

Report to:	PUBLIC EXCLUDED
Date:	31 March 2021
Subject:	Wakatu Quay Procurement Policy Exemption
Prepared by:	Chris Sturgeon – Project Lead
Input sought from:	Dave Clibbery – Senior Manager, Operations
Authorised by:	Will Doughty – Chief Executive Officer

1. SUMMARY

This paper seeks approval from the Council for an exception to made to the provisions of the KDC Procurement Guidelines in respect of procuring works for removal of contaminated ground from Wakatu Quay.

2. RECOMMENDATION

It is recommended that the Council approves the making of an exception to KDC Procurement guidelines for the awarding of works to remove contaminated ground from Wakatu Quay.

3. DISCUSSION

As part of the Wakatu Quay development demolition phase of the project, Asbestos and Metalloid contaminants were found in greater levels than initially anticipated.

The KMDP Governance Board agreed in the early stages of the project to provide a “**Clean Site**” for construction and considered this a commitment to the community to ensure the site was free of any high-risk contaminants.

Some variations were anticipated due to the unknown nature of containments on site. KMDP Governance agreed to variations both positive & negative including the analysis of the surrounding land. WSP the consulting company were engaged by Scope to assess the site as required to meet the condition of the asbestos extraction.

In November 2020 WSP detected Metalloids on site 2 & 3 exceeding the BRANZ (2017) guidelines for Human health regulations. A full report was commissioned which included a number of test pits onsite.

WSP were asked to prepare a remediation strategy to successfully remediate the site whilst ensuring the requirement of NESCS are met.

WSP presented a proposal that exceeded current financial expectation for the demolition. A consent was sought and subsequently approved based on the WSP report for the total possible volume of 650m³/1170t.

Whilst all indications from Scope is that the volume of required excavation will be significantly lower than the consent the project must allow for this higher volume of variance.

A proposal was requested and submitted by Scope.

Establishment and General:	\$16,370.00
Removal of Contaminated Material:	\$ 308.17 /tonne
3rd Party Consultants fees (refer attached WSP fee proposal):	\$12,540.00
Backfill and Cartage:	\$37,924.00

Note: 1170t @ \$308.17t = \$360,558. **Total possible variation \$427,392**

The KMDP Governance Board has approved this variation.

Land Owner Responsibility

The responsibility of remediation of any site falls to that of the landowner. Should the remediation end up costing near the consent volume the total cost of demolition and remediation will be just under \$1mil. To date the council has contributed \$270k.

In the interests of moving the project forward as approved by the governance group the project will absorb the cost in the current budget. Subsequently confirmed by Warren Gilbertson, MBIE.

It is to be noted that there may be a need for a future conversation with KDC for further contribution on the total cost of demolition and remediation should the project require further funds in the future.

Procurement Guidelines

KDC'S procurement guidelines state that for works or services with a value of over \$100,000, procurement should be by means of an open tender with a detailed specification to be called by public notification and advertisement unless waived by the CEO and Mayor, with the reason for the waiver recorded in writing.

These guidelines also state that regardless of the price quantum, in every case relevant Council staff must be satisfied that an offered price represents fair value for it to be accepted.

The following sections consider the grounds for such a waiver of tender requirements and satisfaction of fair value.

Potential Awarding as a Variation of an Existing Contract

In some cases the awarding of additional works as a variation of an existing contract may itself constitute grounds for a waiver of the tender requirement, on the basis that in previously winning the contract through an open tender process the Contract has demonstrated their competitiveness for services of that type.

An issue here is however that the nature of the additional works to be awarded (for removal of contaminated ground) is not the same as that of the original contract (for demolition of a building) and it is therefore not believed that the competitiveness of Scope in respect of the initial contract can by itself be justification for awarding these additional different works that potentially have a value similar to that of the original contract.

As such it is believed that other justification for an award without an open tender is required, and that this can be provided through consideration of issues of market tension and associated achievable value.

Consideration of Competitive Market Tension

Considering the work to date and value of IP already developed Scope was requested to provide all breakdown of calculations.

Analysis has been undertaken based on **“Value of Retained IP & “Likelihood of Financial Benefit from Competitive quote”**

Proposal Pricing	Broad Description	Likelihood Competitive Tension	Value of Retained IP
Establishment/Disestablishment & General	Set up site, Office, Travel & Accommodation	Low	Low
Contaminated Land removal	Exploring the way forward, options, Economic Assessment, Risk & Uncertainty. Determining the potential value/Impact for money.	Low	High
Third part Consultant Fees	Preparation of Remedial Action Plan (RAP) by WSP Monitoring, Inspections, Including 10% Margin	Low	High
Cartage & Backfill	Procurement approach, gaining best value, Risk Sharing, Contractual challenges	Low	Low

Scope Proposal – Breakdown of Costs

Full breakdown of commercially sensitive costs is available.

Establishment & General: \$16,370 The set-up of the project. Basic costs including accommodation, travel time, onsite facilities. All costs would be expected with any provider. It is not considered that there would be significant cost tension beyond 10% of the value of the quote. A total of \$1670.

Removal of Contaminated material: At \$308.17 per tonne. The highest likely value of the contract. Detailed analysis is available. Points of note:

- \$221.64 (\$243,804) is fixed price at Kate Valley, the only possible location for extracted contaminated metal.
- \$26k Excavator operation
- \$23k Specialist Asbestos resources

Considering that 79% of the value is a fixed cost to Kate Valley the level of competitiveness is Low. The considered value of potential competitive option is very low and believed to be nominal. The intellectual property retained by Scope for this particular site and activity is very high

3rd Party Consultant: \$12,650. WSP has been used throughout the process. Engaged by Scope for the first analysis. The value of retained IP is very high. The cost of finding an alternative consultant would exceed the value of the proposed contract.

Cartage & Backfill: \$37,924. Sufficient backfill to level the site including cartage.

- This portion of the proposal could be undertaken by multiple providers.
- Scope has noted that they will use local providers as previously provisioned for the demolition. 90% of this cost will go to the local contractors a total of \$34,131.
- Should this portion of the quote be given to open market we could anticipate a possible variation of 10% or \$3400.

Scope have noted at our request *“Summarised: In good faith by providing full visibility of costs and rates, we (Scope) believe we have made the proposal as efficient as possible and reflects the relationship, previous work and possible future opportunities”*

In summary the determined value or potential advantage of putting the contract to market is approximately \$5000 to \$7000 (for example the sum of the \$1670 and \$3400 mentioned previously)

Using a recent quote by the PDP Group to complete the RFP for South Bay Professional services it predicts a total of 41 business days to complete at a cost of \$21k excluding KMDP project time. As a similar market engagement would be required. To test the market would expect to cost approximately \$25-\$35k and the cost of opening the proposal to market would therefore outweigh any perceived benefit.

4. CONCLUSION

- Whilst the total possible value of the project variation is significant the perceived benefit of open market competition is not considered of great advantage
- The value of retained IP by Scope, WSP and the Asbestos staff is considerable. The delay and additional cost of retaining a new company would be significant.
- Approval is requested to allow an exception to the KDC Procurement policy for the period of this contract only.

5. COMMUNITY OUTCOMES

The issue discussed in this report relate to the following community outcomes:



Our community is resilient, safe and well and has their essential needs met



Our infrastructure, housing and community facilities are easily accessible, cost effective and able to withstand our natural hazards.