

Ben Rose

From: Troy Jones
Sent: Monday, 4 July 2022 7:45 AM
To: Ben Rose
Cc: Shawn Lombard
Subject: RE: VC Mitchell Park Project

Hi Ben – thanks for your email. I have forwarded this on to our infrastructure team initially to determine who within DLGSC would be the representative to assist. I am unsure whether this will be me at this point in time as I am on secondment as Director of Regional Services until end of August.

As soon as I hear back from them I will respond to your enquiry.

Regards

Troy Jones
A/Director Regional Services
Department of Local Government, Sport and Cultural Industries



From: Ben Rose <ben.rose@donnybrook.wa.gov.au>
Sent: Sunday, 3 July 2022 1:46 PM
To: Troy Jones
Cc: Shawn Lombard
Subject: VC Mitchell Park Project

Hi Troy,

An update for you on the tendering process in the below email chain. The 'risk' that James refers to relates to certain community member reactions, not anything compliance related.

If (I stress 'if'), we do not get any compliant tenders, this initiates a provision of the LG Functions and General Regulations 1996 (reg 11(2)(c)(i)) that enables the LGA to procure services/materials etc via direct negotiation with a company/companies (i.e. building company) and not through the normal tender process (there is a 6 month window to direct procure as per the Regs). The purpose of the EOI running concurrent with the last fortnight of the tender period is

to enable me to present a recommended company/ies to Council to direct negotiate with, should the tender not yield any results i.e. to keep things moving. The EOI submissions are more qualitative than quantitative i.e. asks respondents to demonstrate what capability the company has, what capacity, what history of similar projects/works, what margins are expected etc. The EOI is not a preliminary design or costing process (that will follow).

To assist the Shire through the direct negotiation phase with a selected company/companies, I request DLGSC assistance to co-administer the process with the Shire. I will also be seeking assistance from the Department of Finance in a similar role to DLGSC (I have been advised that they did this for the Town of East Fremantle recently). As there is \$6m of State funding committed to the project, I would hope the State Government (agencies) see the benefit in a relatively small amount of assistance to the Shire to direct negotiate/procure for this project in a manner which is robust, rational and transparent (especially as we are potentially now heading down a non-traditional tender procurement route).

Could you please give me a call to discuss in more detail – thanks.

Regards, Ben.

Benjamin (Ben) Rose
Chief Executive Officer



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THINK BEFORE YOU PRINT. PLEASE CONSIDER OUR ENVIRONMENT BEFORE YOU PRINT THIS EMAIL.

From: Ben Rose
Sent: Wednesday, 29 June 2022 2:50 PM
To: James McGovern <
Subject: RE: WALGA Part II: RFT Design and construct sports complex - potential for no submissions - tender exempt process

Thank you so much, greatly appreciated!

Regards, Ben.

Benjamin (Ben) Rose
Chief Executive Officer



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From: James McGovern <jmccgovern@donnybrook.wa.gov.au>
Sent: Wednesday, 29 June 2022 2:02 PM
To: Ben Rose <ben.rose@donnybrook.wa.gov.au>
Subject: RE: WALGA Part II: RFT Design and construct sports complex - potential for no submissions - tender exempt process

Hi Ben,

Thanks for the enquiry and the additional information that informs our discussion yesterday afternoon.

The Local Government (Functions and General) Regulations are silent on the concurrent conduct of tender and EOI processes. The anti-avoidance provisions are irrelevant as the Shire is engaging in both a compliant tender process and a compliant EOI process, neither of which will result in the avoidance of tendering.

Therefore the simple answer is that your intended actions do not breach regulation.

As we discussed, it is presumed that the purpose of the EOI process is to provide Council with a mechanism to provide Council with an alternative approach to market should the active tender process fail to attract a response or if the local government declines to accept any tender lodged. The consequence of approaching the market with an EOI at the same time as an open tender process may incur some risk, especially if the EOI documentation is not explicit in terms of the consultative, rather than determinative, nature of this process. However, it is reassuring from your comments that the tender process has primacy in terms of future decision-making by the Shire Council.

I trust this information is helpful.

Regards,

James

James McGovern | Manager Governance and Procurement | WALGA

(p) 10b`



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From: Ben Rose <ben.rose@donnybrook.wa.gov.au>

Sent: Tuesday, 28 June 2022 5:18 PM

To: James McGovern ·

Subject: FW: WALGA Part II: RfT Design and construct sports complex - potential for no submissions - tender exempt process

Hello James,

Thanks for the conversation on this just now. With reference to the below email chain, I am seeking further advice regarding the potential scenario where no tenders are lodged by the due date on 13 July 2022 (i.e. no tenders, no compliant tenders, or no value for money tenders).

I have reason to believe that it is unlikely that any tenders / compliant tenders / value for money tenders will be lodged by the due date as:

- Multiple prospective proponents have advised the Shire they will not be tendering for RfT-2122
- We have had no tenders lodged to date (noting two weeks still to run to due date)
- There have been no requests for clarification via the tender portal (we would normally expect 10+ requests for clarification where tenders are actually lodged)
- There were no participants in the RfT site visit
- There were no participants in the RfT online briefing.

Of course, we may be pleasantly surprised over the last fortnight.

As discussed with Felicity, Tania and now yourself, my preferred course of action is to release an Expression of Interest consultation document to the market (advertises in West Australian etc) which seeks to enable the Shire to shortlist capable Proponents to further commercial negotiations with, should there be no tenders lodged. If there are compliant tenders lodged, we can 'politely dismiss' any response to the EOI consultation process and move forward with the tenders. Essentially, I am trying to be agile and adaptable in a complex and quickly changing procurement environment, within the bounds of LG legislation.

Ideally, I would like to release an EOI consultation document tomorrow for a period of 14 days, to line up with the close of the RfT period on 13 July. However, before doing so, wanted your/WALGA advice as to whether running a concurrent EOI consultation process with a live RfT process:

- Is permissible under LG Act and F&G Regulations;
- Triggers any anti avoidance considerations of the Act / Regs;
- Creates any other LG compliance, regulatory or governance implications (negative); and
- Any other relevant advice you may be able to offer.

Again, thank you for the conversation on this matter and advising of some other LGAs in a similar situation that we may be able to discuss with.

Regards, Ben.

Benjamin (Ben) Rose
Chief Executive Officer



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From: Tania Narkevich <tania.narkevich@donnybrook.wa.gov.au>
Sent: Tuesday, 21 June 2022 4:07 PM
To: Ben Rose <ben.rose@donnybrook.wa.gov.au>
Subject: WALGA Part II: RFT Design and construct sports complex - potential for no submissions - tender exempt process

Hi Ben,

Thanks for your enquiry and for discussing with me today.

As discussed, per your suggested option and preference re: conducting an Expression of Interest (EOI) Process to establish potential market respondents for the Design and Construct of Built form and Infrastructure at Donnybrook VC Mitchell Park, I advise the process for the same is detailed under r. 21 – 24 *Local Government (Functions and General) Regulations 1996*.

In addition, I provide some additional information as to what types of procurement processes can constitute a RFx. The following was provided to Shawn Lombard in an email I sent 14/04/2022.



1. Types of Specifications

- ⊙ **Request For Information (RFI) – An RFI (or EOI) is a document that is:**
 - used to obtain non-price information from suppliers.
 - most commonly used in purchases that are complex or of significant value.
 - used when the purchasing organisation needs information to ensure that its specification is feasible or the purchasing organisation wishes to narrow down its field of potential bidders to the most qualified candidates.
 - Purchasing departments usually follow an RFI with one of the other three solicitation documents.
- ⊙ **Request For Quote/Quotation (RFQ) – An RFQ requests that suppliers respond with only prices, lead time, and terms from suppliers based on fixed specifications.**
 - Generally, RFQs do not allow for changes to the specification.
 - The lowest price is usually determining factor in awarding an order based on RFQ responses.
- ⊙ **Request For Proposal (RFP) – Like an RFQ, an RFP requests pricing, delivery, etc.**
 - However, unlike an RFQ, an RFP allows, sometimes requires, supplier input on specifications.
 - RFPs are often used to find solution to a problem.
 - Orders based on RFP responses are generally awarded based on the best overall value and not necessarily on price alone.
- ⊙ **Request for Tenders – An RFT is a higher value version of an RFQ.**
 - The specifications, terms, etc. are all predetermined by the purchasing organisation.
 - Price is the only variable
 - RFT are usually advertised publicly and open to any responsible bidder.
 - In most situations, the issuance of an RFT commits the purchasing organisation to buy, so purchasing departments issue an RFT only when:
 - ⊙ well defined specs are available,

- ⦿ the value of the order exceeds pre-established thresholds,
- ⦿ statute requires such an issuance, and
- ⦿ no other method of soliciting pricing is applicable.

Broad Approach to Selecting a Supplier

Request for Quote/Tender

- You know what you want
- You tell the supplier
- They don't tell you
- They merely give a price and demonstrate their capability.
- YOU write the detail in the Specification.

Request for Proposal

- You want the supplier to tell you what they can provide
- You tell them what outcome you want.
- They tell you what they can do for you.
- THEY write the detail in the Specification.

See also WALGA online resources as follows (to view, you must be logged in as WALGA users first):

Procurement Planning: <https://walga.asn.au/services/subscription-services/procurement/procurement/procurement-toolkit/procurement-planning>

Choosing a Procurement Approach: <https://walga.asn.au/services/subscription-services/procurement/procurement/procurement-toolkit/choosing-a-procurement-approach>

Request for Proposal

Like an RFQ, a Request for Proposal (RFP) requests pricing and delivery. However, unlike an RFQ, an RFP allows, and sometimes requires, supplier input on specifications of the total solution.

For example, when procuring CCTV equipment and monitoring services, call for a proposal may be more appropriate for the supplier to propose the network design, the equipment specifications, and the installation locations. If those variables are already available in a specification, then an RFQ or RFT is more appropriate.

RFPs are often used to find the solution to a problem, and are more subjective to evaluate than RFTs, as you are comparing the comparative merit of a range of proposals that may include differing components as well as price. Orders based on RFP responses are generally awarded based on the best overall value or solution offered and not necessarily on price alone (as this is not best practice).

Ensure that you have agreed the evaluation criteria before you issue the RFP. This way you keep the transparency required for this type of method.

Once awarded, the purchasing transactions may be completed by a Purchase Order citing the contracted agreement details as the governing terms and conditions of purchase.

To help suppliers when responding to an RFP it is a good idea to hold a briefing session so that suppliers know the response to your requirements as this affects their solution design and price. In an RFT situation where a tenderer proposes a solution different to the Scope of Work and Specification, it would be deemed a non-conforming tender.

The responsible officer is expected to demonstrate due diligence when conducting a RFQ and must comply with any record keeping and audit requirements.

If you've any questions, please don't hesitate to reach out.

Kind Regards,
Tania

Tania Narkevich | Procurement Specialist | WALGA

Upcoming leave advice: I will be away on Annual Leave from Mon 27 July returning Thu 07 July.



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From: Felicity Morris <
Sent: Friday, 17 June 2022 4:55 PM
To: Tania Narkevich

Cc: Ben Rose <ben.rose@donnybrook.wa.gov.au>

Subject: RFT Design and construct sports complex - potential for no submissions - tender exempt process

Hi Tania,

I hope you had a lovely weekend.

The Shire of Donnybrook Balingup currently have an RFT out for design and construct of a significant sports complex. Given the current market conditions, there is a reasonable possibility that no submissions will be received.

I have confirmed with the Shire's CEO Ben Rose, copied into this email, that in that case the tender exemption under r.11(2)(c)(i) of the *Local Government (Functions and General) Regulations 1996* would apply. However, I wasn't able to suggest how the Shire might approach tender exempt procurement for a project of this size and complexity.

Could you possibly give Ben some advice on how the Shire could engage with the market?

Kind regards,

Felicity

Felicity Morris | Governance Specialist | WALGA (Thursday and Friday)

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