



SHIRE OF YORK

**MINUTES OF THE SPECIAL
MEETING OF THE COUNCIL
HELD ON 11 NOVEMBER, 2013
COMMENCING AT 5.00pm
IN THE COUNCIL CHAMBERS,
YORK TOWN HALL, YORK**

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SHIRE OF YORK

THE SPECIAL MEETING OF THE COUNCIL HELD ON MONDAY, 11 NOVEMBER, 2013, COMMENCING AT 5.00PM IN THE COUNCIL CHAMBERS, YORK TOWN HALL, YORK

The York Shire Council acknowledges the traditional owners of the land on which this meeting will be held.

1. OPENING

1.1 Declaration of Opening

Cr Matthew Reid, Shire President, declared the meeting open at 5.00pm.

1.2 Disclaimer

The Shire President advised the following:

"I wish to draw attention to the Disclaimer Notice contained within the agenda document and advise members of the public that any decisions made at the meeting today, can be revoked, pursuant to the Local Government Act 1995.

Therefore members of the public should not rely on any decisions until formal notification in writing by Council has been received. Any plans or documents in agendas and minutes may be subject to copyright. The express permission of the copyright owner must be obtained before copying any copyright material."

1.3 Suspension of Standing Orders (undergoing the repeal process) –

Clauses 1 to 19 excluding Clause 8.5.1 which states "No person is to use any electronic, visual or vocal recording device or instrument to record the proceedings of the Council or a committee without the written permission of the Council."

Moved: Cr Duperouzel; Seconded: Cr Smythe

That the Local Law Standing Orders, excluding Clause 8.5.1 be suspended for the purpose of expediting the Council Meeting.

Carried: 4/0

1.4 Announcement of Visitors

Nil

1.5 Declarations of Interest that Might Cause a Conflict

Financial Interest

Nil

Disclosure of Interest that May Affect Impartiality

Nil

2. ATTENDANCE

2.1 Members

Cr Matthew Reid, Shire President; Cr Mark Duperouzel, Deputy Shire President

Cr Denese Smythe, Cr David Wallace

2.2 Staff

Ray Hooper, Chief Executive Officer; Graham Lantzke, Manager Works & Projects

2.3 Apologies

Cr Hooper

2.4 Leave of Absence Previously Approved

Cr Boyle

2.5 Number of People in Gallery at Commencement of Meeting

There were nil people in the Gallery at the commencement of the meeting.

3. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

3.1 Previous Public Questions Taken on Notice

Nil

4. PUBLIC QUESTION TIME

Public Question Time commenced at 5.02pm

4.1 Written Questions – Current Agenda

Mrs Tanya Richardson

Question 1

Why is a Special Council Meeting required for this item as opposed to it appearing on the Ordinary Council Meeting Agenda?

Response:

To ensure sealing can be done as soon as works are ready.

Question 2:

Please advise why there are no appendices?

Response:

No appendix as Tender documents are confidential.

4.2 Public Question Time

Nil

Public Question Time was declared closed by the Shire President at 5.04pm

- 5. APPLICATIONS FOR LEAVE OF ABSENCE**
Nil
- 6. PETITIONS / PRESENTATIONS / DEPUTATIONS**
Nil
- 7. CONFIRMATION OF MINUTES OF PREVIOUS MEETING**
Nil
- 8. ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION**
Nil
- 9. OFFICER'S REPORTS**

9.3 Works Reports

9. OFFICER'S REPORTS

9.3 WORKS REPORTS

9.3.1 Tender 03-1314 Bituminous Surfaces

FILE NO:	AS.TEN.39
COUNCIL DATE:	18 November 2013
REPORT DATE:	6 November 2013
LOCATION/ADDRESS:	Whole Of Shire
APPLICANT:	Not Applicable
SENIOR OFFICER:	Ray Hooper, CEO
REPORTING OFFICER:	Graham Lantzke, Works Manager
DISCLOSURE OF INTEREST:	Nil
APPENDICES:	Nil
DOCUMENTS TABLED:	(1) Tender Specification (2) Three Tenders Received

Summary:

Tenders have been called to supply bituminous surfaces for planned and budgeted road construction works in the 2013/14 financial year. Three tenders have been received and a recommendation is made to appoint a contractor. All tenders were compliant.

Background:

The Shire of York undertakes an annual tender process for primer and final seals, re-sealing and asphalt works as the combined works value requires tenders to be called under the Tender Regulations.

Consultation:

Nil

Statutory Environment:

Section 3.57 of the Local Government Act (1995) requires a Local Government to tender for works of a prescribed kind and the State Government to create regulations detailing how and when this shall occur.

Part 4 of the Local Government (Financial and General) Regulations 1996 set forth the details on when, where and how tenders should be called. In general terms it requires works over \$100,000 to be tendered, the tenders to be fairly called and assessed and the tender awarded "best value for money".

Policy Implications:

The Shire of York Purchasing Policy applies and includes provision for Local Purchasing.

Financial Implications:

There are no budget implications as all proposed works are included in the 2013/14 Budget allocations.

Tendered rates are within the provisions of the budgeted works program.

Tenders received value from \$615,230 to \$642,550 and this cost will be allocated amongst various construction jobs as summarised in the tender request.

This is a schedule of rates contract based on estimated quantities so the Shire is only liable for bituminous seal that is actually provided and pays for it after delivery.

Strategic Implications:
The Shire of York's 2012 Strategic Community Plan -

Built Environment: Enhanced Lifestyle Choices

Our Vision

Our assets, facilities, roads and parks are well maintained and meet our requirements.

Our objectives and priorities are built from our shared outcomes.

Outcomes – Improved Quality of our Assets

Objectives – Upgrade and Maintain our Infrastructure

Priorities - Work towards applying safe system principles to provide and maintain safe, efficient transport, including roads, footpaths and cycle ways.

Voting Requirements:

Absolute Majority Required: Yes

Site Inspection:

Site Inspection Undertaken: Not applicable

Triple bottom Line Assessment:

Economic Implications:

Good roads are essential to the economy. Getting a good price for good quality bitumen affects the quantity and quality of road services provided.

Social Implications:

Good roads are essential to the community. Getting a good price for good quality bitumen affects the quantity and quality of road services provided to the community.

Environmental Implications:

Road building has environmental impacts including vegetation clearing, dust reduction and greenhouse gas emissions.

Comment:

Tenders

Tenders were called on Saturday 12 October 2013 by public advertisement in the Western Australian newspaper. A tender specification was prepared and issued on the Council web site from 16 October 2013. The specification includes tender assessment guidelines.

Tenders closed on Friday 1 November 2013 at the Shire of York. No tenderers or members of the public were in attendance at the close of the tender period or the opening of tenders.

The tender has been conducted in accordance with the Act, Regulations and Shire Policy.

Tenders have been tabled under separate cover for Councillor review if required.

Tender Quantities

This is effectively a schedule of rates contract where the Shire will pay for goods at the rates provided in the tender as and when the goods are delivered.

The tender has been prepared and the prices quoted on a best estimate of required bitumen sealing quantities as planned for in budgeted construction works. Actual quantities may vary from this estimate as works progress through the year and particularly if decisions are made to change projects, additional road funding becomes available or significant private works are commenced.

The tender for instance makes no provision for any work for Main Roads WA on the York Tammin Road which at this point in time has not been committed to by either the Shire or Main Roads.

Tender Mandatory Compliance

Three tenders were received from Bitutek, RNR Contracting and Boral Constructions. Tender prices are summarised in the assessment section below.

All three tenders were first assessed for compliance with mandatory tender requirements and all three tenders were found to be compliant.

Lobbying of Councillors is grounds for instant disqualification of tender and if any Councillor has been lobbied they should immediately notify the Chief Executive Officer.

Tender Results

Tender price results are presented in Table 1

Shire of York		Supply and Application of Bituminous Surfaces					
Tender No 03-1314		Table 1. Tender Results - Tender Price					
Tender	Tenderer	Quoted Price	Traffic		Reseal	\$ 283,800	\$ 315,000
			Management	Seal design			
1	Bitutek	\$ 642,550	\$ 40,750	\$ 3,000	\$ 283,800	\$ 315,000	
2	RNR Contracting	\$ 653,456	\$ 30,576	\$ 2,240	\$ 299,640	\$ 321,000	
3	Boral Construction	\$ 615,230	\$ 16,950	\$ 2,600	\$ 295,680	\$ 300,000	
	Minimum	\$ 615,230					

Tender Qualifications

It is normal in any tender for the tenderer to add conditions of tender or service, usually in relation to unknown or unspecified requirements. In some instances conditions of tender can show a good understanding of the required work. In other cases they may imply or cause additional costs.

Tender qualifications are as shown in Table 2.

Shire of York		Supply and Application of Bituminous Surfaces					
Tender No 03-1314		Table 2. Qualifying conditions					
Tenderer	Condition	Recommend Condition Acceptable					
		Offer to negotiate lower rates if program can be consolidated					yes
1	Bitutek	Offer to negotiate lower rates if program can be consolidated					yes
2	RNR Contracting	Assumed maximum of 8 visits to the shire and works					yes
		Shire to provide traffic counts					yes
		Offer to discuss alternative cheaper provision for primer seals					yes
		Assumes generic traffic management plans.					yes
		Additional cost if bitumen binder rates increased greater than 7.5% over specification.					yes
3	Boral Construction	Unclear if traffic control is being provided by Boral or Shire (clause 6)					confirm understandin

With respect to bitumen binder rates two tenders have qualified that where binder rates vary from specification additional costs will be charged which is normal in a tender. The third tenderer, Boral, has not specified this however under the general provisions of the contract a price variation can be claimed anyway. A clarification from Boral has been sought.

Tender Assessment

- **Assessment Process**

The assessment process for the tenders is defined in Appendix A of the Request for Tender and requires each tender to be scored on the following criteria and weighting

<i>Methodology</i>	<i>20%</i>
<i>Experience</i>	<i>30%</i>
<i>Capacity</i>	<i>30%</i>
<i>Management system</i>	<i>20%</i>
<i>Total</i>	<i>100%</i>

Assessed score is then to be compared against price and best value for money determined.

Note it is not necessary that the lowest price tender be awarded, and the Council might reject all tenders if they deem they do not represent value for money.

As a principle, and as provided for in the tender, Councillors should take into account matters of capacity, management and so forth because it could be possible that a low priced tender is unable to deliver the goods, or do so in a required time and that would expose the Shire to additional costs and risks.

- **Qualitative Assessment**

Each of the tenders has been independently assessed by the Works Manager, Graham Lantzke against the assigned criteria and scores assigned. The Chief Executive Officer has then reviewed the assessment.

Raw assessments are not provided in this report and are retained confidentially under separate cover for review if and when required. Similarly names and identities of referees have not been published.

Tenders have been ranked as follows on qualitative criteria

Shire of York						
Tender No 03-1314		Supply and Application of Bituminous Surfaces				
Table 3. Qualitative Assessment						
		Overall Rank	Methodology	Experience	Capacity	Management system
weight			20%	30%	30%	20%
1	Bitutek	80%				
2	RNR Contracting	80%				
3	Boral Construction	70%				
Maximum		80%	out of possible maximum of 100%			
Scoring 1=least favourable, 3=most favourable						

- **Risk**

Principal risks to be considered include

1. The tenderer appointed becomes insolvent and the Shire needs to retender. Action – appointment subject to satisfactory credit check.
2. The tenderer appointed fails to deliver agreed services – reference checks have been carried out and all companies have a good record; contract includes provisions for non acceptance and disputes
3. Seal quantities vary significantly and there is a cost blow out. Some variation of quantities from job to job is inevitable. Individual quantities and jobs need to be controlled within budget. Bitumen is paid for as delivered so this is a risk controlled by the Shire.

- **Reference Check**

A reference check has been performed on all three tenderers with at least two referees by the Works Manager. Referees were nominated by the tenderers. The names of referees and their statements are not published.

Reference check outcome

Bitutek	Excellent
RNR	Excellent
Boral	Qualified – see below

With respect to the reference check on Boral one of the referees advised that Boral service and performance was excellent but a couple of bad experiences with bitumen. The referee was very clear they believed the problem was not caused by Boral but by bad bitumen.

The tender specification provides for Council to take into account Shire of York experiences with the tenderers. This is problematic, may be misleading and may not accord with tendering guidelines because the Shire has recent experience with only one supplier and it is the nature of any contractual relationship that a single bad experience outweighs multiple good experiences. The intention of the tender process is to ensure that all of the tenders are fairly assessed without bias on their merits.

The reporting officer is not making a recommendation on Shire of York past experience because it does not provide for the three tenders to be fairly compared.

- **Credit Check**

A credit check is in progress and should be available before the Council decision is made.

- **Summary Assessment**

The lowest price tender is from Boral for \$615,230. The second lowest is from Bitutek for \$642,550. Prices are excluding goods and services tax.

If the Shire lays more primer seal than expected this advantage will shift further to Boral because the Boral rate for primer seal is lower. If the Shire lays more reseal than estimated the advantage will shift towards Bitutek. However in both cases this is a marginal consideration and quantities would have to substantially change (more than 200%) to make material difference to the price assessment.

Both Bitutek and RNR have advised they can offer primer seal at a lower price subject to negotiation about the specification. However any such negotiation would corrupt the tender process therefore this can't be counted on.

On qualitative assessment the three tenderers are much alike. Bitutek is weakest in experience but offers a no frills very workable methodology and has an excellent reputation. Boral is the more experienced and larger company but has a slightly poorer reputation and the methodology statement is inferior.

On substance of tenders it is recommended the Shire of York will get best value for money from Boral.

RESOLUTION

011113

Moved: Cr Smythe

Seconded: Cr Duperouzel

"That Council:

1. **Award Tender Number 03-1314 - Supply and Application of Bituminous Surfaces to Boral Construction Materials group Ltd for the price of \$615,230 excluding goods and services tax for the estimated quantities specified; and subject to a satisfactory credit check and subject to Boral providing a written guarantee that they can and will provide sealing services to meet the timeframes set and required by the Shire of York.**
2. **Thank all tenderers for their submissions.**

Advice Note:

1. **If not a quality outcome in 2013/14 Boral be excluded from future sealing contracts.**
2. **Boral to provide full cover seal and supervision of all works."**

CARRIED: 4/0

10. CLOSURE

Cr Reid thanked everyone for their attendance and declared the meeting closed at 5.13pm.