



MINUTES OF THE SPECIAL MEETING OF COUNCIL HELD ON 25 MAY 2010

I hereby certify that the Special Meeting of Council held are a true and accurate record of the proceedings contained therein.

Shire President Confirmed

SUMMARY OF AGENDA

Item No	Description	Page No
1.	DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS	2
2.	RECORD OF ATTENDANCE / APOLOGIES / LEAVE OF ABSENCE (PREVIOUSLY APPROVED)	2
3.	DECLARATION OF INTEREST	2
4.	BUSINESS OF MEETING	
	4.1 Consideration of T15 Spray Seal and Cement Stabilisation Services Tender Assessment	3
5.	MEETING CLOSURE	7

SHIRE OF WYNDHAM EAST KIMBERLEY

MINUTES

OF THE SPECIAL COUNCIL MEETING HELD ON, 25 MAY 2010, AT 6:00 PM

1. DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

The Shire President declared the meeting open at 6:03pm.

Mr Raymond Dessert was welcomed to the meeting as a visitor by the Shire President.

2. RECORD OF ATTENDANCE

Cr F Mills	Shire President
J Moulden	Deputy Shire President
Cr J McCoy	Councillor
Cr D Ausburn	Councillor
Cr K Torres	Councillor
Cr R Addis	Councillor
Cr J Parker	Councillor
Cr K Wright	Councillor
G Gaffney	Chief Executive Officer (Minute Taker)
R Williams	Acting Director Infrastructure Services
N Kearns	Director Development Services
K Apperley	Director Community Development
J Ellis	Director Corporate Services

APOLOGIES

Nil

3. DECLARATION OF:

- **Financial Interest**

Nil

- **Members Impartiality Interest**

Nil

- **Proximity Interest**

Nil

4. BUSINESS OF MEETING

4.1 CONSIDERATION OF T15 SPRAY SEAL AND CEMENT STABILISATION SERVICES TENDER ASSESSMENT

DATE:	25 May 2010
PROPONENT:	Shire of Wyndham East Kimberley
LOCATION:	Shire of Wyndham East Kimberley
AUTHOR:	Russell Williams, Acting Director Infrastructure Services
REPORTING OFFICER:	Russell Williams, Acting Director Infrastructure Services
FILE NO:	66. 58. 15
ASSESSMENT NO:	N/A

PURPOSE

For Council to consider the cancellation of tender T15 09/10 - Spray Seal and Cement Stabilisation Services.

BACKGROUND

The documentation for tender T15 09/10 Spray Seal and Cement Stabilisation Services was prepared in the final two weeks of the previous Executive Manager's service with the Shire. The tender was advertised in the 'West Australian' and 'Kimberley Echo' 8 and 9 April 2010 respectively. Tenders closed at 1600hours on Thursday 6 May 2010 and were opened in the presence of Shire President Cr Fred Mills, and Acting Director of Infrastructure Services, Russell Williams, Project Officer, Lubor Hon and Infrastructure Executive Support Officer, Fiona Kuiper.

An assessment and evaluation was completed by the Kununurra Works Manager, John Gault. The report to Council for the Ordinary Meeting of 18 May 2010 was completed with assistance from Infrastructure Executive Support Officer, Fiona Kuiper, who proofed the report and included the aforementioned assessment as an attachment to the report.

The report was then forwarded to the Acting Director Infrastructure Services, Russell Williams, and the CEO's Executive Assistant for inclusion into the agenda as Urgent Business for the Ordinary Meeting of 18 May 2010. Officers indicate there was a perceived urgency to have this tender considered by Council and a similar pressure to commence works.

During the opening presentation of this report to the Ordinary Meeting 18 May 2010, Cr Torres asked the Acting Director Infrastructure Services "*why has there been no Indigenous Employment Criteria included in the Tender assessment?*" This question was taken on notice and the answer from the Acting Director Infrastructure Services is provided below:

“Why has there been no Indigenous Employment Criteria included in the Tender assessment?” (Cr K Torres – Question on Notice)

Investigations have revealed that there was no inclusion in section 1 ‘Conditions of Tendering’ regarding Indigenous Employment Opportunities as per Council Policy F19 (amended 17/11/2009).

Subsequently there is no provision for Indigenous Employment Opportunities as per Council Policy F19 (amended 17/11/2009) within section ‘1.12 Tender Assessment Criteria’.

Section 2 ‘General Conditions of Contract’ contains no provision for the provision of Indigenous Employment Opportunities as per Council Policy F19 (amended 17/11/2009).

Section 3 ‘Preliminary Clauses and Schedules’ contains no provision for the inclusion of Indigenous Employment Opportunities as per Council Policy F19 (amended 17/11/2009).

Further investigation revealed that there has been no inclusion of Indigenous Employment Opportunities as per Council Policy F19 (amended 17/11/2009) in ‘Tender T15 09/10 Evaluation Criteria’.

The omission of Indigenous Employment Opportunities contravenes Shire of Wyndham East Kimberley ‘Council Policy F19’ (amended 17/11/2009).

Evidentially in previous tenders, both tenderers are committed to Indigenous Employment; in this case they have not been required to demonstrate that commitment.

Cr Wright raised the following points pertaining to the assessment and evaluation matrix and the responses from the Acting Director Infrastructure Services are provided below:

“It is apparent that in the pricing comparison Fulton Hogan are clearly dearer for each component; this is not reflected in the Evaluation Matrix.” (Cr K Wright)

Response to Point 1

The tender document requests the tenderer to provide prices for two individual components ‘River Aggregate’ and ‘Quarried Crushed Aggregate’ unfortunately each tenderer has chosen to supply only one of the two options requested.

Fulton Hogan tendered prices to provide Quarried Crushed Aggregate, a material that has to be imported which is a superior product that meets Main Roads WA specifications.

Downer EDI has tendered prices to supply ‘River Aggregate’ a locally produced product that does not meet Main Roads WA specifications.

Both tenderers have provided prices that do not allow for a cross comparison, which in turn does not allow a precise conclusion to be drawn.

“The total dollar factor given for the total square metreage and total litres used per annum shows a difference of close to 1.4 million dollars.” (Cr K Wright)

Response to Point 2

As stated previously both tenderers have chosen to provide prices for only one of the products as per the Schedule of Rates. This has a compounding effect on the quantity estimation values which reflects the difference in the “total amount” tendered price.

After studying the tender documents I consider that both tenderers have addressed the tender and replied, each interpreting the document in their own way and replying accordingly.

The following comment is provided as background from Kununurra Works Manager, John Gault:

At the Ordinary Meeting of Council 18 of May 2010, Officers recommended that the tender submission offered by Fulton Hogan provided Council with the greatest flexibility and value for money and recommend that Council enter into a three year contract with the option for a one year extension subject to the agreement of both parties, with Fulton Hogan.

During the meeting a number of issues were raised with the tender documentation and evaluation matrix used. The main points were as follows:

Indigenous employment evaluation criteria -

It is believed that the indigenous employment evaluation criteria included in policy F19 – Purchasing and Tendering, may have been overlooked due to the tender documents being written up prior to the review of the policy date (17/11/2009). The tender documents were not review thoroughly before advertising in April 2010 to include this new criterion. This was an oversight in the tender process.

Evaluation Matrix Pricing –

The evaluation matrix was assessed to the best of the officer’s knowledge and experience with the information provided by tenders. It is obvious now that the pricing component was more difficult to compare than first thought and should be reassessed to comply more closely with the Shires expectations for their resealing and cement stabilisation needs within the area. It is suggested that the Shire only call tenders on quarried crushed aggregate to align itself within Main Roads specifications

It is believed that the Shire should include these items into a new advertisement of the Tender documents and reassess tenders

STATUTORY IMPLICATIONS

The Local Government (Functions and General) Regulations 1996

POLICY IMPLICATIONS

Shire of Wyndham East Kimberley F19 Purchasing and Tendering Policy

FINANCIAL IMPLICATIONS

Council allocates in the vicinity of \$200,000 per year to the resealing of Council's road Network. In addition to this the Shire also has a requirement to cement stabilise a high proportion of resealing works in the area to ensure longer road pavement life.

STRATEGIC IMPLICATIONS

Key Result Area 1 – Transport

Goals 2 – Roads & Drainage:

That the Shire's roads and drainage are commensurate with community expectations.

COMMENT

The Indigenous Employment Opportunities component has been excluded from the document which contravenes the Council Policy F19 (amended 17/11/2009).

The tender document has been constructed in such a way that the tenderer has not been given direction as to what is expected in the pricing structure. The pricing schedule offers a choice of options where as it should state that both schedules must be quoted.

The tender is a 'Schedule of Rates' pricing structure which concludes in a 'lump sum' which has **not** been considered in the evaluation assessment.

ATTACHMENTS

Nil

VOTING REQUIREMENT

Simple Majority

OFFICER'S RECOMMENDATION

That Council:

1. Not accept any tenders for T15 09/10 Spray Seal and Cement Stabilisation Services.
2. Acknowledge that the Acting Director of Infrastructure will prepare new tender documentation which complies with the 'Councils Policy F19' and includes Standard Specifications for materials that will comply with Main Roads WA Standards.

COUNCIL DECISION

Minute No: 9183

Moved: Cr D Ausburn

Seconded: Cr K Wright

That Council:

- 1. Not accept any tenders for T15 09/10 Spray Seal and Cement Stabilisation Services.**
- 2. Acknowledge that the Acting Director of Infrastructure will prepare new tender documentation which complies with the 'Councils Policy F19' and includes Standard Specifications for materials that will comply with Main Roads WA Standards.**

CARRIED UNANIMOUSLY: (8/0)

5. MEETING CLOSURE

With all matters of business complete, the Shire President closed the meeting at 6:24pm.