

## REPORTS THROUGH THE GENERAL MANAGER

### REPORTS FROM THE DIRECTOR ENGINEERING AND OPERATIONS

b38 [EO-CM] EC2011-005 Supply of Retail Electricity for Small Sites

**ORIGIN:**

Director Engineering and Operations

**FILE NO: EC2011-005**

**SUMMARY OF REPORT:**

On 1 February 2011, tenders were invited for the Supply of Retail Electricity for Small Sites (those consuming less than 160MWh per year) with a 3 year operation of contract commencing on 1 July 2011 (or the first meter read after that date) and finishing on 30 June 2014 (or the first meter read after that date).

Two (2) responses were received for EC2011-005 at the close of tenders on 2 March 2011.

This report provides a recommendation on the preferred course of action that will ensure supply of retail electricity to small sites at the best possible price and terms for Council. A summary of the Selection Criteria is included in the body of this report. It is recommended that Council declines to accept any of the tenders for EC2011-005.

**ATTACHMENT A** is **CONFIDENTIAL** in accordance with Section 10a(2)(c) and 10A(2)(d) of the Local Government Act 1993, because it contains commercial information of a confidential nature that would, if disclosed:-

- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business
- (d) commercial information of a confidential nature that would, if disclosed:
  - (i) prejudice the commercial position of the person who supplied it, or
  - (ii) confer a commercial advantage on a competitor of the council, or
  - (iii) reveal a trade secret

**RECOMMENDATION:**

**That:**

1. Council, in accordance with Clause 178 (1)(b) of the Local Government (General) Regulations 2005, declines to accept any of the tenders for EC2011-005 Supply of Retail Electricity for Small Sites.
2. Council, in accordance with Section 55(3) of the Local Government Act 1993 and Clause 163(1A) of the Local Government (General) Regulation 2005, endorses participation in the Local Government Procurement tender process for Electricity for Small (tariff) Sites (contracts in place prior to 1 July 2011).
3. The proposal from Entire Network Solutions be provided to the Revolving Energy Fund Management Team to investigate possible implementation of carbon sensitive electricity generating devices which could assist Councils carbon footprint reduction goals.
4. ATTACHMENT A is CONFIDENTIAL in accordance with Section 10A(2)(c) and 10A(2)(d) of the Local Government Act 1993, because it contains commercial information of a confidential nature that would, if disclosed:-
  - (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business
  - (d) commercial information of a confidential nature that would, if disclosed:
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## **REPORT:**

### **Tender Background**

In July 2008, Council rolled its small site electricity accounts into the Department of Commerce '776' Contract for the supply of retail electricity (Contract EC2008-078). This contract was developed by State Procurement on behalf of the State Contracts Control Board.

NSW Government Agencies and other approved entities were invited to utilise and benefit in the bulk purchase arrangement which was developed through a competitive tendering process.

Contract '776' is due to expire on 30 June 2011 (or the first meter read after that date). Before the current contract expires, it is prudent that Council makes arrangements for a renewed contract. To date, there has been no official advice or correspondence from the Department of Commerce with regard to a possible extension or new contract arrangement after the expiry of Contract '776'.

The Retail Electricity market is historically at its least volatile during late summer and late winter seasonal periods. These times have been proven to be the best time to negotiate Retail electricity contracts. The timing of tendering for electricity supply is probably the most important aspect of negotiating a good electricity contract and it is not wise to obtain offers near contract expiry due to the restriction in negotiating power.

As an extended Contract '776' or a replacement contract has not been offered before this tender was prepared and advertised, Council's Contracts Unit proactively prepared a tender to the open market to ensure the best possible timing to negotiate pricing for the next 3 financial years.

Tender EC2011-005 was invited by open tender in accordance with the requirements of the Local Government (General) Regulations 2005 and was advertised on 1 February 2011 in The Sydney Morning Herald.

### **Tenders Received**

Tender Submissions closed at 4:00pm (local time) on 2 March 2011 in the Tender Box located in the foyer at the Tweed Shire Council Civic and Cultural Centre, Murwillumbah NSW 2484. A total of 2 responses was recorded for EC2011-005 at the Tender Box opening from:

- AGL Energy Limited
- Entire Network Solutions

### Tender Evaluation

The tender evaluation was based on the following evaluation criteria which were determined prior to the issuing of the Tender:

Criterion	Weighting %
Conformity of Offer	10
RESA Pricing (Lump Sum Comparison)	80
Time Performance	10
Total	100

The tender evaluation was conducted by Council's Tender Assessment Panel, consisting of Council Contracts Engineers.

The general terms of reference for the Assessment Panel were as follows:

- Assess the tenders submitted in accordance with the specified criteria;
- Undertake an individual initial assessment of the tender price and non-price data;
- Review any written responses;
- Identify and seek further clarifications (as required) from the tenders and review any qualifications and departures; and
- Score all responses against the specified price and non-price assessment criteria and agreed assessment criteria weightings.
- Assess the rates offered for EC2011-005 against the rates offered in the existing contract EC2008-078 (for cost increase calculations only).

A copy of the Tender Evaluation Report is included in **ATTACHMENT A** which is **CONFIDENTIAL** in accordance with Section 10A(2)(c) and 10A(2)(d) of the Local Government Act 1993, because it contains commercial information of a confidential nature that would, if disclosed:-

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### Evaluation Findings

An alternative offer was received from Entire Network Solutions. The submission proposes electricity supply through stand alone carbon sensitive electricity generating devices installed at each small site. The proposal would still require a connection to the normal electricity grid but the costs of this connection and consumption have not been included. The offer is deemed non-conforming as it does not provide a reliable supply of retail electricity.

Although the tender is non-conforming to the requirements of EC2011-005, the proposal from Entire Network Solutions should be reviewed by Council's Revolving Energy Fund management as an opportunity to invest in physical assets that could

reduce Council's carbon footprint. The Revolving Energy Fund already focuses on solar power installations on site, replacement of old fittings and fixtures with energy efficient models (ie energy saving light bulbs).

An alternative offer was also received from AGL Energy Limited. Their submission indicates that the Contract '776' operated by AGL and managed by the NSW Department of Commerce will be extended for a further 1 year (until 30/06/2012) with the discount increasing to 12% for the period 1/7/2011 to 30/6/2012.

Based on the 2010 calendar year consumption of Council's Small sites and the current IPART Business Regulated Retail Rates, Council could save 12% or approx \$117,000 on the IPART Business Regulated Retail Rates by continuing the Contract '776' arrangement for an extra year.

However, the NSW Department of Commerce has not announced that an extension to Contract '776' has been negotiated and there is no guarantee that this will definitely take place.

On 8 March 2011, Council received a letter from Local Government Procurement (LGP) advising the opportunity to commit to a new electricity tender process that will commence on 1 July 2011. The Acting General Manager, on advice that no tender submitted was a conforming tender, signed an authorisation that irrevocably commits Council's Small Sites to the LGP Retail Energy Tender process. The authority for the Acting General Manager to commit was based on the fact that LGP is a bulk purchasing organisation as prescribed in the Local Government Act, s55(3), cl163(1A) of the Local Government (General) Regulations and the *Tendering Guidelines for NSW Local Government – October 2009*.

The LGP tender process has achieved significant benefits in previous years due to the aggregated consumption of the participating councils and as no submissions for EC2011-005 were deemed conforming, it is prudent that Council makes arrangements for a renewed contract through other options. The LGP opportunity is the best action for Council as it guarantees a contract will be in place before 1 July 2011. Pursuing the tendering process proposed by Local Government Procurement, Council is making a commitment and does not then have the right to withdraw from the process once tenders have been lodged and evaluated, unless of course the prices tendered are not better than the current prices.

### **Tender Recommendation**

Based on the Tender Evaluation Report, it is recommended that:

1. Council declines to accept any tender for EC2011-005 in accordance with the terms and conditions prescribed within the Local Government Act 1993 and the Local Government (General) Regulations 2005.
2. Council endorses participation in the Local Government Procurement tender process for Electricity for Small (tariff) Sites (contracts in place prior to 1 July 2011).

3. The proposal from Entire Network Solutions be provided to the Revolving Energy Fund Management Team to investigate possible implementation of carbon sensitive electricity generating devices which could assist Councils carbon footprint reduction goals.

Details of the alternative offer from AGL Energy Limited are shown in the Tender Evaluation Report **CONFIDENTIAL ATTACHMENT A** which was endorsed by the Tender Evaluation Panel.

#### **LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

##### **Probity**

This tender process is in accordance with Section 55 of the Local Government Act 1993, Part 7 (Tendering) of the NSW Local Government (General) Regulation 2005 and Council's Procurement Policy. It is considered that the tendering process has adequately addressed the five fundamentals of probity:

- Best value for money
- Impartiality
- Dealing with conflicts of interest
- Accountability and transparency
- Confidentiality

##### **Funding**

Funding is provided within the 2011/2012 Operating Expenses Budget managed within each responsible Council Division.

#### **POLICY IMPLICATIONS:**

The recommendations in this report are consistent with Council's Procurement Policy, Procurement Procedure, Contracts Management Process document and Tenders Procedure.

#### **UNDER SEPARATE COVER/FURTHER INFORMATION:**

1. **Confidential Attachment A** - Tender Evaluation Report (ECM 30043822).
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