

CONTRACT 1322 - BLUEWATER FITNESS CENTRE REDEVELOPMENT UPDATE

COUNCIL REPORT – IN COMMITTEE 26 FEBUARY 2014

At the 18 December 2013 Council meeting a detailed report was provided to Council on the redevelopment of Bluewater Fitness Centre.

Council resolved:

“That Council conducts a full internal enquiry into the cost overruns of the Bluewater Fitness Centre contract and reports these findings to the 26 February 2014 Council meeting.”

Prior to going into Committee at the 26 March 14 Council meeting, Council resolved:

That:

- 1. Pursuant to the provisions of Section 89(2) of the Local Government Act, the meeting be closed to the public and Council move “In-Committee” in order to deal with:***

SUBJECT	REASON	SECTION OF ACT
<i>Contract 1322 - Bluewater Fitness Centre Redevelopment Update</i>	<i>this matter deals with contractual matters; AND this matter may prejudice the Council or any person</i>	<i>Section 89 (2) (d) (h)</i>

- 2. That Council release a report on Contract 1322 Bluewater Fitness Centre Redevelopment Update in the March 2014 Open Council meeting.***

As part of the resolution In-Committee on the item “Contract 1322 - Bluewater Fitness Centre Redevelopment” Council resolved:

“That Council release the report, with any confidential parts being deleted, to the public by midday on 3 March 2014.”

RELEASE OF REPORT

A report into Contract 1322 – Bluewater Fitness Centre Redevelopment was released to the public on Monday 3 March 2014 with confidential parts redacted.

A review of the report released to the public on 3 March 2014 and included as an attachment to a report to Council on 26 March 2014, has been recently undertaken.

A revised redacted version of the report is attached.

**OM142602-24 CONTRACT 1322 - BLUEWATER FITNESS CENTRE
REDEVELOPMENT UPDATE**

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DEPARTMENT:	Corporate & Community Services	FILE REF:	11/96037

Reason for Closure of the Meeting

This report is being considered In Committee under the *Local Government Act 1989* Section 89 (2) (d) (h) because this matter deals with contractual matters; AND this matter may prejudice the Council or any person.

Purpose

The purpose of this report is to provide information to Councillors on the tender process and costs for Contract 1322 – Bluewater Fitness Centre Redevelopment.

At the Council meeting held on 18 December 2013, Council resolved the following:

“That Council conducts a full internal enquiry into the cost overruns of the Bluewater Fitness Centre contract and reports these findings to the 26 February 2014 Council meeting.”

A significant amount of information has previously been provided to Council with respect to the Bluewater Fitness Centre Redevelopment project, awarding of the Contract and other financial considerations at both the October and December 2013 Council meetings.

It should also be noted that a confidential briefing was provided to Councillors at the Councillor Briefing Session of 9 October 2013. This followed the close of tenders on 30 September 2013, and provided an overview of the project development process and information relating to the tender prices received relative to the available project budget.

The overall project cost was reported to be well in excess of the budget. A number of options were presented to Councillors with the purpose of addressing the shortfall. These options included:

- Complete the project to full scope
- Complete project but find cost savings within current scope
- Redesign the project to match probable available budget.

It was clearly articulated that proceeding with options 1 or 2, Council would be required to fund the shortfall from its own source funds. It was recommended that the preferred option was to deliver the project based on the current design and to identify cost savings prior to the signing of the Contract. The evaluation of tenders and the eventual award of Contract advanced on this basis.

Declaration of Interests

No officer declared an interest under the *Local Government Act 1989* in the preparation of this report.

Background

The Council report to the October 2013 In Committee meeting provides a background to the redevelopment of Bluewater Fitness Centre.

Funding Details

In August 2010, Council received an election commitment of \$3,783,000 to redevelop the stadium. This commitment was well short of the \$6m required to complete the project. Subsequent funding applications were made to the State Government to meet the shortfall to complete the project. The Department of Education and Early Childhood Development also confirmed a commitment to the stadium redevelopment through the revitalisation of the Colac Secondary College.

An additional opportunity presented itself with respect to the Warm Water Pool. Council was encouraged to apply to the Federal Government's Health and Hospitals Fund which it did so in 2011. Council's application requested \$3.6m from the program however whilst the application was successful, it was for a reduced amount of \$2.8m.

Council officers again applied for additional funding from the State Government and were able to source funds for the Warm Water pool on the provision that water play elements were included and that Council contributed funds to the project.

Based on the funding received from Federal and State Governments, along with the community, the development of the project was progressed on a \$10,000,000 budget with the following funding contributions:

Source	Amount
Federal Government – 2010 election commitment	\$3,783,000
Federal Government– Health & Hospitals Fund	\$2,800,000
State Government– SRV & RDV (three different programs)	\$2,150,000
State Government – DEECD	\$430,000
State Government – LGIP	\$200,000
Colac Basketball Association	\$100,000
Colac Warm Water Group	\$25,000
Council (Requested)	\$512,000
Total	\$10,000,000

Expression of Interest (EOI) Process

The following provides the steps undertaken in the EOI process:

- Preparation of EOI Document – April 2013.
- Advertisement of EOI – 3 and 4 May 2013 (Colac Herald, Geelong Advertiser, The Age). Information also available via Tenderlink and the Council website.
- Closing date for EOI – 29 May 2013.
- EOI submissions were received from a total of 12 Building Contractors. All were received on time:
 - ADCO Constructions (VIC) Pty Ltd
 - A.W. Nicholson Pty Ltd
 - Allmore Constructions Pty Ltd
 - BDH Constructions Pty Ltd

- Behmer & Wright Pty Ltd
- E.J. Lyons & Sons Pty Ltd
- Fairbrother Construction
- Ireland Brown Constructions Pty Ltd
- MMAP Constructions Pty Ltd
- Regent Construction & Building Services Pty Ltd
- Rendine Constructions Pty Ltd
- Stellar Constructions Pty Ltd.

A prerequisite to qualification for an invitation to tender was that the company be accredited through the Australian Government Building and Construction OHS Accreditation Scheme prior to awarding a contract.

[REDACTED] indicated that they did not hold the required accreditation. They further indicated that they did not expect to achieve accreditation prior to Council awarding the contract. Therefore the Evaluation Panel removed them from further consideration.

At the time of the EOI, [REDACTED] were also presently unaccredited but submitted EOIs with representations that they expected to achieve accreditation prior to the contract award. It was indicated to each of these companies that if accreditation was not achieved by a tenderer by the time of the award of contract their tender submission will be removed from further evaluation.

Council did not contact any companies and request that they submit an EOI.

- No Requests for Information were received during the EOI period.
- Meeting of evaluation panel to shortlist EOI registrants– 4 June 2013. Further information was requested in order to conduct a preliminary financial check of registrants.

EOI Evaluation Panel

The EOI Panel comprised the following members:

- [REDACTED] Manager Recreation, Arts & Culture;
- [REDACTED] Acting General Manager, Infrastructure & Services;
- [REDACTED] Bluewater Fitness Centre Manager;
- [REDACTED] Building Construction Coordinator;
- [REDACTED] Contracts Officer; and
- [REDACTED] Sutera Architects

All evaluation panel members signed the standard conflict of interest and confidentiality forms developed for the process of evaluating the EOIs and tenders (and EOIs).

- The EOI submissions were shortlisted to 6 preferred Contractors. The EOI submissions were evaluated and scored using the following selection criteria:

<u>Criteria</u>	<u>Weighting</u>
Relevant Experience and Experience of Key Contractors and Personnel	20%

Track Record and Proven Performance including Project Quality, Duration and Build to Budget	30%
Financial Capacity	30%
Evidence of Completing Previous Projects of a Similar Nature	20%

The Evaluation Panel developed a shortlist comprising the following six (6) companies:

- ADCO Constructions (VIC) Pty Ltd
- A.W. Nicholson Pty Ltd
- Allmore Constructions Pty Ltd
- BDH Constructions Pty Ltd
- E.J. Lyons & Sons Pty Ltd
- Ireland Brown Constructions Pty Ltd.

No discussion was held with any companies. The evaluation panel shortlisted based solely on the content of their EOI submissions and additional information which was obtained during the evaluation process.

All EOIs were evaluated against the specified criteria which sought to ensure that Contractors had demonstrated relevant experience and capacity to undertake a project of this type, size, and complexity.

Probity Plan

As part of the Probity Plan and in line with Council's Procurement Policy a Probity Auditor was appointed. Martin Thompson from Crowe Horwath was appointed as the Probity Auditor for Contract 1322 – Bluewater Fitness Centre Redevelopment.

A meeting was held on 12 June 2013 with Crowe Horwath to brief them on the EOI process. The Probity Auditor was given an overview on the EOI process and was supplied with supporting documentation including public advertisements, EOI documents, EOI submissions and the Evaluation Panel Report.

The Probity Auditor issued the following statement 14 June 2013 with respect to the EOI process undertaken by Council:

"I have completed a review of the probity associated with the initial stages of the proposed redevelopment of the Bluewater Fitness Centre.

Purpose

The purpose of this review was to assess the probity of the processes undertaken from the commencement of the procurement process through to the development of a report to Council recommending a shortlist of applicants to be invited to tender.

Key Observations

From a review of Council documentation it was possible to conclude:

- *The EOI documentation was clear, with evaluation criteria and weightings identified in advance.*
- *The EOI was appropriately advertised.*

- *Applicants were evaluated in accordance with the documented evaluation criteria and weightings, and the report to Council (draft) reflects the outcome of the evaluation process.*

Review Conclusion

No matter was noted that would indicate that the procurement process, to date, has not been conducted with an appropriate level of probity.”

At the June 2013 Council meeting, Council considered a report on the Expression of Interest process for the Redevelopment of the Bluewater Fitness Centre.

Council resolved:

That Council nominates the following companies who submitted an Expression of Interest to be invited to tender on the proposed redevelopment project for Bluewater Fitness Centre:

- ***ADCO Constructions (VIC) Pty Ltd***
 - ***A.W. Nicholson Pty Ltd***
 - ***Allmore Constructions Pty Ltd***
 - ***BDH Constructions Pty Ltd***
 - ***E.J. Lyons & Sons Pty Ltd***
 - ***Ireland Brown Constructions Pty Ltd.***
- Notification to successful (and unsuccessful) registrants – 1 July 2013.
 - Feedback was requested from some unsuccessful registrants as to reasons as to why they were not included on the panel of companies.

Tender Process

The following provides the steps undertaken in the Tender process:

- Development/refinement of tender document specification – July/August 2013.
- Request for Tender Document was issued to the 6 companies on 17 August 2013.
 - ***ADCO Constructions (VIC) Pty Ltd***
 - ***A.W. Nicholson Pty Ltd***
 - ***Allmore Constructions Pty Ltd***
 - ***BDH Constructions Pty Ltd***
 - ***E.J. Lyons & Sons Pty Ltd***
 - ***Ireland Brown Constructions Pty Ltd.***
- Addendums were issued in response to request for information. A total of 7 addenda were issued to all tenderers to clarify the scope of works. Requests for Information (RFI) were received from the invited tenderers throughout the submission period. Tenderers were required to submit RFIs to Council’s Contract Administration Officer. Responses to RFIs were similarly issued in writing via the Contract Administration Officer. Responses to RFIs were issued as addendums to all the invited tenderers – not just the tenderer that had submitted the RFI. This was to ensure that all invited tenderers had the same information.
- All tenderers were given the opportunity to inspect the existing facility to familiarise themselves with site specific conditions and the scope of works. Not all tenderers availed themselves of this opportunity.

- The closing date for tenders – 30 September 2013. The original closing date for tenders as specified in the documentation was 25 September 2013. This was extended to 30 September 2013 via Addendum 5 at the request of tenderers. This was due to the late issuing of revised drawings. The extension in time was required so that tenderers could consider detail in their pricing.
- Submissions were received from all 6 companies invited to tender.

The following six tenders were received:

Tenderer	Tendered Price (excluding Options) \$	Option 1 Splash Pad \$	Option 2 Joinery Fitout \$	Option 3 Soft Landscaping \$	Total \$
ADCO Constructions (Vic) Pty Ltd	██████████	██████████	██████████	██████████	██████████
Allmore Constructions Pty Ltd	██████████	██████████	██████████	██████████	██████████
AW Nicholson Pty Ltd	██████████	██████████	██████████	██████████	██████████
BDH Constructions Pty Ltd	██████████	██████████	██████████	██████████	██████████
EJ Lyons & Sons Pty Ltd	██████████	██████████	██████████	██████████	██████████
Ireland Brown Constructions Pty Ltd	██████████	██████████	██████████	██████████	██████████

❖ Prices do not include GST

- Council's appointed Probity Auditor and Council officers were in attendance at the tender opening.
- The evaluation period was between 1 October 2013 and 14 October 2013.
- Initial assessment meeting – 1 October 2013.

Tender Evaluation Process

Tender Evaluation Panel

The Tender Evaluation Panel for Contract 1322 comprised the following members:

- ██████████ Manager Recreation, Arts & Culture;
- ██████████ Acting General Manager, Infrastructure & Services;
- ██████████ Bluewater Fitness Centre Manager;
- ██████████ Building Construction Coordinator;
- ██████████ Contracts Officer; and
- ██████████ Sutera Architects

All evaluation panel members signed the standard conflict of interest and confidentiality forms developed for the process of evaluating tenders (and EOIs).

No officer (or Evaluation Panel Member) declared an interest under the *Local Government Act 1989* in the preparation of the report or in the evaluation of the tenders.

Tenders were evaluated and a recommendation was made in accordance with Council's *Procurement Policy and Procedure*.

All tenders were evaluated and scored using the following selection criteria:

<u>Criteria</u>	<u>Weighting</u>
Tendered price	60
Track record and proven performance of the contractor and subcontractors	15
Capacity and Resources	10
Tenderer's relevant experience and experience of key personnel and subcontractors	10
Local content	5

Tenderers also had to satisfy Council that they were able to meet requirements for:

- Occupational health and safety;
- Financial viability; and
- Value for money.

The following provides an overview of the tender evaluation process:

- Request for further information issued to all tenderers seeking further information in relation to local content, proposed subcontractors, and project personnel – 1 October 2013.
- Second assessment meeting was held on 4 October 2013. Tenderers shortlisted to two companies (BDH and [REDACTED]).
- The Tender Evaluation Panel deemed the tender submissions by [REDACTED] to be non-conforming on the basis that they omitted certain prices from their submissions and tendered based on some products and materials that were not of an equivalent type and/or quality to products and materials specified within the tender documentation. These tenders were removed from further consideration by the Tender Evaluation Panel.
- Interviews with shortlisted tenderers and final assessment meeting – 8 October 2013. This involved the full Evaluation Panel.
- The “Bluewater Fitness Centre Contract” was listed on the Councillor Workshop agenda. At the time of the discussion four (4) councillors were in attendance along with the Executive Management Team who were aware of the cost implications.
- Probity auditor delivers probity audit report and financial capacity report for the preferred tenderer.

- The Tender Evaluation Panel assessed the submission by **BDH Constructions Pty Ltd** as being the lowest price conforming tender, the best value and scored highest overall when applying the selection criteria.
The Evaluation Panel recommended acceptance of the lowest priced tender of **BDH Constructions Pty Ltd**.
- Evaluation Panel report signed – 14 October 2013.
- Contract was awarded by Council at In Committee Meeting of 23 October 2013

“That Council:

1. ***Awards Contract 1322 for Bluewater Fitness Centre Redevelopment to BDH Constructions Pty Ltd at the tender price of \$10,750,000 (excluding GST).***
 2. ***Approves the inclusion of the northern splash pad option valued at [REDACTED] (excluding GST) in the contract.***
 3. ***Approves the inclusion of the joinery fitout option valued at [REDACTED] (excluding GST) in the contract.***
 4. ***Resolves that the Chief Executive Officer is authorised to disclose the successful tenderer to the Contract including their lump sum price but not any other information contained within the report and after all relevant parties have been notified.***
 5. ***Delegates to the Chief Executive Officer authority and to place under Council Seal the contract documents following award of Contract 1322.***
 6. ***Resolves to refer funding of up to \$1,702,000 to its 2014/15 budget for the redevelopment of the Bluewater Fitness Centre.***
 7. ***Resolves to allocate its remaining funds from the Local Government Infrastructure Program totaling \$535,000 to the budget for the redevelopment of the Bluewater Fitness Centre.***
 8. ***Resolves to commit \$300,000 from the 2014/15 Building Renewal Programme to the budget for the redevelopment of the Bluewater Fitness Centre.”***
- Some unsuccessful contractors requested feedback regarding their proposals which were responded to by Council officers.
 - Appointment of BDH by letter of acceptance in accordance with Council resolution – 1 November 2013.
 - Discussion period for identifying cost savings – November/December 2013.
 - The contract was executed on 6 December 2013. The negotiated Contract price was [REDACTED] (ex GST) and followed initial cost savings that were identified in discussions between Council Officers, BDH and our consultant architects.

BDH Constructions Pty Ltd

BDH Constructions Pty Ltd ("BDH") is a Colac based company that has successfully completed a number of projects for Council including Council Offices Redevelopment (2011), COPACC Civic Hall Theatre Alterations (2010,) and Colac Skate Park Extension (2010).

Other recent projects undertaken by BDH include construction of the Colac Secondary College and Community Library & Learning Centre and construction of the Colac Trade Training Centre. The company has constructed a number of domestic pools and a holiday accommodation resort pool. The work of BDH in constructing the Barham River intake structure to service Apollo Bay (Barwon Water) demonstrates relevant experience in the area of pool constructions and associated hydraulics.

The subcontractors nominated by BDH, especially for the pool construction element of the project, are reputable and are highly regarded within the industry.

The scope of works includes refurbishment of the existing building, extension of the indoor stadium to include an additional basketball court, and construction of a new warm water pool and associated infrastructure. There are three options for the works – (1) construction of a splash pad, (2) joinery fitout and (3) soft landscaping.

The contract is a lump sum contract that is not subject to rise and fall, with a provisional sum of \$50,000 for blinding concrete and an \$800,000 contingency sum. Council requested tenderers submit a proposed time frame for completing the works, but nominated a preferred construction period of 12 months.

Council Plan / Other Strategies / Policy

Good Governance

Means we care about and are responsive to the community, encourage democratic participation and involve people in decisions that affect them. We strive for excellence in financial management and council services, and always look for better ways to do things.

Our Goal:

Ensure transparency of governance practices, the capability of our organisation and effective resource management.

Issues / Options

Cost of the Project

As previously advised, the cost of delivering this important project is in excess of the available budget allocation. Throughout the design phase of the project, a number of Cost Plans were provided by Council's contracted Architects through their sub-consultant Quantity Surveyor. Cost Plan No. 4 stated an overall cost of [REDACTED] inclusive of consultants' fees, contingencies, landscaping, car parking, disbursements, etc. The Architect and Quantity Surveyor also expressed an opinion that considering the current economic climate and the downturn in the construction industry, Council could reasonably expect a very competitive price possibly lower than the Cost Plan. Based on this information, it was determined to go out to the market through a competitive tender process.

As a result of the tender process and discussions with the successful tenderer the project costs are detailed below.

The revised Project costings and funding are based on the contract price and the funding options as agreed to by Council on 23 October 2013.

Negotiations regarding cost savings continued with the successful tenderer before the contract was signed and will continue as the project progresses.

Project Component	Cost (\$)
Construction (lump sum)	
Consultant fees, etc.	
Relocation of BWFC gym/dry programmes to Youth Club	
Project Management	
Equipment for redeveloped facility	
Cost savings from relocation – funded through 2013/14 operational budget	
Landscaping	
Total Project Costs	\$11,855,860

Revised Funding Budget	Funding (\$)
External funding	\$9,488,000
Remaining LGIP funds	\$535,000
2014/15 Building Renewal Programme	\$300,000
Funded by Council	\$1,532,860
Total Funding	\$11,855,860

Council considered a number of options in addressing this funding shortfall. These were:

- Complete the full scope of works as specified with Council to provide the balance of funding
- Complete the project with cost savings to be found within the current scope
- Redesign the project to match probable available budget or
- Abandon the project.

1. Complete Project with Cost Savings within Scope

The tender had three options which were separable portions. These are the northern splash pad, joinery, and landscaping.

Council resolved to complete the project including the northern splash pad and joinery options. Landscaping will be completed using an alternative delivery method to realise further cost savings.

2. Project Redesign to Match Available Budget

It was indicated previously to Council that an option was to revisit the current scope and redesign some elements to match the available budget.

It was noted that a redesign would have resulted in additional consultant costs, a delay in delivery timelines and ultimately a significant impact on the community.

In this scenario the scope would have needed to be scaled back to fit within a budget of \$10.625. Given the likely escalations in construction costs between October 2013 and when the project was ready to be started, the risk of a potential budget overrun still exists.

It was considered necessary to award the contract and proceed with the redevelopment of the Bluewater Fitness Centre in a timely manner to uphold Council's commitment to upgrade the facility.

Probity Plan – Bluewater Fitness Centre Redevelopment (Revised)

As part of the consideration of the tender process a Probity Plan was developed.

Objectives

To uphold Council's commitment to exercising proper processes in the procurement of goods and services by appointing an external auditor to oversee the expression of interest and tender process. This is in accordance with Council's Procurement Policy for projects in excess of \$3 million.

Statement of the proposed application of probity principles

Persons nominated to form part of the evaluation panel for the EOI and tender shall declare that they are not compromised by an actual or potential conflict of interest in their role as an evaluation panel member. At any time that a panel member becomes aware of a conflict of interest they shall remove themselves from the evaluation panel. This process shall be applied by evaluation panel member signing Council "Declaration of Conflict of Interest and Confidentiality" form.

Expressions of interest and tender submissions shall each be measured against the same evaluation criteria, which shall be pre-disclosed in the EOI document and tender document respectively.

Evaluation panel members shall consider submissions with complete impartiality and proper reasoning with reference to the evaluation criteria.

Evaluation panel members shall maintain confidentiality regarding all information offered in EOI and tender submissions, as well as any other information acquired in the process of evaluating submissions.

The evaluation process for expressions of interest and tender shall follow Council's procurement procedure. The method in following Council's procurement procedure shall be evidence in the record keeping maintained by the Contracts Officer.

Roles and responsibilities of each participant in the evaluation process and probity auditing

Each member of the evaluation panel shall give appropriate consideration to all submissions and offer their skills and expertise to allow and complete and thorough evaluation process.

Evaluation panel members shall each take responsibility in the collective decision making of the panel.

The evaluation panel shall fully involve the probity auditor in all elements of the EOI and tender process and draw on his advice and expertise to maintain the integrity of the process.

The probity auditor shall fully apply his knowledge and expertise and make all proper enquiries of the evaluation panel to ensure that the appropriate probity is being applied in the EOI and tender process.

Specification of what probity auditing will occur

The probity auditor will report on the EOI process conducted by the Evaluation Panel and monitor review and report on the tender process undertaken.

Probity tasks, documents and timelines

3 May 2013	EOI Released
29 May 2013	EOI Closed
4 June 2013	EOI Shortlisting by Evaluation Panel and Recommendation Report

created for Council

- 11 June 2013 *Meeting with Probity Auditor (Martin Thompson – Crowe Horwath)
Probity Auditor to review EOI process
Documents considered – Request for Expressions of Interest
Document, Public Notice/Advertisement, EOI Submission, EOI
Evaluation Report*
- August 2013 *Final draft of Request for Tender document.
Probity Auditor to review prior to release.*
- Sep/Oct 2013 *Tender Review.
Probity Auditor to oversee, including attendance at evaluation
meetings.
Probity Auditor to report on tender process to Council.*

Measures for ensuring confidentiality and security

*EOI and tender submissions – hard copy submissions to be held in filing cabinet
- electronic submissions and other tendered information to be
held in TRIM with permissions granted to evaluation panel
members*

Confidentiality forms to be executed by each member of the evaluation panel.

Communication protocol with bidders

Tenderers shall be directed to submit and enquiries in writing, directed to the Contracts Officer. If the Contracts Officer, in collaboration with the Superintendent's Representative determine that a response to the enquiry requires the provision of additional information an addendum to the tender shall be issued to all tenderers.

The evaluation panel may seek direction from the Probity Auditor in communicating with tenderers in the post-tender pre-award stage to ensure that all tenderers are treated equally.

Record keeping requirements

The Contracts Officer shall ensure that record keeping requirements dictated in Council's Procurement Policy and Procurement Procedure is followed by the Evaluation Panel.

Hard copy and electronic copies of documents detailing the tender process, including the tender document, correspondence with tenderers, meeting notes, evaluation report, shall be maintained in the physical contract tender file and in TRIM.

As part of the Probity Plan and in line with Council's Procurement Policy a Probity Auditor was appointed. Martin Thompson from Crowe Horwath was appointed as the Probity Auditor for Contract 1322 – Bluewater Fitness Centre Redevelopment.

The following information was provided to Council as an attachment to the 23 October 2013 Council report.

“Probity Audit Scope

In accordance with our engagement letter, we have been contracted by the Colac Otway Shire (Colac) to conduct an independent probity audit of the tender process for the awarding of the contract for the redevelopment of the Blue Water Fitness Centre.

We have completed a continuous probity audit of activities on the tender process. This is the first and final report on the probity and covers the period from the release of tender documentation through to the preparation and finalisation of the evaluation panel's report to Council.

The scope of the probity audit as set out in the engagement letter is to:

- Ensure conformity to process;*
- Provide accountability;*
- Ensure that the interests of tenderers are protected by an equitable process;*
- Ensure that all bids will be assessed against the same criteria;*
- Preserve the public and tenderer confidence in the process; and*
- Improve defensibility of decisions to potential legal challenge.*

The probity audit considered and assessed probity principles by applying discussion, observation and review techniques during the period from the time of appointment to the date of issuing this report. The probity audit has been completed based on the probity process as outlined in:

- Victorian Government Procurement Group, Conduct of Commercial Engagements in Government, June 2006 (the VGPC Guidelines)*

Auditor Responsibility

Our responsibility is to express an opinion on the probity process relating to the tender process culminating in the submission to Council of the evaluation panel's report. We have conducted our audit in accordance with Australian Auditing Standards. These Auditing Standards require that we comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance as to whether there has been material deviation from the matters subject to the probity audit.

An audit involves performing procedures to obtain audit evidence to support the opinion formed. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material deviation from the matters subject to the probity audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Facts and Findings

In accordance with probity requirements, we undertook the following processes to gain assurance with regards to the probity of the tender process for the Bluewater Fitness Centre Redevelopment:

- Reviewed all tender documentation.*
- Attended Council and met with key Council officers to understand the proposed process.*
- Reviewed correspondence between tenderers and Council during the period between the call for tenders and the close of tenders.*
- Attended Council to witness the closing of tenders and subsequent opening of the tender box and recording of tenders received.*
- Reviewed the evaluation process, including the rating of tenders in line with the stated criteria.*
- Reviewed the minutes of the shortlist interviews.*
- Reviewed the panel evaluation report.*

As part of the probity process it was observed that the evaluation panel operated in an effective manner and managed the challenges arising from the evaluation of a multi-faceted contract appropriately.

Audit Opinion

Based on our probity audit, nothing has come to our attention that causes us to believe that the probity of all processes associated with, and leading to the preparation of the Evaluation Panel Report for Contract 1322 – Bluewater Fitness Centre did not meet appropriate standards of probity.”

Justification for Final Contract Price

As part of the information provided to Council with respect to the financial details, it also included details that had been provided by the Quantity Surveyor (QS).

Below is an overview of the QS discrepancies for the BWFC Redevelopment.

Item	Cost difference	Explanation
Pool	████████	Tender price received for the pool component was in excess of the consultant's estimates. This may be due to: <ul style="list-style-type: none"> • The impact of regional location; • Market activity higher than anticipated; and • Risk of modifying an aged existing facility.
Mechanical	████████	The tender price received for ductwork as specified in the documents was in excess of the consultant's estimates. Pricing for mechanical controls also came in higher than expected, approximately 15% of the total mechanical services cost. Industry standards generally put this around 7% to 10%.
Building works	████████	Cost differences and inclusion of additional works included in revised tender documents post preparation of the final cost plan.
Hydraulics	████████	Possible inconsistencies between structure of tender price submission and QS cost plan.
Electrical	████████	Possible inconsistencies between structure of tender price submission and QS cost plan.
Tender options 1 – Northern Splash Pad	████████ ████████	Option provides a glazed enclosure additional to the existing building footprint. This was not included in the original cost plan but is considered a priority to providing a modern facility without compromising the use of the pool concourse.
Tender option 2 – Joinery	████████	Costed at \$112,500 in original cost plan.

Item	Cost difference	Explanation
Tender option 3 – Landscaping	██████	Costed at \$95,000 in original cost plan.
Contingency	██████	This was increased based on the project being works to an existing aging facility. Also concerns with what may be uncovered when undertaking works to a 20 year old pool.
Blinding concrete	██████	Included by Council in tender documents.

The main aim of engaging a Quantity Surveyor (QS) on any project is to achieve best value outcomes as well as to reduce the risk of any adverse situation occurring.

A Quantity Surveyor was involved through the full design development phase for the Bluewater Fitness Centre Redevelopment project from concept design, providing initial cost estimates, to final design which included a pre-tender cost plan.

The estimates received from the QS have guided the development of this project from the very beginning and have informed the decisions which have ultimately lead to the final project design.

The QS uses established market rates in order to value the cost estimates and in this case was also reliant on being provided cost information by other consultants involved in the design of this project. This particularly related to the pool and mechanical service elements. In these areas alone, there is an approximate differential of ██████ between the estimates provided by the consultants and BDH's tender price.

The accepted tender price received for the pool component of this project was in excess of the estimates provided by the design consultants by approximately ██████. This may be due to a number of factors, including:

- Higher prices for pool construction in a regional area relative to a metropolitan centre.
- Market activity higher than anticipated. Market sentiment was that there was continued subdued building activity at the time of tender and that competitive prices could have been expected.
- Risks associated with modifying an existing facility. Given the nature of the proposed pool works and the age of the current pool and its associated pipework, etc., unexpected latent conditions create possible elevated levels of risk which may be considered in overall pricing of works.

With respect to mechanical services, the tender price received for ductwork as specified in the documents was in excess of the consultant's estimates. Pricing for mechanical controls also came in higher than expected, approximately 15% of the total mechanical services cost. Industry standards generally put this around 7% to 10%.

A fully addressable Building Management System (BMS) was specified in the design documents. This enables full monitoring and control functionality which means that individual air conditioning units can be interfaced, controlled, and monitored at a central hub. This is a sophisticated control system which comes at a substantial cost.

Post tender investigations suggest that there is an opportunity to simplify or reduce the extent of the BMS control system or reduce the functionality of the system at the central computer. It is considered that these measures will not greatly impede system performance

but could result in cost savings to the overall project. This proposal continues to be investigated.

A number of elements were not included in the final cost plan which appeared in the final tender documents. This included the northern splash pad option [REDACTED], an increase in contingency [REDACTED], and an additional contingency for blinding concrete [REDACTED].

Additional building works were included in the final stages of design which were not considered in the pre tender cost plan. The major items included in this extra scope were reglazing and the provision of new sliding doors to the Northern elevation of the pool hall and recladding of the existing walls of the Program Room to provide for insulation. These refurbishment items were deemed necessary in order to maximise the thermal efficiency of the building fabric to reduce long term operational costs.

Improving the facility's building fabric will result in:

- Reduced energy costs as a result of minimising the loss of treated (heated or cooled) air;
- Better temperature control through lower ventilation and air conditioning costs and prevention of overheating;
- A more comfortable building environment through reducing draughts, solar glare, overheating and noise; and
- Lower future capital expenditure requirements as a more efficient, well-insulated building needs smaller heating and cooling systems.

During the design phase Council had applied for \$500,000 of funding through the Community Energy Efficiency Program (CEEP). This program was aimed at providing funding to local governing bodies to implement projects that deliver a range of energy efficiency measures in council and community owned buildings, facilities and sites.

The funding decision deadline aligned with the programmed completion of the tender documentation meaning that either documenting the inclusion of Ecologically Sustainable Development (ESD) items included in the CEEP funding application with the risk the funding would not be available, or documenting without the ESD elements and when successful causing a design change to update the documentation to include items in the future. The Project Control Group (PCG) instructed the design team to document the building with the additional scope identified for the CEEP funding.

The CEEP funding application was unsuccessful and at the time a number of options were presented for scope reduction which was considered by the PCG prior to tendering. As the construction market at the time was seen as extremely competitive, The PCG decided to proceed as documented and decline the scope reductions. The identified list of scope reductions could instead be used as items that could be negotiated with the preferred contractor. The total value of the ESD items identified in the cost plan was [REDACTED] and includes components such as; solar hot water generation; stormwater collection, treatment and storage for reuse; mechanical services, LED lighting upgrades; and insulation and building fabric upgrades. Inclusion of these elements demonstrates Council's commitment to both reducing the impact of its services on the environment and achieving its carbon neutrality goals. Energy saving initiatives combined with an improved building fabric will also assist in reducing operational costs in the future.

The inclusion of the northern splash pad which incorporates a variety of water play elements is tied to further State Government funding and must proceed. The option provided for in the tender documents involves an enclosure external to the existing building footprint being constructed to accommodate the proposed splash pad. It is considered that this is the best

outcome as having the splash pad external to the existing pool concourse will not compromise the amount of floor space available in the future.

The contingency sums have been increased or included on the basis that, while every attempt has been made to accurately document the works, there will invariably be latent conditions uncovered given the age of the existing structures and the type of work that is being undertaken.

While the best available information is used in preparing construction estimates, the role of a cost plan is to provide guidance only and ultimately the market will dictate final tender prices. Advice from the QS was that at the time of going to tender the building and construction industry was soft and Council should expect highly competitive prices. Council officers were guided by this advice and went to tender based on the full scope of works that had been specified. The tender pricing was highly competitive with approximately [REDACTED] separating the two (2) lowest priced conforming tenders.

Proposal

That Council notes the process that has been undertaken in awarding Contract 1322 for the Redevelopment of Bluewater Fitness Centre.

Financial and Other Resource Implications

Council has previously been provided with extensive details on the financial implications. This was provided to Councillors as an addition to the Council report in October 2013.

As previously noted to Council the report which was presented to Council at the meeting of 23 October 2013 provided a number of options in relation to funding the budget shortfall. The recommendation was that funding be referred to the 2014/15 budget process which would include a more thorough analysis of how this was to be financed including the implications thereof.

As a result of questions asked by Councillors extensive financial information and legal advice was provided to Council.

The revised Project costings and funding are based on the contract price and the funding options as agreed to by Council on 23 October 2013.

Negotiations regarding cost savings continued with the successful tenderer before the contract was signed and will continue as the project progresses.

Project Component	Cost (\$)
Construction (lump sum)	[REDACTED]
Consultant fees, etc.	[REDACTED]
Relocation of BWFC gym/dry programmes to Youth Club	[REDACTED]
Project Management	[REDACTED]
Equipment for redeveloped facility	[REDACTED]
Cost savings from relocation – funded through 2013/14 operational budget	[REDACTED]
Landscaping	[REDACTED]
Total Project Costs	\$11,855,860

Revised Funding Budget	Funding (\$)
External funding	\$9,488,000
Remaining LGIP funds	\$535,000
2014/15 Building Renewal Programme	\$300,000

Funded by Council	\$1,532,860
Total Funding	\$11,855,860

Risk Management & Compliance Issues

The preferred tenderer, BDH Constructions Pty Ltd, has a good track record of management of risks and completion of contracts to specification and on time. Council should be confident that contracting with BDH Constructions Pty Ltd will minimise exposure to occupational health and safety issues and non-compliance with the contract.

BDH Constructions Pty Ltd is registered under the Australian Government Building and Construction OHS Accreditation Scheme which is a specific requirement of this tender.

The tender process, including evaluation, has been monitored by a probity auditor to ensure that the entire process is transparent and has followed due process. Council's probity auditor noted that all processes associated with, and leading to the preparation of the Evaluation Panel Report meet appropriate standards of probity.

Environmental and Climate Change Considerations

The Tender Evaluation Panel assessed that BDH Constructions Pty Ltd has adequate systems in place to deliver and implement an effective environmental plan. This plan has been approved by Council's Superintendent. Council's history of engaging BDH Constructions Pty Ltd lends support to its ability to deliver projects with proper consideration to the environment.

Community Engagement

The community engagement strategy follows the recommendations of the Colac Otway Shire Council Community Engagement Policy of January 2010, which details five levels of engagement – inform, consult, involve, collaborate and empower.

The method selected has been to inform.

Notification was provided to BDH advising them of Council's acceptance of their tender.

Implementation

The Contract has been awarded and works have commenced on site with the project scheduled to be completed within 12 months from commencement.

Conclusion

Redevelopment of the Bluewater Fitness Centre is a significant project for Council which, once complete, will provide quality sport and leisure opportunities for the community for generations to come. Through the ongoing efforts of Councillors and officers, Council has been very fortunate in being able to attract significant financial assistance for this project from both Federal and State Governments. In order to provide a quality facility which will be a focus for sport and active recreation within the shire, Council will be required to complement the funds that it has received with its own cash contribution.

Council has complied with the Procurement Plan and Probity Plan.

Attachments

Nil

Recommendation(s)

That Council notes the report on the Redevelopment of the Bluewater Fitness Centre.