

## 9.5 LANDFILL CONTRACT EXTENSION FOR CONTRACT C556

**File Number:****Author:** Robert Hon, Environmental Waste Manager**Authoriser:** Doug Tate, Chief Executive**Attachments:** Nil

The Council is satisfied that, pursuant to s48(1)(a)(i) of the *Local Government Official Information and Meetings Act 2002*, the information to be received, discussed or considered in relation to this agenda item is:

- s7(2)(h) the withholding of the information is necessary to enable Council to carry out, without prejudice or disadvantage, commercial activities
- s7(2)(i) the withholding of the information is necessary to enable Council to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).

### PURPOSE

The purpose of this report is for Council to accept the offer for the extension to the contracts works period or consider re-tendering the contract.

### RECOMMENDATION FOR CONSIDERATION

- a) That Council note and approve unbudgeted contract costs of \$99,400 in the 2023/2024 financial year and note the additional budget requirement of \$170,000 in the 2024/2025 year.
- b) That Council approve the variation for Contract 556 noting the new contract price of \$740,000 per annum for the three-year contract extension term.
- c) That the resolutions relating to this item be released as publicly available information on official notification to the contractor.

### EXECUTIVE SUMMARY

Following the report to Council on 21 September 2023 recommending the extension of Contract 556- Landfill Management Contract for a further 3 years, Council have concluded negotiations with Higgins. Higgins have offered a 3-year extension with a total contract price of \$740,000 per annum.

While this is an increase to the current price from \$453,000 per annum to \$740,000 per annum. It is noted that adjusted contract also includes annual reactive operations (valued at \$120,000) being formalised as part of the contract.

To this end, the net increase in value requested by the Contractor for this contract and the budget shortfall is \$170,000 per annum. For this financial year, the shortfall will be a net increase for the remaining 7 months, totalling \$99,700.

Council now has the option to either

1. offer Higgins the extension at the original contract price which will likely be rejected, resulting in the retendering of the contract to the market.

OR

2. accept the offer of a 3-year extension at the new contract price.

Council sought independent advice to review the increase through an independent third party. The review noted that the price was reasonable and in line with market rates. Retendering would cost the council an additional \$50 – 70k with no guarantee of better value or a more competent supplier. The review recommended that the Council conclude the negotiations, accept the offer, and extend the contract with the incumbent, Higgins.

Based on this review and considering the contractor performing satisfactorily within the cost limitations so far, officers are confident to recommend that the Council approve and accept this extension.

## **BACKGROUND**

In early 2018 Council sought to procure suppliers to operate its waste management and disposal services. After a robust tender process, Higgins was selected as the successful tenderer to manage and maintain the operations at the Farm Road landfill. The Contract commenced on the 1 December 2018.

A Section 17a Review followed in 2020, with the final report endorsing the current arrangement of outsourcing solid waste operations to suppliers under the direct management of the Council being the most appropriate structure. This was largely driven by the low landfill tonnages and local community expectations making other options such as a public- private partnerships, less attractive. The contract currently has an annual value of \$453,000.

The contract allows for an extension of a further 3 years from 1 December 2023.

At Councils meeting of 21 September 2023, officers detailed a paper recommending that the Council extend the landfill operational contract a further 3 years and that Chief Executive is granted delegation to negotiate and effect the extension. At this stage, there had been no indication from the supplier from the likely significant escalation in price. Subsequently to this report, Officers were notified of the increase and have worked through a transparent process with the contractor to confirm the process.

While the current contract term lapsed on 1 December 2023, the current contract rates remain in place.

The next section of this report outlines the process that Council Officers have been through to test the pricing variation submitted by the Supplier, and the basis for recommended the changes.

## **DISCUSSION**

Officers acknowledge the new price is unlikely in line with elected member expectations when elected members approved the recommendation on 21 September. This report provides further clarity on how officers have arrived at this recommendation.

Through a transparent, open book process, negotiations concluded with Higgins offering to extend the contract a further 3 years for a contract value of \$740,000 per annum. Higgins indicated this would be the minimum amount for the contract to remain viable for them to continue the contract.

While this is an increase of some \$287,000, some \$120,000 of work is already worked funded and undertaken in the contract reactively at dayworks rates, rather than scheduled rates. This leaves a funding shortfall and new overall request of \$170,000 from the Supplier to deliver the Contract.

The table below show a breakdown of the drivers of costs:

| Description                  | Drivers   |
|------------------------------|---|
| Labour and management        | <ul style="list-style-type: none"> <li>• Increasing to 2 FTE to accommodate higher compliance requirements and a growing site.</li> <li>• Extra administration in line with contract management and operational planning.</li> <li>• Labour rates increasing beyond CPI</li> <li>• Increasing hours to complete operational tasks in line with best practice</li> </ul> |
| Plant/Machinery Requirements | <ul style="list-style-type: none"> <li>• Additional plant hours to complete operational tasks in line with best practice,</li> <li>• Minor plant improvement for safety and efficiency improvements.</li> <li>• Higher rates driven by higher fuel and maintenance costs.</li> </ul>  |
| H&S consumables              | <ul style="list-style-type: none"> <li>• Additional consumables e.g., filters, safety equipment for staff and plant.</li> </ul>   |

The table above show the largest increases are in staffing costs and machinery costs necessary to ensure continued delivery of contract specifications, performance expectations, and compliance with legislative and health and safety regulations at an expanding landfill.

The increased resources are in an environment of high inflation, high insurance costs, higher interest rates and a tight labour market.

Council sought independent advice to review the price, provide an opinion on whether these are in line with current market rates and to recommend a way forward. The scope presented included a review of the Higgins rates that make up the contract value, an estimate on the costs of re-tendering, an opinion on the likelihood of obtaining better value through the tender process and a recommendation on a way forward.

The report concludes the costs are reasonable, noting some of Higgins rates on the lower end of the market. The advice also estimates that the cost to re-tender is estimated to be about \$50k - \$60k with no guarantee that the Council will get better prices or the same price from the incumbent. This is due to the limited pool of suitable contractors for the execution of the contract. Given the context, the independent advice recommends that council conclude negotiations with Higgins and accept the value.

It is also worth noting that the figure of \$740,000 includes other costs (valued at around \$120,000). Again, historically these were funded reactive and thus, funded through other operational budgets. These have now been included as part of the contract extension as scheduled items. These are discussed in further detail below:

| Operations   | Value per annum |
|--|-----------------|
| 1. Vegetation control on closed landfill management                            | \$15k           |
| 2. Maintenance of internal roads, leachate ponds and facilities                | \$47.5k         |
| 3. Pest control & weed spraying  | \$10k           |
| 4. Managing material to cover waste (previously sourced externally)            | \$15k           |
| 5. Opening on selected public holidays.  | \$17.5k         |
| 6. Operational design and planning (previously done by an external consultant) | \$15k           |
| <b>Total</b>   | <b>\$120k</b>   |

### Financial Impact

If accepted, the Contract will require some \$99,000 of unbudgeted new funds in the current financial year, and the Long Term Plan 2024-2034 will need to reflect the \$170,000 increase. There will be some savings to Council in the 2024/25 year, with inflation indexes only being applied to seven months of the contract, with this extension setting new values for a 12 month period.

There are limited options to recoup this shortfall this financial year and officers acknowledge that the solid waste budgets are already financially strained due to lower-than-expected tonnages. As at the 30 October the solid waste activity as a whole was down \$188k in fee revenue. While some of this is timing, overall waste volumes are significantly lower than forecast and costs are up.

Officers will be presenting to Council in February options to defray these costs, including options to adjust fees and charges out of cycle. Looking ahead, this shortfall could be largely recouped though increased landfill charges. With a net increase of \$170,000 per annum in costs spread over an expected tonnage of 11,150 tonnes, an increase of \$15 per tonne to the landfill fees is likely to cover this.

## **RISK ASSESSMENT AND MITIGATION**

One key risk has been identified.

### Risk of tendering

The main risk of retendering is around the quantity and quality of the potential suppliers. Given the shorter contract term, the contract prices will likely be higher due to the common practice of suppliers spreading the costs of new plant and machinery over the number of years of the contract. With a shorter timeframe, each year attracts higher costs for plant.

Furthermore, selecting a new suppliers of unknown quality could increase the risk of legislative breaches, e.g. consent breaches, as suppliers take time to adjust to operations. Worst of all, a potential tenderer could simply be under resourcing the contract, putting the service in a similar position as it currently is.

One way to mitigate these risks would be to be very selective when selecting a supplier which in turn, will likely limit the opportunity of getting a contract price lower than the current offer.

## **FOUR WELLBEINGS**

Having a competent landfill operations contractor will ensure that the various types of waste will be disposed safely at the district landfill.

This aligns with the environmental and social wellbeing's of the Local Government Act 2002.

## DELEGATIONS OR AUTHORITY

Only Council have delegation for this decision noting the value of the contract is over \$1,000,000.

## SIGNIFICANCE AND ENGAGEMENT

In accordance with the Council's Significance and Engagement Policy, this matter has been assessed as of some significance, noting in particular the impact of the unexpected expenditure.

## OPTIONS ANALYSIS

The structures of the contract give rise to few available options. Two possible options are detailed below:

### Option 1 – Offer the Contract Extension at the current value, likely requiring the re-tendering of the contract

There is a likelihood that Higgins will reject the Contract Extension which will require the tendering of the Contract.

In a worst-case scenario, the Supplier could give Council one (1) months' notice and exit the Contract.

### Option 2 – Offer the Contract Extension at the new Contract Value

This option gives security and tenure in the current supplier, however, comes with additional cost to Council. If Council went directly to market there is no guarantee that costs will be the same or lower. Independent testing of the price increase have been assessed as in line with supplier expectations.

|  | <u>Option 1</u>  | <u>Option 2</u>   |
|--|--|---|
|  | <b>Offer the Contract Extension at the current value, likely requiring the re-tendering of the contract</b>  | <b>Offer contract extension at the new contract value</b>   |
| <b>Financial and Operational Implications</b>      | Credible suppliers are relatively few. Retendering takes time and costs money. An operational gap would likely occur. No certainty that the retendered value will be lower.                            | Financial cost increases. Noted that this could be recovered partly by increasing user charges. No operational gap for the services.  |
| <b>Long-Term Plan and Annual Plan Implications</b> | Costs of service as part of Annual plan and LTP cannot be guaranteed in the next 6 months.   | Certainty of cost of service. Confidence in setting budgets for the Annual plan and LTP. Will require an increase in the Long Term Plan above inflation.  |
| <b>Achievement of Community Outcomes</b>           | No certainty of continued or enhanced local outcomes for employment and the advancement of local expertise in the waste disposal field as this is dependent on the outcome of the procurement process. | Current local outcomes to continue and likely enhanced with the potential for increased employment opportunities for local staff and subcontractors as well as advancing local expertise in the waste disposal field. |
| <b>Statutory Requirements</b>                      | Slightly higher risk of a statutory breach – leachate, consent   | At lesser risk of statutory breach – leachate, consent conditions, off-site   |

|  | <u>Option 1</u>   | <u>Option 2</u>   |
|--|---|---|
|  | <b>Offer the Contract Extension at the current value, likely requiring the re-tendering of the contract</b> | <b>Offer contract extension at the new contract value</b> |
|  | conditions, off-site effects especially in the initial phase of the contract with a new supplier.           | effects.  |
| <b>Consistency with Policies and Plans</b> | Consistent  | Consistent  |

**Recommended Option**

This report recommends **Option 2 -Offer contract extension at the new contract value** to address the matter.

**NEXT STEPS**

Officers will finalise the contract extension with the incumbent contractor.

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| <p><b>RECOMMENDATION FOR CONSIDERATION</b></p> <p>a) That Council note and approve unbudgeted contract costs of \$99,400 in the 2023/2024 financial year and note the additional budget requirement of \$170,000 in the 2024/2025 year.</p> <p>b) That Council approve the variation for Contract 556 noting the new contract price of \$740,000 per annum.</p> <p>c) That the resolutions relating to this item be released as publicly available information on official notification to the contractor.</p> |
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