

CJ061-04/06 TENDER 047-05/06 - PROVISION OF LEGAL SERVICES FOR THE CITY OF JOONDALUP - [39582]

WARD: All

RESPONSIBLE DIRECTOR: Garry Hunt
Office of the CEO

PURPOSE

This report is to seek the approval of Council to choose Jackson McDonald, Kott Gunning Lawyers, McLeods Barristers and Solicitors, Minter Ellison Lawyers and Watts and Woodhouse and as the successful tenderers for the provision of Legal Services for the City of Joondalup (Tender 047-05/06).

EXECUTIVE SUMMARY

Tenders were advertised on 18 January 2006 through statewide public notice for the Provision of Legal Services for the City of Joondalup. Tenders closed on 7 February 2006. Nine submissions were received as follows:

- Deacons;
- Freehills;
- Hammond Worthington Lawyers;
- Jackson McDonald;
- Kott Gunning Lawyers;
- McLeods Barristers and Solicitors;
- Minter Ellison Lawyers;
- Talbot Olivier;
- Watts and Woodhouse.

It is recommended, in relation to Tender Number 047-05/06 that Council:

- 1 *CHOOSES Jackson McDonald, Kott Gunning Lawyers, McLeods Barristers and Solicitors, Minter Ellison Lawyers and Watts and Woodhouse as the successful tenderers for the Provision of Legal Services for the City of Joondalup (Tender 047-05/06) in accordance with the Schedule of Rates as outlined in Attachment 1 to Report CJ061-04/06;*
- 2 *AUTHORISES the Chief Executive Officer (CEO), on behalf of the City, to enter into a Contract with Jackson McDonald, Kott Gunning Lawyers, McLeods Barristers and Solicitors, Minter Ellison Lawyers and Watts and Woodhouse in accordance with their submitted tenders, subject to minor variations that may be agreed between the CEO and Jackson McDonald, Kott Gunning Lawyers, McLeods Barristers and Solicitors, Minter Ellison Lawyers and Watts and Woodhouse*
- 3 *DETERMINES that the contract is to be for an initial period of two (2) years with options to extend, subject to satisfactory performance reviews, for a further maximum period of three (3) years, in twelve (12) month increments, with the total term of the Contract not to exceed five (5) years.*

BACKGROUND

The scope of Services is for the Provision of Legal Services for the City of Joondalup. The City has a requirement for the provision of Legal Services by qualified practitioners within the main categories of General Local Government, Planning and Environmental, Employee and Industrial Relations and Property.

The operations of the City are impacted upon by a large number of statutes and subsidiary legislation and the Legal Consultants may be required to provide advice on a broad spectrum of legal issues, ranging from town planning and development, commercial contracts, administrative law, prosecutions, environmental health, property transactions and disputes and legislative interpretation and the City will seek such specialist knowledge in all or any one of the categories on an 'as and when required' basis.

The original tender was called on 26 October 2005 and closed on 9 November 2005. Subsequently a report was submitted to Council (CJ293 – 12/05 refers) recommending that no action be taken due to date/timing inconsistency and that Council reject all offers and recall the Tender in January 2006. This recommendation was carried unanimously.

DETAILS

Tenders were advertised on 18 January 2006 in the West Australian newspaper with the tenders closing on 7 February 2006. Nine submissions were received as follows:

- Deacons;
- Freehills;
- Hammond Worthington Lawyers;
- Jackson McDonald;
- Kott Gunning Lawyers;
- McLeods Barristers and Solicitors;
- Minter Ellison Lawyers;
- Talbot Olivier;
- Watts and Woodhouse.

The first part of the tender evaluation process is to check conformance to the Compliance Criteria, in order to ensure that all essential requirements have been met. Tenders not meeting all the essential requirements are deemed to be non-conforming and are eliminated from further consideration.

Seven of the nine submissions received were for the provision of Legal Services for all categories, while the submissions from Freehills and Deacons only catered for the categories of Human Resources and Industrial Relations.

The nine submissions met all the essential requirements in the relevant categories and were therefore carried forward into the second part of the evaluation process, which involves an independent assessment of the qualitative and quantitative criteria by each member of the Evaluation Panel. Each member of the Evaluation Panel assessed the submissions individually against the selection criteria using the weightings determined during the tender planning phase. The Evaluation Panel then discussed their assessments, leading to their recommendation to award the tender.

Under the City's Contract Management Framework, the tender was assessed by the Evaluation Panel using a weighted multi-criterion assessment system and AS 4120-1994 'Code of Tendering', ensuring compliance with *Regulation 18(4)* of the *Local Government (Functions and General) Regulations 1996*.

The Selection Criteria for Tender Number 047-05/06 is as follows:

Demonstrated Understanding of the Required Tasks

- Distribution of relevant legal publications;
- Conducting in-house seminars relating to topical areas of law;
- Ability to provide advice in a timely manner (for example if requested on a need basis the advice is to be provided immediately or within 24 hours);
- Willingness to attend meetings out of normal office hours, as well as a willingness to provide advice/consultation on a need basis (e.g. weekends);
- Ability to provide the City with easy to read legal advice – in plain English;
- Willingness to provide verbal advice at no cost to the City when no follow up advice is required;
- Ability to provide detailed invoices, which include accurate time charges;
- Resolve a perceived or actual conflict of interest;
- Any additional value added free services the Respondent may offer the City if it were to become a Legal Consultant;
- Key Performance Indicators.

Capacity

- A brief history of the company addressing the period of time in business, the number of full time employees and the principal location of the business.
- The structure of the business and details of the support team proposed for the Contract including the skills of equipment operators and the following details of key personnel;
 - Qualifications;
 - Professional or business associations;
 - Length of service;
 - Industry experience
- Nominated contact allocated to this requirement.
- Details of relationships with other organisations to ensure supplementary advice can be provided where and when necessary.
- Response times to act upon a request from the City.
- Details of specialised facilities, systems or equipment that will be used.

Demonstrated Experience in Completing Similar Projects

- Scope of work
- Similarities between those Contracts and this requirement

Social and Economic Effects on the Local Community

- Maintain or increase opportunities for local employment
- Maintain or increase arrangements with local service providers
- Provide value added services to the City

The Evaluation Panel carried out the evaluation of the above Submission in accordance with the Qualitative Criteria and concluded that the Offers submitted by Jackson McDonald, Kott Gunning Lawyers, McLeods Barristers and Solicitors, Minter Ellison Lawyers and Watts and Woodhouse represented best value for money to the City.

Issues and options considered:

The City has a requirement for the provision of Legal Services by qualified practitioners as the operations of the City are impacted upon by a large number of statutes and subsidiary legislation ranging from town planning and development, commercial contracts, administrative law, prosecutions, environmental health, property transactions and disputes and legislative interpretation and the City will seek such specialist knowledge in all or any one of the categories on an 'as and when required' basis.

Link to Strategic Plan:

This requirement is linked to the Strategic Plan in accordance with the following items:

4. Organisational Development.

Objective 4.1 To manage the business in a responsible and accountable manner.

Legislation – Statutory Provisions:

A statewide public tender was advertised, opened and evaluated in accordance with the *Local Government (Functions & General) Regulations 1996*, where tenders are required to be publicly invited if the consideration under a contract is, or is estimated to be, more, or worth more, than \$50,000. The consideration for this contract exceeds the Chief Executive Officer's Delegated Authority in relation to the acceptance of tenders to \$250,000.

Risk Management considerations:

It is considered that the contract will represent a low risk to the City as Jackson McDonald, Kott Gunning Lawyers, McLeods Barristers and Solicitors, Minter Ellison Lawyers and Watts and Woodhouse are providing legal services to a number of WA Local Government and State Authorities and have an established satisfactory performance record for the provision of legal services in a timely manner. This has been confirmed by referee checks with other WA Local Government and State Authorities who have indicated that their Schedule of Rates are competitive; the quality of the Services are of a high standard and the service delivery is very good.

Financial/Budget Implications:

Ongoing expenditure for legal services will be managed in accordance with the City's centralised process for managing legal costs and expenditure will be in line with budget allocations as authorised by Council annually and reviewed semi annually. The 2005/2006 annual budget for legal expenses is \$252,000 (excluding costs associated with the Panel Inquiry).

The City of Joondalup is a registered business entity for GST purposes. The nett effect on the price submitted by the successful tenderer is that the City pays GST but is able to claim an input tax credit for the amount of GST paid.

Policy implications:

Not Applicable.

Regional Significance:

Not Applicable.

Sustainability implications:

Not Applicable.

Consultation:

Not Applicable.

COMMENT

To ensure comprehensive legal representation in all categories while providing maximum flexibility for the City, the Evaluation Panel recommended that a 'Panel' of legal service providers are appointed and those offers representing best value for money to the City are those as submitted by Jackson McDonald, Kott Gunning Lawyers, McLeods Barristers and Solicitors, Minter Ellison Lawyers and Watts and Woodhouse.

These organisations achieved the five highest qualitative score rankings and their Schedule of Rates were very competitive.

ATTACHMENTS

Attachment 1 - Schedule of Rates

VOTING REQUIREMENTS

Simple Majority

RECOMMENDATION

That Council, in relation to Tender 047-05/06:

- 1** **CHOOSES** Jackson McDonald, Kott Gunning Lawyers, McLeods Barristers and Solicitors, Minter Ellison Lawyers and Watts and Woodhouse as the successful tenderers for the Provision of Legal Services for the City of Joondalup (Tender 047-05/06) in accordance with the Schedule of Rates as outlined in Attachment 1 to Report CJ061-04/06;

- 2** **AUTHORISES** the Chief Executive Officer (CEO), on behalf of the City, to enter into a Contract with Jackson McDonald, Kott Gunning Lawyers, McLeods Barristers and Solicitors, Minter Ellison Lawyers and Watts and Woodhouse in accordance with their submitted tenders, subject to minor variations that may be agreed between the CEO and Jackson McDonald, Kott Gunning Lawyers, McLeods Barristers and Solicitors, Minter Ellison Lawyers and Watts and Woodhouse;

- 3** **DETERMINES** that the contract is to be for an initial period of two (2) years with options to extend, subject to satisfactory performance reviews, for a further maximum period of three (3) years, in twelve (12) month increments, with the total term of the Contract not to exceed five (5) years.

SCHEDULE OF RATES

MINTER ELLISON

ATTACHMENT 1

SCHEDULE A: LEGAL ADVISOR

Category of Legal Advisor	Hourly Rate Exclusive of GST	GST	Hourly Rate Inclusive of GST
Partner to	\$ 320.00	\$ 32.00	\$ 352.00
	\$ 380.00	\$ 38.00	\$ 418.00
Senior Associate to	\$ 260.00	\$ 26.00	\$ 286.00
	\$ 320.00	\$ 32.00	\$ 352.00
Associate to	\$ 230.00	\$ 23.00	\$ 253.00
	\$ 260.00	\$ 26.00	\$ 286.00
Solicitor to	\$ 220.00	\$ 22.00	\$ 242.00
	\$ 250.00	\$ 25.00	\$ 275.00
Articled Clerk	\$ 140.00	\$ 14.00	\$ 154.00
Paralegal to	\$ 110.00	\$ 11.00	\$ 121.00
	\$ 140.00	\$ 14.00	\$ 154.00

SCHEDULE OF RATES

MINTER ELLISON			
- Continued -			
SCHEDULE B: DISBURSEMENTS			
Type of Disbursement	Rate Exclusive of GST	GST	Rate Inclusive of GST
Telephone			
- Local	No Charge		
- Interstate	Each 110%		
- International	Each 110%		
Facsimile			
- Local (First Page)	\$ 2.00	\$ 0.20	\$ 2.20
(Additional Pages)	\$ 1.50	\$ 0.15	\$ 1.65
- National (First Page)	\$ 3.00	\$ 0.30	\$ 3.30
(Additional Pages)	\$ 2.50	\$ 0.25	\$ 2.75
- International (First Page)	\$ 4.00	\$ 0.40	\$ 4.40
(Additional Pages)	\$ 3.50	\$ 0.35	\$ 3.85
Courier	At Cost		
Travel	At Cost		
Search	At Cost		
Transcript Fees	At Cost		
Photocopying / Printing / Imaging			
- Black & White (Per Page)	\$ 0.50	\$ 0.05	\$ 0.55
- Colour A4 (Per Page)	\$ 1.00	\$ 0.10	\$ 1.10
- Colour A3 (Per Page)	\$ 1.50	\$ 0.15	\$ 1.65

SCHEDULE OF RATES

MINTER ELLISON			
- Continued -			

SCHEDULE C: OTHER CHARGES			
Other Charges	Rate Exclusive of GST	GST	Rate Inclusive of GST
N/A		\$ -	\$ -

SCHEDULE OF RATES

MCLEODS BARRISTERS & SOLICITORS

SCHEDULE A: LEGAL ADVISOR

Category of Legal Advisor	Hourly Rate Exclusive of GST	GST	Hourly Rate Inclusive of GST
Partners (Other Than Counsel)			
- D Nadebaum / G Owen	\$ 270.00	\$ 27.00	\$ 297.00
- P Wittkuhn / C Slarke	\$ 250.00	\$ 25.00	\$ 275.00
- F Grgich	\$ 230.00	\$ 23.00	\$ 253.00
Senior Solicitor	\$ 230.00	\$ 23.00	\$ 253.00
Associates	\$ 220.00	\$ 22.00	\$ 242.00
Solicitors	\$ 200.00	\$ 20.00	\$ 220.00
Restricted Practitioners	\$ 170.00	\$ 17.00	\$ 187.00
Articled Clerks to	\$ 100.00	\$ 10.00	\$ 110.00
	\$ 120.00	\$ 12.00	\$ 132.00
Paralegal	\$ 60.00	\$ 6.00	\$ 66.00
Counsel - D McLeod	\$ 330.00	\$ 33.00	\$ 363.00

SCHEDULE B: DISBURSEMENTS

Type of Disbursement	Rate Exclusive of GST	GST	Rate Inclusive of GST
		\$ -	\$ -
		\$ -	\$ -
		\$ -	\$ -

SCHEDULE C: OTHER CHARGES

Other Charges	Rate Exclusive of GST	GST	Rate Inclusive of GST
		\$ -	\$ -
		\$ -	\$ -
		\$ -	\$ -
		\$ -	\$ -

SCHEDULE OF RATES

KOTT GUNNING

SCHEDULE A: LEGAL ADVISOR

Category of Legal Advisor	Hourly Rate Exclusive of GST	GST	Hourly Rate Inclusive of GST
Senior In-House Counsel	\$ 300.00	\$ 30.00	\$ 330.00
Partner	\$ 280.00	\$ 28.00	\$ 308.00
Senior Associate	\$ 230.00	\$ 23.00	\$ 253.00
Associates	\$ 200.00	\$ 20.00	\$ 220.00
Solicitor to	\$ 180.00	\$ 18.00	\$ 198.00
	\$ 200.00	\$ 20.00	\$ 220.00
Restricted Practitioners	\$ 180.00	\$ 18.00	\$ 198.00
Clerks	\$ 140.00	\$ 14.00	\$ 154.00
Articled Clerks	\$ 100.00	\$ 10.00	\$ 110.00

SCHEDULE B: DISBURSEMENTS

Type of Disbursement	Rate Exclusive of GST	GST	Rate Inclusive of GST
Telephone (Interstate & International)	At Cost		
Fascimille			
- Local	\$ 1.50	\$ 0.15	\$ 1.65
- Interstate	\$ 2.50	\$ 0.25	\$ 2.75
- International	\$ 4.00	\$ 0.40	\$ 4.40
Photocopying (Per Page)	\$ 0.50	\$ 0.05	\$ 0.55
Courier	At Cost		
Travel	At Cost		
Searches	At Cost		
Transcript Fees	At Cost		
Other Disbursements	At Cost		

SCHEDULE C: OTHER CHARGES

Other Charges	Rate Exclusive of GST	GST	Rate Inclusive of GST
		\$ -	\$ -

SCHEDULE OF RATES

WATTS & WOODHOUSE

SCHEDULE A: LEGAL ADVISOR

Category of Legal Advisor	Hourly Rate Exclusive of GST	GST	Hourly Rate Inclusive of GST
Partner	\$ 320.00	\$ 32.00	\$ 352.00
Solicitor	\$ 200.00	\$ 20.00	\$ 220.00
Para Legal	\$ 80.00	\$ 8.00	\$ 88.00

SCHEDULE B: DISBURSEMENTS

Type of Disbursement	Rate Exclusive of GST	GST	Rate Inclusive of GST
Photocopying			
- Black & White (Per Page)	\$ 0.75	\$ 0.08	\$ 0.83
- Colour (Per Page)	\$ 1.50	\$ 0.15	\$ 1.65
Telephone Calls			
- Local	At Cost		
- STD	At Cost		
- ISD	At Cost		
Fascimiles			
- Local (Per Page)	\$ 0.50	\$ 0.05	\$ 0.55
- STD (Per Page)	\$ 1.00	\$ 0.10	\$ 1.10
- ISD (Per Page)	\$ 1.50	\$ 0.15	\$ 1.65
Courier (Per Delivery)	\$ 30.00	\$ 3.00	\$ 33.00
DOLA Searches (Per Title / Document Search)	\$ 25.00	\$ 2.50	\$ 27.50

SCHEDULE C: OTHER CHARGES

Other Charges	Rate Exclusive of GST	GST	Rate Inclusive of GST
		\$ -	\$ -
		\$ -	\$ -

SCHEDULE OF RATES

JACKSON MCDONALD

SCHEDULE A: LEGAL ADVISOR			
Category of Legal Advisor	Hourly Rate Exclusive of GST	GST	Hourly Rate Inclusive of GST
Partners / Consultants to	\$ 300.00	\$ 30.00	\$ 330.00
	\$ 360.00	\$ 36.00	\$ 396.00
Senior Associates	\$ 270.00	\$ 27.00	\$ 297.00
Associates	\$ 240.00	\$ 24.00	\$ 264.00
Solicitors	\$ 210.00	\$ 21.00	\$ 231.00
Restricted Practitioner	\$ 185.00	\$ 18.50	\$ 203.50
Articled Clerks	\$ 160.00	\$ 16.00	\$ 176.00
Clerks	\$ 100.00	\$ 10.00	\$ 110.00
SCHEDULE B: DISBURSEMENTS			
Type of Disbursement	Rate Exclusive of GST	GST	Rate Inclusive of GST
Photocopying (Per Page)	\$ 0.50	\$ 0.05	\$ 0.55
Facsimile Transmission			
- Western Australia (Per Page)	\$ 0.50	\$ 0.05	\$ 0.55
- Interstate (Per Page)	\$ 1.00	\$ 0.10	\$ 1.10
- International (Per Page)	\$ 2.00	\$ 0.20	\$ 2.20
Phone Calls			
- Local (Per Call)	No Cost		
- STD (Per Call)	At Cost		
- ISD (Per Call)	At Cost		
Courier	At Cost		
Bank Charges	At Cost		
Court Fees	At Cost		
Attendance Fees to Search / Lodge & Stamp Document (Per Attendance) to	\$ 9.50	\$ 0.95	\$ 10.45
	\$ 34.40	\$ 3.44	\$ 37.84

SCHEDULE OF RATES

JACKSON MCDONALD

- Continued -

SCHEDULE C: OTHER CHARGES			
Other Charges	Rate Exclusive of GST	GST	Rate Inclusive of GST
Deed of Lease			
- Base Cost	\$ 550.00	\$ 55.00	\$ 605.00
- Per Year of Term + Disbursements	\$ 50.00	\$ 5.00	\$ 55.00
	\$ 375.00	\$ 37.50	\$ 412.50
Deed of Assignment + Disbursements to	\$ 425.00	\$ 42.50	\$ 467.50
Deed of Extension + Disbursements to	\$ 350.00	\$ 35.00	\$ 385.00
	\$ 400.00	\$ 40.00	\$ 440.00
Deed of Variation + Disbursements to	\$ 350.00	\$ 35.00	\$ 385.00
	\$ 400.00	\$ 40.00	\$ 440.00
Deed of Novation + Disbursements to	\$ 350.00	\$ 35.00	\$ 385.00
	\$ 400.00	\$ 40.00	\$ 440.00
Deed of Surrender + Disbursements to	\$ 350.00	\$ 35.00	\$ 385.00
	\$ 400.00	\$ 40.00	\$ 440.00
Lodgement of Caveat + Disbursements	\$ 275.00	\$ 27.50	\$ 302.50
Withdrawal of Caveat + Disbursements	\$ 165.00	\$ 16.50	\$ 181.50
Notifications Under s.70A of the Transfer of Land Act + Disbursements	\$ 400.00	\$ 40.00	\$ 440.00