

**SPECIALIST OPERATIONAL AND CAPITAL WORKS – TENDER CONSIDERATION PLAN FOR VARIOUS PROJECTS**

CIA | 63/14/4\* | #7797016

**RECOMMENDATION:**

That Council:

- 1 Resolves to adopt the Tender Consideration Plan under procurement exemption, section 230 of the *Local Government Regulation 2012* to enable the engagement of specialist suppliers and contractors for operational, capital and disaster recovery works, and this TCP is to remain in place for five years from date of resolution;
- 2 Notes that this Tender Consideration Plan updates previously approved Tender Consideration Plans, with the key changes being the inclusion of additional specialist contractors to reflect current market availability and capability requirements and confirmation of an extended timeframe to enable completion of all required activities across multiple project types; and
3. Delegates authority to the Chief Executive Officer in accordance with the *Local Government Act 2009* to enter into contracts, finalise and negotiate any and all matters relating to these projects, including engagement of additional specialist contractors, subject to normal procurement practices and policies.

**INTERESTED PARTIES:**

The interested parties refers to specialist suppliers and contractors operating within the relevant technical fields associated with the proposed works.

Council officers have undertaken market research and industry engagement to identify contractors with the capability, capacity, specialised plant and accreditation required to deliver these works. Due to the dynamic nature of the specialist contractor market, the pool of interested parties is not fixed and may evolve over the term of the Tender Consideration Plan (TCP).

Accordingly, individual suppliers/contractors are not specifically named within this report. Engagement of specialist suppliers will occur on a project-by-project basis through targeted quotation processes in accordance with the adopted Tender Consideration Plan, Council's Procurement Policy, and within relevant internal governance and delegation requirements.

*Note: The identification of interested parties is provided on a best endeavours basis by Council Officers and may not be exhaustive.*

## **EXECUTIVE SUMMARY:**

This report seeks Council endorsement of an updated Tender Consideration Plan (TCP) under section 230 of the *Local Government Regulation 2012*, to enable Council to procure highly specialised works across a range of operational, capital and disaster recovery projects. These works require niche technical capability, specialised plant, accreditation or delivery methods that are not reasonably available through Council's existing prequalified procurement arrangements.

While some works may be funded through the Disaster Recovery Funding Arrangements (DRFA), this TCP is intentionally broader in scope and is also intended to support non-DRFA works through operational and capital projects where similar specialist capability is required.

Endorsement of the TCP will allow Council to respond efficiently and lawfully to disaster recovery needs while maintaining probity, accountability and compliance with legislative, policy and funding obligations.

## **BACKGROUND:**

Council is required to undertake a range of operational, capital and disaster recovery works across its infrastructure and asset portfolio. Some of these works involve highly specialised construction, remediation or installation activities that require niche technical capability, specialised plant, accreditation or delivery methodologies not readily available through Council's standard procurement arrangements.

In some instances, works may be delivered in response to eligible disaster events and funded through external programs such as DRFA, which in Queensland are administered by the Queensland Reconstruction Authority (QRA). These funding arrangements provide financial assistance to support the restoration of essential public assets following declared disaster events, subject to eligibility and approval requirements.

Council has approved several DRFA Restoration of Essential Public Assets (REPA) grant applications in recent years, and delivery of eligible restoration works remains ongoing. The timing and sequencing of these works continues to be influenced by scale, geographic spread, technical complexity and funding conditions. However, notwithstanding this, the requirement to engage specialist contractors is not limited to disaster recovery activities. Council regularly undertakes operational and capital projects that require similar specialist capability, including works associated with bridges, buildings, marine infrastructure, underground services, slope stabilisation and complex civil construction.

Council has previously adopted several TCP's to support the procurement of specialist works. This updated TCP does not alter the underlying procurement approach or governance framework, but refreshes the plan to reflect current market conditions, contractor availability and capability requirements, and to ensure the TCP remains fit-for-purpose across a broader range of operational, capital and disaster recovery activities.

## **COMMENT:**

The operational, capital and disaster recovery works require the engagement of specialist contractors with advanced geotechnical, structural and construction capability, and the value of these engagements may exceed \$280,000 excluding GST (or greater subject to annual CPI indexation after 1 July each year). In addition, the drainage and associated civil restoration works may require the engagement of specialist suppliers and contractors to deliver complex, constrained or technically specialised construction activities, including works involving specialised plant, confined-space construction, ground improvement, structural remediation and asset reinstatement. Individual engagements for these specialist works may also exceed the \$280,000 procurement threshold.

Council's market research and experience indicate that there is a limited pool of contractors capable of undertaking these highly specialised works. These specialist providers typically operate in niche markets, require specialised plant and accreditation, and are not accustomed to responding to open tender processes advertised by Council.

Council's experience is that the most effective procurement outcomes for these types of works are achieved through the direct invitation of quotations from suitably qualified and experienced contractors with the demonstrated capability, equipment and availability to deliver the works within the required timeframes.

Under the *Local Government Regulation 2012*, Council is generally required to undertake a public tender process for procurements with an expected value exceeding \$280,000 ex GST unless an approved exception applies. Section 230 of the Regulation provides for such an exception where Council prepares and adopts a TCP.

An additional procurement and governance control overlay will also be applied to demonstrate that, while the TCP enables an exemption from open tender, procurement oversight is still being actively exercised for higher-value specialist engagements. Where individual specialist contractor engagements are anticipated to exceed \$200,000 excluding GST, the Works team will present a brief to the Procurement Review Board (PRB) outlining the proposed contractor, scope, value and justification prior to engagement, ensuring that appropriate governance, probity and value for money oversight continues to be maintained.

Adoption of the TCP will enable Council to lawfully engage specialist contractors for the delivery of these works in accordance with legislative requirements, while maintaining appropriate governance, probity and value for money outcomes and supporting the timely delivery of operational, capital and disaster recovery works.

## **OPTIONS:**

1. Resolves to adopt the Tender Consideration Plan under procurement exemption, section 230 of the Local Government Regulation 2012 to enable the engagement of specialist suppliers and contractors for operational, capital and disaster recovery works, and this Tender Consideration Plan is to remain in place for five years from date of resolution;
2. Notes that this Tender Consideration Plan updates previously approved TCPs, with the key changes being the inclusion of additional specialist contractors to reflect current market availability and capability requirements and confirmation of an

extended timeframe to enable completion of all required activities across multiple project types; and

3. Delegates authority to the Chief Executive Officer in accordance with the *Local Government Act 2009* to enter into contracts, finalise and negotiate any and all matters relating to these projects, including engagement of additional specialist contractors, subject to normal procurement practices and policies.

## **CONSIDERATIONS:**

### **Risk Management:**

The proposed approach enables the timely delivery of operational, capital and disaster recovery works, while managing procurement, delivery and compliance risks associated with highly specialised activities. The adoption of a TCP provides a structured and transparent framework for engaging specialist contractors where required, reducing the risk of project delays, market non-response or capacity constraints. Procurement activities will continue to be subject to Council's governance, probity and financial delegation requirements, with risks managed through documented justifications, appropriate evaluation processes and contract management controls.

### **Council Finance and the Local Economy:**

A range of project works are funded under DRFA and are subject to eligibility, acquittal and reporting requirements. Other project works may also be required and funded through Council's approved operational and capital budgets. Adoption of the TCP supports value for money outcomes by enabling Council to access specialist capability efficiently and mitigate cost escalation associated with delays or limited market availability. Where feasible, opportunities for local suppliers to participate in the delivery of works are considered first, consistent with Council's procurement principles and market capacity.

Final project costs are governed by many factors, including the final designs. The various project works benefit the local economy by providing employment for local subcontractors and suppliers.

### **Community and Cultural Heritage:**

The proposed works support the restoration of essential transport and public infrastructure impacted by a disaster event, contributing to community safety, access and resilience. Project delivery will be undertaken in accordance with relevant cultural heritage obligations, with appropriate investigations, approvals and engagement processes applied where required. The procurement approach does not alter Council's responsibilities in relation to cultural heritage management.

### **Natural Environment:**

The works are intended to construct, operate, maintain and restore assets to a safe and serviceable condition, with consideration given to minimising environmental impacts. All works will be required to comply with relevant environmental legislation, approvals and conditions. Where applicable, environmental management measures will be incorporated into project planning and delivery to manage impacts on waterways, vegetation and surrounding environments via Environmental Management Plans (EMPs).

Corporate and Operational Plans:

Council's operational objectives relating to disaster recovery, infrastructure resilience and service continuity continue to be supported. Adoption of the TCP enables Council to respond effectively to emerging priorities while maintaining compliance with governance and procurement frameworks. The works align with Council's broader objectives to restore and maintain essential infrastructure following disaster events.

Statutory:

The proposed approach is consistent with the requirements of the *Local Government Act 2009* and the *Local Government Regulation 2012*. Section 230 of the Regulation permits Council to adopt a TCP where compliance with standard tendering requirements is impractical or inappropriate. Adoption of the TCP provides a lawful basis for the proposed procurement approach while maintaining transparency and accountability.

Policy:

Procurement undertaken in accordance with the TCP complies with Council's Procurement Policy, including the sound contracting principles. The TCP does not replace existing prequalified supplier arrangements but applies only where specialist capability or exceptional circumstances warrant an alternative procurement approach.

**CONSULTATION:**

Stakeholder and community engagement, where required, will be undertaken as part of the planning and delivery of specific projects in accordance with Council's standard practices.

**ATTACHMENTS:**

Attachment 1 – Tender Consideration Plan



Martin Perkowicz  
Executive Manager Works



Toni Veronese  
Associate Director Service Delivery



Mark Wuth  
Director Cairns Infrastructure and Assets

# **TENDER CONSIDERATION PLAN**

**In accordance with section 230 of the *Local Government Regulation 2012***

## **SPECIALIST SUPPLIERS AND CONTRACTORS FOR OPERATIONAL, CAPITAL AND DISASTER RECOVERY WORKS**

### **1. Introduction / Background**

Council is required to undertake a range of specialist works, arising from operational, capital and disaster recovery works requirements. The specialist works may include, but are not limited to, complex civil, structural, geotechnical and environmental works such as piling, ground stabilisation and landslip remediation; trenchless technologies including pipe jacking, tunnel boring and relining; marine and underwater works; aerial and high-risk access works; concrete pumping; track and trail construction and maintenance; or similar specialist services or activities as approved by the Procurement Review Board (PRB), including works requiring specialised plant, equipment, certifications or delivery methodologies.

The nature of these works may be highly specialised and may require advanced geotechnical, structural and construction capability, specialised plant, confined-space construction techniques and specialist delivery methodologies. There are a limited number of suppliers and contractors capable of undertaking these works in the local market, and advertising a public invitation for tenders is unlikely to attract a broader or more competitive response than that achieved through targeted market engagement. There is also a risk that a formal tender processes and associated costs involved may deter specialist contractors from responding.

Accordingly, Council has determined that it is impractical to comply with standard tendering requirements for these procurements and has resolved to prepare and adopt this Tender Consideration Plan (TCP) pursuant to section 230 of the *Local Government Regulation 2012*. The TCP will support project and maintenance works that require niche technical capability, specialised plant or accreditation and are not reasonably available through Council's existing prequalified procurement arrangements.

It is proposed that the TCP remains in place for a term of five years, commencing from the date of endorsement by Council resolution.

### **2. Procurement Approach**

Council proposes, where practical, to directly invite written quotations from a select number of suitably qualified and experienced specialist suppliers and contractors identified through market research and professional experience.

Quotations may be invited on a project-by-project basis, proportionate to the scope, risk and value of the works and assessed against predetermined evaluation criteria to determine the submission most advantageous to Council.

### **3. Objectives of the Tender Consideration Plan**

The objectives of this Tender Consideration Plan are to:

- enable the timely and compliant delivery of operational, capital and disaster recovery works;
- engage specialist suppliers and contractors with the required expertise, plant, accreditation and availability;
- achieve value for money outcomes having regard to market capability and constraints; and
- ensure procurement activities comply with the Sound Contracting Principles contained in section 104(3) of the *Local Government Act 2009*, including value for money, open and effective competition, ethical behaviour and fair dealing.

### **4. Achievement of the Objectives**

The objectives will be achieved by:

- identifying suitable specialist suppliers and contractors through market research and prior professional experience. This may occur on a project-by-project basis, or by utilising an pool of interested parties established from prior similar projects;
- directly inviting quotations from a minimum number of capable suppliers where practicable;
- evaluating submissions against predetermined qualitative and commercial criteria; and
- awarding contracts in accordance with Council's delegations, policies and governance requirements.

### **5. Measurement of Achievement**

Achievement of the objectives will be measured by:

- the competitiveness and reasonableness of pricing received;
- the quality and technical suitability of proposed methodologies;
- contractor availability and ability to meet required timeframes; and
- successful delivery of works in accordance with contract requirements and specifications.

### **6. Alternative Ways of Achieving the Objectives**

An alternative approach would be to publicly advertise an invitation for tenders for each procurement. This approach is not recommended as Council's market research has confirmed there is a limited pool of specialist contractors capable of delivering these works, and a public tender process would introduce additional time and administrative cost without improving procurement outcomes.

Specialist contractors in this market typically operate as subcontractors to major civil contractors and are not accustomed to responding to public tenders issued by Councils or other government agencies. For a public tender to succeed, Council would still be required to directly notify known specialist contractors, which would negate the purpose of an open tender process and potentially create a perception of favouritism.

Another alternative would be to engage specialist contractors through Council's existing prequalified civil or trade supplier arrangements. While this approach is utilised where appropriate and available, it is not always practicable for highly specialised works. Requiring specialist contractors to be engaged through prequalified arrangements or to undergo prequalification solely for these DRFA works is not recommended, as it may introduce additional contractual layers, increase cost and administrative complexity, and reduce Council's ability to directly manage risk, performance and delivery timeframes.

## **7. Proposed Terms of the Contract**

The proposed terms of the contract may vary depending on the nature of works, but will either be based on AS General Conditions of Contract (Construct, Design and Construct, or Minor Works), as amended for Council use, together with project-specific technical specifications and conditions; or under Council's Standard Terms and Conditions for Goods and Services, depending on the nature and risk of the works.

## **8. Risk Analysis of the Market**

The market for specialist works is constrained by limited supplier availability, high demand and the need for specialised plant and expertise.

Key risks and mitigation measures include:

- Pricing – mitigated by inviting quotations from multiple suppliers where practicable to encourage competitive pricing.
- Quality – mitigated through detailed specifications, technical evaluation criteria and the use of appropriate contract conditions.
- Timeliness – mitigated by assessing contractor availability and capacity as part of the quotation evaluation.
- Supplier Availability – mitigated through early market engagement and flexible procurement sequencing.
- Material Supply – mitigated through early identification and ordering of critical materials where required.

## **9. Recommendation**

It is recommended that Council adopts this Tender Consideration Plan for a period of five years and directly invites quotations, where practical, from selected specialist suppliers and contractors that have the required expertise, equipment and availability to perform the required project and maintenance works.

## 10. Attachments

Nil

---

### ***Local Government Regulation 2012***

#### **230 Exception if quote or tender consideration plan prepared**

- (1) A local government may enter into a medium-sized contractual arrangement or large-sized contractual arrangement without first inviting written quotes or tenders if the local government—
- (a) decides, by resolution, to prepare a quote or tender consideration plan; and
  - (b) prepares and adopts the plan.
- (2) A ***quote or tender consideration plan*** is a document stating—
- (a) the objectives of the plan; and
  - (b) how the objectives are to be achieved; and
  - (c) how the achievement of the objectives will be measured; and
  - (d) any alternative ways of achieving the objectives, and why the alternative ways were not adopted; and
  - (e) the proposed terms of the contract for the goods or services; and
  - (f) a risk analysis of the market from which the goods or services are to be obtained.