

Strategic Alignment - Enabling Priorities

Program Contact:

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Public

Approving Officer:

Amanda McIlroy - Chief Operating Officer

EXECUTIVE SUMMARY

The City of Adelaide Procurement Policy, adopted by Council at its meeting on 8 June 2021, includes that all contract award reports over \$2m are to be approved by Council and are to be considered in confidence.

To increase transparency to Council and our community, many reports usually considered in confidence have recently been discussed in public. This transparency in reporting has included reports relating to the award of contracts.

The Procurement Policy and Guidelines state that *The CoA will provide open and fair access to its Procurement activities and maintain ethical treatment of participants through consistent processes*. While we adhere to this throughout all procurement processes, a report relating to awards of contract presented to Council at its meeting on 14 June 2022, resulted in a potential breach of confidentiality by one Councillor.

Due to this potential breach and the associated financial and reputational risks to Council, award of contract reports will now return to being considered in confidence.

RECOMMENDATION

THAT COUNCIL

1. Notes the report.
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IMPLICATIONS AND FINANCIALS

City of Adelaide 2020-2024 Strategic Plan	Strategic Alignment – Enabling Priorities Open, transparent reporting underpins Council's ability to make clear, transparent decisions for the benefit of the community.
Policy	The Procurement Policy as approved by Council on 8 June 2021 includes the requirement for contract awards to be considered in confidence due to the commercial nature of the procurement process.
Consultation	Not as a result of this report
Resource	Not as a result of this report
Risk / Legal / Legislative	The release, accidental or intentional, of commercial information during a public contract award discussion can expose Council to legal risk of breach of confidentiality with participants in a procurement process. This could result in Council being sued for breach of tender terms as the minimum and depending on the detail of the breach tenderers could pursue further legal action. In additional, potential release of commercial information raises concerns regarding integrity of the procurement process and raises risks regarding code of conduct and maladministration.
Opportunities	Not as a result of this report
21/22 Budget Allocation	Not as a result of this report
Proposed 22/23 Budget Allocation	Not as a result of this report
Life of Project, Service, Initiative or (Expectancy of) Asset	Not as a result of this report
21/22 Budget Reconsideration (if applicable)	Not as a result of this report
Ongoing Costs (eg maintenance cost)	Not as a result of this report
Other Funding Sources	Not as a result of this report

DISCUSSION

1. The current Procurement Policy (Link 1 view [here](#)) adopted by Council on 8 June 2021 includes that all contract award reports over \$2m are to be approved by Council and considered in confidence.
2. The policy also outlines a process for ensuring ethical and fair treatment of all tenderers as it is critical that the interests of both Council and the participants of any procurement activity are protected during the process.
3. Thorough probity processes are followed throughout procurement to ensure that value for money is achieved and to protect the commercial interests of both the participants and of Council.
4. Since April 2022, as a part of the Chief Executive Officer's (CEO) commitment to transparent reporting to Council and the community, contract award reports, previously considered in confidence, have been considered in public.
5. At the meeting of Council on 14 June 2022, deliberations were held relating to the contract award for Physical Security. During those deliberations there was concern there had been a potential breach of the Procurement Policy with regard to confidentiality and as a result the CEO withdrew consideration of the report in a public forum.
6. The implications of this are currently being assessed and a report will be brought back to Council regarding that award of that specific contract.
7. Breaches of confidentiality can have a significant, negative impact on the procurement process. Not only is there a serious risk of reputational damage to Council, impacting who is likely to seek to partner with us in future, but there can also be substantial financial impacts where a completed procurement process must be recommenced or where Council may be left in breach of contracts or agreements. This also results in considerable delays to the process which can have additional financial and reputational implications.
8. To minimise future risks of any breach of this nature, award of contract reports will now return to being considered in confidence.

DATA AND SUPPORTING INFORMATION

Link 1 – Procurement Policy

ATTACHMENTS

Nil

- END OF REPORT -