

## Councillor Question Time – answers to questions taken on notice\*

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**Asked if the Commonwealth Banks tender still be valid if it was submitted today? This is asked in context of the recent disclosure from AUSTRAC that they are taking action against CBA alleging serious non-compliance with the anti-money and counter terrorism financing laundering act.**

(Cr Pearl)

### **Response**

- a) Would the CBA tender response have been invalidated under our Tender Protocols if we knew then what has recently been published regarding AUSTRAC charges?

Although our tender process may not have directly identified this issue, there is provision for the Tender Evaluation Panel to manage tender responses in accordance with clause 3.6 of the tender conditions "The Council is not bound to accept the lowest or any tender".

Following a review of this specific tender invitation there was no provision within the tender evaluation criteria or the tender specification to identify or score tenderers according to contentious issues such as AUSTRAC matter.

- b) If indeed the charges are proven what is scope for CoPP to take action of some nature?

In our contract with CBA although it is not specific with regard to contractor compliance with specific legislation, ie Employments Awards etc there is an inference in the requirement under 2.9.1 of the contract to comply with CoPP Code of Conduct – A guide for Contractors, Consultants and Suppliers (Clause 1.1), that CBA "...must comply with all Federal and State Laws, Local Laws, and regulations"

In addition the executed CBA contract spells out the following:

- 6.1 Default by the Contractor – Show Cause Notice and Suspension of Payment

Should the Contractor –

- 6.1.1 default in the performance or observance of any obligation it has under this Contract; or

- 6.1.2 refuse or neglect to carry out or give effect to any order, instruction, direction or determination which the Council or the Contract Manager is empowered to give or make under this Contract and which is given or made in writing to the Contractor

the Council may, without limiting any other rights that the Council may have, give notice to the Contractor to show cause why the powers contained in this sub-clause 6.1 should not be exercised.

Such notice must:

- 6.1.3 not be unreasonably given;
- 6.1.4 indicate that it is a notice under this sub-clause 6.1; and
- 6.1.5 specify the default, refusal or neglect on the part of the Contractor upon which it is based.

If, within seven (7) days after receipt of the notice, the Contractor fails to show cause which in the opinion of the Council offers reasonable assurance that –

- 6.1.6 the default will be rectified; or
- 6.1.7 the Council's or Contract Manager's order, instruction, direction or determination will be carried out or given effect to –

and this Contract satisfactorily completed in accordance with its terms, the Council, without prejudice to any other rights that it may have under this Contract or at common law against the Contractor, may –

- 6.1.8 suspend payment under this Contract; or
- 6.1.9 terminate this Contract –

by notice to the Contractor.

Should Council determine in due course that it wishes to explore potential remedies against CBA on this matter we would first seek appropriate legal advice.

*\*Note: answers to any questions in Councillor Question Time which were answered at the meeting are included in the minutes of that meeting.*