services to be supplied and does not change the scope of the contract or if the variation is a renewal or extension of the term of the contract as described in the regulations.

### **RELEVANT PLANS AND POLICIES**

The Busselton Regional Airport Expansion – Stage 2 is identified in the City's Corporate Business Plan: "Subject to the outcome of the Busselton Regional Airport business case and the provision of external funding, progress with Stage 2 expansion of the airport to provide for interstate flights".

The Busselton Regional Airport Master Plan (2016-2036) identifies future stages for development and the award of this tender will enable the City to progress those future stages.

The City's purchasing, tender selection criteria, occupational health and safety and engineering technical standards and specifications were all relevant to this tender and have been adhered to in the process of requesting and evaluating tenders.

## **FINANCIAL IMPLICATIONS**

The Busselton-Margaret River Regional Airport Development Project is fully funded with \$55.9 million of State Government funding and \$9.78 million of Federal Government funding. A total of approximately \$26 million has been allocated to the landside infrastructure on the Airport site including the terminal building, civils, internal services and landscaping. Whilst the State Government's funding is expected reduce as a result of a State Government's Value Optimisation Review being undertaken, the award of this tender, and any associated variations, will not exceed the overall project budget.

### **Long-term Financial Plan Implications**

As part of the development of the State Government Business Case proposal for the project an operational financial model was developed which incorporated a 10-year financial plan. The model considered revenues and costs associated with the upgraded facility, including up-front and recurrent capital and ongoing operational expenditure. The model demonstrates that the upgraded facility will be self-sustainable, generating a modest profit into the future, to be transferred into the City's Airport Infrastructure Renewal and Replacement Reserve at the end of each financial year.

The Long Term Financial Plan (LTFP) is currently based on the 'here and now' scenario (stage 1), and will require updating to reflect the project, including ongoing operational and capital revenue and expenditure based on the redevelopment. This work has commenced and will be incorporated into future LTFP reviews.

## **STRATEGIC COMMUNITY OBJECTIVES**

The Airport Development Project aligns with the following community objectives of the City of Busselton Strategic Community Plan 2013:

- Key Goal Area 2 - Infrastructure assets that are well maintained and responsibly managed to provide for future generations; and
- Key Goal Area 6 - An organisation that is managed effectively and achieves positive outcomes for the community.

## **RISK ASSESSMENT**

A risk assessment was carried out and risks of medium and high associated with the awarding of the tender and the additional works proposed as minor variation are listed below:

<i>Risk</i>	<i>Controls</i>	<i>Consequence</i>	<i>Likelihood</i>	<i>Risk Level</i>
The decision made by Council that they are satisfied that reduced works proposed under Regulation 20 of the <i>Local Government (Functions and General) Regulations</i> constitute a minor variation are challenged.	City executive and legal officers have reviewed the requirements of this regulation.	Minor	Possible	Low
The State Government requires reductions beyond what is considered a minor variation as part of the value optimisation review currently being undertaken	Officers have reviewed funding agreements and continue to work with the State Government through the value optimisation review to ensure that the project objectives can be met	Minor	Likely	Medium

## CONSULTATION

Project Governance Committee (South West Development Commission, City of Busselton, Tourism WA, Department of Treasury, Department of Transport and Department of Regional Development as observer only).

## OFFICER COMMENT

### Evaluation

The primary objective of RFT11/17 was to appoint a suitably experienced and qualified contractor for the design and construction of the landside civil and services infrastructure at Busselton-Margaret River Airport.

The documentation for RFT11/17 was issued on 8 June 2017. The request for tender closed on 6 July 2017 and the City received a total of four submissions as detailed below.

	<b>Company</b>	<b>Location</b>	<b>Contact</b>	<b>Phone</b>
1.	BCL Group Pty Ltd	Unit 1/48 Rigali Way, Wangara WA 6065	Louie Hancock	(08) 9303 9648
2.	Busselton Civil Pty Ltd	19 Cable Sands Road, Yalyalup WA 6280	Jason Lauder	(08) 9752 1000
3.	Ertech Pty Ltd	118 Motivation Drive, Wangara WA 6065	Stephen Eardley	(08) 9302 6666
4.	Jaxon Civil	4 Gwentyfred Road, South Perth WA 6151	Mike Boynes	(08) 9368 9999

A tender evaluation panel was formed to evaluate the tender submissions. The evaluation panel members were as follows:

- Naomi Searle, Director – Community and Commercial Services;
- Andrew McColgan, Project Manager – APP Corporation;
- Ben Whitehill, Project Officer – Contracts and Tendering.

As part of the tender evaluation process an initial compliance check was conducted to identify submissions that were non-conforming with the immediate requirements of the RFT. This included compliance with contractual requirements and the provision of requested information. All tenders were found to comply with the terms and conditions and mandatory requirements of the RFT.

Accordingly, each tender was scored according to the qualitative criteria included in the tender documentation as follows:

<b>Criteria</b>	<b>Weighting</b>
Relevant Experience	10 %
Key Personnel Skills and Experience	5 %
Tenderer's Resources	5 %
Demonstrated Understanding	20 %
Price	60 %

The net tendered price was scored using the 'average based scoring method' recommended by WALGA in the 'Local Government Purchasing and Tender Guide'.

The panel members individually assessed the qualitative criteria and then applied an average to provide a final rating. The scores were then added together to indicate the rankings for each tender.

Following the initial evaluation process, the panel sought clarifications from all tenderers. Following that tender interviews were conducted with Ertech on 25 August 2017 and with Jaxon Civil on 29 August 2017. A final meeting of the evaluation panel was carried out on 29 August 2017 to agree on a final recommendation.

The confidential report attached provides further detail in relation to the relative merits of each of the individual tenderers. Officers recommend that ERTECH PTY LTD should be nominated as the best value for money tender the reasons outlined in the confidential report.

#### Variation of requirements before entry into contract

Whilst all tenders received were within the overall landside project budget the State Government's Value Optimisation Review will have an impact on the amount awarded which will require some negotiations with the preferred tenderer. Officers have been heavily involved in the Review and are aware of the likely reduction in works required.

The tender documentation was specifically prepared with this in mind with the pricing schedule being very detailed and the use of value management options. Tenderers have provided their best prices for delivering those minimum requirements and have provided rates for the provision of materials and performance of the requirements.

Officers believe that the best mechanism for reducing the extent of the works is to seek a variation of requirements prior to entering into the contract with the preferred tenderer pursuant to Regulation 20 of the *Local Government (Functions and General) Regulations 1996*.

Regulation 20 permits a local government, after inviting tenders and having chosen a successful tenderer, to make a minor variation in the goods or services required and enter into a contract with the successful tenderer for the varied requirement without again inviting tenders. A minor variation is defined as a variation that the local government is satisfied is minor having regard to the total goods or services that tenderers were invited to supply.

Officers believe that the reduction in the extent of works is a minor variation because:

1. having regard to the total goods and services that tenderers were invited to supply the reduced goods and services do not significantly change the total goods and services supplied being, the design and construction services of the landside civil and services infrastructure at BMRA;
2. the variation would not alter the evaluation and assessment of the tenders;
3. in the context of the design and construct contract which was selected to allow opportunity to explore buildability and staging to meet the City's operational and financial objectives adjusting the requirements should only be considered a minor variation; and
4. there is unlikely to be any significant change in construction methodology.

For the reasons set out above, officers believe there are reasonable grounds upon which Council can be satisfied that the variations will be minor.

#### **CONCLUSION**

It is recommended that Council delegates authority to the CEO to negotiate the contract and award the tender in consultation with the Director of Community and Commercial Services. The delegation should allow the CEO to first negotiate with the first preferred tenderer, ERTECH PTY LTD, and if those negotiations are unsuccessful then with the second preferred tenderer, JAXON CIVIL PTY LTD.

It is also recommended that Council also delegates authority to the CEO to:

- (a) propose variations to the required works and services which variations are considered minor by the CEO and to determine whether the variations are minor in accordance with Regulation 20 of the *Local Government (Functions and General) Regulations 1996*;
- (b) to agree any other variations to be included in the contract as a result of the varied works and services and which are considered reasonable by the CEO; and
- (c) to enter into a contract with the chosen tenderer to supply the varied works and services.

It should be noted that whilst delegated authority is sought for the CEO to enter into negotiations with the preferred tenderer, the tender will not be awarded until the Minister for Regional Development notifies the City of the outcome of the Value Optimisation Review and the City assesses the associated impacts that may arise as a result of this.

## **OPTIONS**

The Council may consider the following alternate options:

1. The Council may choose not to accept the Officer's Recommendation and award the tender to an alternate tenderer. In the view of the Officers this could result in a tender being awarded to a tenderer that has not presented the "best value for money" offer.
2. The Council may choose not to accept the Officer's Recommendation and not award the tender. This would mean going back out to tender, resulting in significant delays to the contract award and the Airport Development Project.
3. The Council may not choose to delegate authority to the CEO to propose and determine minor variations in accordance with Regulation 20 of the *Local Government (Functions and General) Regulations 1996*.
4. Not proceed with the development.

## **TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

Negotiations with the preferred tenderer can be undertaken immediately after the Council has endorsed the Officer's recommendation. Award of the tender can be made following the outcome of the State Government's Value Optimisation Review and subsequent conclusion of negotiations with the successful tenderer. Subject to finalisation of the contract the successful tenderer will receive formal written notification of the resolution. All unsuccessful tender applicants will also be notified at this time. It is expected that the finalisation of the contract will take between two and four weeks.

## **COUNCIL DECISION AND OFFICER RECOMMENDATION**

**C1708/208**

Moved Councillor J McCallum, seconded Councillor G Bleechmore

### **ABSOLUTE MAJORITY DECISION OF COUNCIL REQUIRED**

1. That the Council:

1. Endorses the outcomes of the evaluation panel's assessment in relation to Tender RFT11/17 – Design and Construction of Landside Civil and Service Infrastructure – Busselton-Margaret River Airport, which has resulted in the tender submitted by ERTECH PTY LTD being determined as the best value for money tender and the tender submitted by JAXON CIVIL PTY LTD as the second best value for money tender.

2. Delegates to the CEO the authority:
  - (a) to propose variations to the required works and services which variations are considered minor by the CEO;
  - (b) to determine whether the variations are minor in accordance with Regulation 20 of the *Local Government (Functions and General) Regulations 1996*;
  - (c) to agree any other variations to be included in the contract as a result of the varied works and services and which are considered reasonable by the CEO; and
  - (d) to enter into a contract with the chosen tenderer to supply the varied works and services.
  
3. Delegates authority to the CEO to negotiate, with ERTECH PTY LTD, the terms of the contract for a finalised lump sum price for the design and construction of the Landside Civil and Services Infrastructure at Busselton-Margaret River Airport including any variations in accordance with Regulation 20 of the *Local Government (Functions and General) Regulations 1996* provided that the total cost does not exceed the budget.
  
4. Delegates authority to the CEO to negotiate, with the second preferred tenderer JAXON CIVIL PTY LTD if negotiations with the first preferred tenderer ERTECH PTY LTD are unsuccessful, the terms of the contract for a finalised lump sum price for the design and construction of the Landside Civils and Services Infrastructure at Busselton-Margaret River Airport including any variations in accordance with Regulation 20 of the Local Government (Functions and General) Regulations provided that the total cost does not exceed the allocated budget.
  
5. Delegates authority to the CEO to approve variations in accordance with Regulation 21A of the *Local Government (Functions and General) Regulations 1996* limited so as not to exceed the overall project budget.

**CARRIED 7/0**

**8. CLOSURE**

The meeting closed at 12.37pm.

THESE MINUTES CONSISTING OF PAGES 1 TO 11 WERE CONFIRMED AS A TRUE AND CORRECT RECORD ON FRIDAY, 8 SEPTEMBER 2017.

DATE: \_\_\_\_\_

PRESIDING MEMBER: \_\_\_\_\_