ACKNOWLEDGMENT OF A SOLE SUPPLIER: UNINET ENCLOSURE SYSTEMS.

Tim Dendle: 19/15/9-03:#2434541

RECOMMENDATION:

That Council:

1. Resolves in accordance with Section 486(1)(a) of the Local Government Act 1993, that it is satisfied that Uninet Enclosure Systems Ltd is the only supplier reasonably available to it to supply stinger resistant enclosures to Council; and

2. Delegates authority to the Mayor and Chief Executive Officer in accordance with Section 472 of the Local Government Act to negotiate and finalise any and all matters in relation to the contract with this supplier.

INTRODUCTION

This report seeks a resolution of Council to make use of the provisions of the Local Government Act 1993 that allow for exceptions to the requirement for written quotations or tenders. The use of this provision is sought in relation to the supply of stinger resistant beach swimming enclosures beyond the end of the current contract which concludes on 30 June 2010.

BACKGROUND:

Legal:

It is a requirement of the Local Government Act 1993, (The Act), to invite written quotations or tenders where the supply of goods or services involves a cost greater than $150,000.

The Act provides a number of exceptions to this requirement. Some of the exceptions include:

- Where the Council resolves that it is satisfied that there is only one supplier reasonably available to it;
- The Council resolves that an emergency exists; or
- The contract is made with the Federal, State or Local Government or a government entity.
Operational and Contractual:

The provision of beach safety services at the region’s beaches is a key consideration for Council in providing unstructured recreational activities for the community. By providing these services Council increases the public’s access and exposure to some of our most important natural assets.

At its SACCS Committee Meeting of 10 November 2005, Cairns City Council resolved to award a five year contract to Uninet Enclosure Systems (UES) Ltd (ACN 076 774 984) for the provision of eight stinger resistant enclosures for the Cairns beaches, commencing 1 July 2005 and expiring 30 June 2010, at a price of $47,236 per year, as sole supplier in accordance with the provisions set out in clause 486 (1) of the Local Government Act 1993. The locations of these enclosures were:

- Ellis Beach
- Palm Cove
- Clifton Beach
- Kewarra Beach
- Trinity Beach
- Yorkeys Knob
- Holloways Beach
- Bramston Beach

Similarly on 1 July 2003, the former Douglas Shire Council (DSC) entered into a contract with UES for the provision of stinger resistant enclosures at Four Mile Beach for a period of five (5) years, terminating on 30 June 2008. This agreement was subsequently extended by the amalgamated Cairns Regional Council at its SACCS Committee Meeting of 22 May 2008 in order to align it with the termination date of the services at other beaches within the local government area.

Potential Suppliers:

UES was established over 20 years ago by James Cook University in Cairns to supply and service marine stinger resistant enclosures on North Queensland beaches. UES is now a financially independent company which supplies the enclosure systems to Councils, on an all inclusive supply, installation and maintenance basis. Currently there are 28 systems in operation that are on permanent hire to local councils along the east coast of Australia. The operation is based in Cairns and employs a staff of six with an office, workshop and fleet of five service vehicles.

There are several suppliers of Shark Nets such as Shark Proof Enclosures Ltd from COOGEE, NSW, some of which are known to have attempted to provide stinger resistant enclosures in the past. However it appears that the nets offered were adaptations of their much larger holed shark nets which do not work effectively as a barrier to marine stingers. Investigations indicate that none these companies are presently contracted to supply stinger resistant nets to any Local Authority in Australia.

COMMENT:

Investigations including consultation with other local governments The Cassowary Coast Regional Council, Townsville City Council and the Sunshine Coast Regional Council, have concluded that UES remains the only supplier of this highly specialised service to our region. Council’s preference to continue to provide a service using the current type of net or similar is based on:
• The success of the current net, with its unique, patented design with no credible alternatives/substitutes; and
• Council’s intention to use the existing foreshore infrastructure (installed and maintained by Council) that compliments the UES setup.

While not an argument to support the sole supplier request, it is noteworthy that a contract with UES also offers the following benefits:

• Partnership with James Cook University for research and development (currently there are trials for an Irukandji resistant system);
• Local operational base for immediate response; and
• Local knowledge.

Proposed Contract Scope

It is intended that the scope of the new agreement be broadly in line with existing service levels (that is, nine beaches for seven months of the year) but subject to review in light of the recommendations from the current Parks and Recreation Strategy process. Future contractual documentation will include provision for the deletion and/or inclusion of services over time at the discretion of Council.

CONSIDERATIONS:

Corporate and Operational Plans:

Corporate Plan 2009-2014

2.1 Implement a more comprehensive and coordinated approach to community health and safety.
2.3 Deliver equitable provision of a diverse range of sport and recreation opportunities.
4.4 Deliver effective long-term maintenance and renewal of existing infrastructure and community assets.

Operational Plan 2009-2010

Sport and Recreation
Mission: To foster, support and develop sport and recreational opportunities and facilities in accordance with the needs of the community including providing safe and clean beaches within the Cairns Regional Council.

Statutory:

Section 484 (1) of the Local Government Act 1993 states:

“A local government must invite tenders before making a contract for the carrying out of work, or the supply of goods or services, involving a cost of more than $150,000.”

Section 486 (1) of the Local Government Act 1993 states:

“A local government may enter into a contract without complying with section 484, if (a) it resolves that it is satisfied that there is only 1 supplier reasonably available to it.”
Policy:

Procurement Policy No. 1:02:23 provides a framework for the undertaking of any procurement activities and is supported by section 5 ‘Procedure for calling for Tenders and Administering Contracts’ which governs all matters relating to the administration of contracts. Council’s procurement process complies with Section 481 of the Local Government Act 1993.

Financial and Risk:

Current financial outlay by Council through its existing hire agreements with UES can be summarised as follows (all figures are exclusive of GST and are rounded to the nearest dollar):

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount 2009/10</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Hire Fee (9 beaches/locations)</td>
<td>$442,304</td>
<td>Indexed annually at 75% of Relevant CPI change as noted in section five of Hire Agreement</td>
</tr>
<tr>
<td>2</td>
<td>Insurance contribution</td>
<td>$5,676</td>
<td>4.3% of UES insurance costs (section 28 of Hire Agreement)</td>
</tr>
<tr>
<td>3</td>
<td>Bramston Beach Operator *</td>
<td>$8,550</td>
<td>Approximately 30 weeks as prescribed by the ‘stinger season’.</td>
</tr>
</tbody>
</table>

* An operator is required for the service at Bramston Beach due to the lifeguard service being limited only to the Christmas and Easter Holidays. Council has engaged Surf Life Saving Queensland to operate the nets at the remaining eight locations though Contract 2041 ‘Provision of Life Guard Services’.

With regard to the insurance contribution, it is recommended that future contracts include an escape clause for Council in the event the insurance premiums rise to a degree that is unacceptable for Council. It should also be a standard condition that Council be noted as an interested party on the UES policy.

It is noteworthy that although the stinger season has been extended in recent years by one month from the standard six months out of necessity, there has been no charge for this additional service.

It is intended that the Mayor and CEO be delegated authority to negotiate and finalise a new contract with UES at a price commensurate with 2009/10 levels.

Sustainability:

Stinger resistant enclosures are a major factor in sustaining tourist and local visitor numbers to the region’s beaches. The continued provision of these services will enhance Cairns Regional Council’s reputation as a provider of safe places for people to enjoy recreational pursuits in a variety of locations thus furthering the economic and social prosperity of the region.
The stinger resistant enclosures are permitted by the Great Barrier Reef Marine Park Authority and are tested for environmental sustainability. Any alternative structure would need to obtain the same authority and meet the same criteria.

**CONSULTATION:**

Consultation has occurred with other Councils prior to the formulation of this recommendation including Cassowary Coast Regional Council, Townsville City Council and the Sunshine Coast Regional Council. Officers have also discussed the nature of this report with Surf Life Saving Queensland and local surf lifesaving clubs: Cairns, Ellis and Port Douglas. Appropriate contributions have also been made from Corporate Services (Purchasing, Legal Services), Sport Recreation and Community Development and Inner City Facilities (Esplanade Lagoon).

Officers have sought advice from King and Company regarding the provisions of the *Local Government Act 1993* that allow for exceptions for written quotations or tenders and the recommendation conforms to this advice.

**OPTIONS:**

**Option 1:**

That Council:

1. Resolves in accordance with Section 486(1)(a) of the *Local Government Act 1993*, that it is satisfied that Uninet Enclosure Systems Ltd is the only supplier reasonably available to it to supply stinger resistant enclosures to Council; and

2. Delegates authority to the Mayor and Chief Executive Officer in accordance with Section 472 of the *Local Government Act* to negotiate and finalise any and all matters in relation to this supplier on Cairns Regional Council Beaches.

**Option 2:**

That Council proceed to call tenders for the provision of stinger resistant enclosures for the region’s beaches.

**CONCLUSION:**

Given the performance of UES under previous contracts and its status as the only supplier in a position to supply services to the desired specification, it is recommended that Council:

1. Resolves in accordance with Section 486(1)(a) of the *Local Government Act 1993*, that it is satisfied that Uninet Enclosure Systems Ltd is the only supplier reasonably available to it to supply stinger resistant enclosures to Council; and

2. Delegates authority to the Mayor and Chief Executive Officer in accordance with Section 472 of the *Local Government Act* to negotiate and finalise any and all matters in relation to this supplier on Cairns Regional Council Beaches.
ATTACHMENTS:

Nil

Tim Dendle  
**Sport and Recreation Development Officer**

Jennifer Hunter  
**Manager Sport Recreation and Community Development**

Ian Lowth  
**General Manager Community, Sport and Cultural Services**