



## ORDINARY MEETING OF COUNCIL

held in Council Chamber, Civic Centre, Elizabeth Street, Moss Vale  
Wednesday, 25 November 2009

## SUPPLEMENTARY REPORT OF DIRECTOR INFRASTRUCTURE SERVICES

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### SUPPLEMENTARY REPORT OF INFRASTRUCTURE SERVICES

#### Governance and Accountability

<b>o-IS2 PLANT &amp; EQUIPMENT HIRE TENDER</b>
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REF: DIS	6330/10.6
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Reporting on tenders for Plant & Equipment Hire.

REPORT
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Council is implementing a procurement improvement program with the objective of ensuring that the procurement of goods and services:-

- conforms with Council's recently adopted Local Preference Policy;
- conforms with OH&S and risk management requirements for the engagement of contractors;
- conforms with the requirements of the Local Government Act and Regulations and General Managers Practice Note 7;
- meets Department of Local Government best practice requirements;
- seeks value for money outcomes for the Shire and its residents through improved, openly competitive processes.

A significant step in this procurement improvement program is the tendering for a range of goods and services such as asphalt works, traffic control, kerb and gutter construction and plant hire. Six schedule of rates tenders, covering the procurement of these goods and services closed on Friday 6 November 2009. A total of 63 tender submissions were received across these six tenders, which are currently being evaluated by a tender evaluation panel. These tenders are scheduled to be reported to the Council meeting of 16 December 2009.

One of the six tenders is for the hire of Plant and Equipment (Tender 12/10). Twenty eight tenders were received, of which six are local. A number of local contractors who did not submit tenders have contacted Councillors and are concerned that they will not be eligible to undertake work for Council because they were not aware of the new requirements to submit tenders. Previously, these contractors have submitted an "Expression of Interest" and the requirement now to submit a tender may be viewed by these small local contractors as being too onerous.

In order to address these issues, there must be a transparent process that meets Council's governance obligations. It is suggested that Council decline to accept any of the tenders for Plant and Equipment and re-advertise the tender to enable a larger pool of tender applications.

If adopted by Council, the new closing date for tenders will be Thursday 22 December 2009. It is anticipated that submissions received will be reported to Council on the 27 January 2010.



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Subject to Council's resolution, the evaluation of Tender 12/10 will cease and those tenderers will be advised that they are required to submit a fresh tender. A media release will be issued to confirm that Council is seeking a larger pool of tender applicants and will be inviting fresh tenders for the hire of plant and equipment.

### POLICY IMPLICATIONS

NIL

### BUDGET IMPLICATIONS

NIL

### ATTACHMENTS

Local Government (General) Regulation 2005 – Regulation 178

### RECOMMENDATION

1. **THAT** Council decline to accept any of the Plant and & Equipment Hire tenders (Tender 12/10) under the provisions of Local Government (General) Regulation 2005 – Regulation 178 (1)(b) for the reason that a larger pool of applicants will be achieved by inviting fresh tenders.
2. **THAT** Council invite fresh tenders closing on 22 December 2009 for Plant and Equipment Hire for 2010 under the provisions of Local Government (General) Regulation 2005 – Regulation 178 (3)(b).

M J Brearley  
**Director Infrastructure Services**

23 November 2009

Scott Lee  
**Acting General Manager**



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### ATTACHMENT 1

#### LOCAL GOVERNMENT (GENERAL) REGULATION 2005 - REG 178

##### Acceptance of Tenders

##### 178 Acceptance of tenders

- (1) After considering the tenders submitted for a proposed contract, the council must either:
  - (a) accept the tender that, having regard to all the circumstances, appears to it to be the most advantageous, or
  - (b) decline to accept any of the tenders.
- (1A) Without limiting subclause (1), in considering the tenders submitted for a proposed contract for the performance of domestic or other waste management services, the council must take into account whether or not existing workers (within the meaning of clause 170) will be offered employment or engagement on terms and conditions comparable to those applicable to the workers immediately before the tender was submitted.
- (2) A council must ensure that every contract it enters into as a result of a tender accepted by the council is with the successful tenderer and in accordance with the tender (modified by any variation under clause 176). However, if the successful tender was made by the council (as provided for in [section 55](#) (2A) of [the Act](#)), the council is not required to enter into any contract in order to carry out the requirements of the proposed contract.
- (3) A council that decides not to accept any of the tenders for a proposed contract or receives no tenders for the proposed contract must, by resolution, do one of the following:
  - (a) postpone or cancel the proposal for the contract,
  - (b) invite, in accordance with clause 167, 168 or 169, fresh tenders based on the same or different details,
  - (c) invite, in accordance with clause 168, fresh applications from persons interested in tendering for the proposed contract,
  - (d) invite, in accordance with clause 169, fresh applications from persons interested in tendering for contracts of the same kind as the proposed contract,
  - (e) enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender,
  - (f) carry out the requirements of the proposed contract itself.
- (4) If a council resolves to enter into negotiations as referred to in subclause (3) (e), the resolution must state the following:
  - (a) the council's reasons for declining to invite fresh tenders or applications as referred to in subclause (3) (b)-(d),
  - (b) the council's reasons for determining to enter into negotiations with the person or persons referred to in subclause (3) (e).