

# **CCF WA REPORT**

## **Transparency in Western Australian Local Government tender evaluation**

**July 2022**



**CIVIL CONTRACTORS  
FEDERATION**

## About CCF WA

The Civil Contractors Federation (CCF) is Australia's peak civil construction industry body. With branches in all states and territories, as well as a National Office in Canberra, CCF understands the local, state and national issues facing the civil construction industry.

In Western Australia, CCF WA represents the WA civil construction industry, striving to ensure that:

- The industry is represented and advocated for – heard at a local, state and national level
- The industry is informed – provided with sound advice and the latest information
- The industry is equipped – with access to tools and resources that help your business succeed
- The industry is connected – through our events and publications.

CCF WA works closely with state and local governments, and key private sector clients, to address key issues and improve the operating environment for members. Our advocacy is focused on:

- Increasing opportunities for civil contractors by promoting the benefits of infrastructure investment
- Promoting sustainable procurement policies that ensure opportunities for contractors of all sizes
- Reducing red tape including excessive regulation and onerous contracts
- Ensuring a 'fair go' for all contractors through open and transparent tendering and procurement

CCF WA is committed to ensuring the civil construction industry is professionally represented. It does this by:

- Consulting with members to understand the key issues affecting the industry, and developing policies on these issues.
- Representing the industry on government and industry panels and working groups and responding to government reviews/inquiries.
- Advocating on behalf of the civil construction industry directly to all levels of government through various channels on a range of issues.
- Promoting our vision of a strong, fair and sustainable civil construction sector to the community and industry stakeholders.
- Being the 'voice of the industry' through media and social media channels and through our own publications.

## Contact for further information on this report

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## 1. Introduction

Local Government infrastructure projects are an important source of work for the Western Australian civil contracting sector. Civil construction investment by local governments is generally less cyclical than other key sources of civil construction work. Each year the local government sector in this state makes significant investments in civil construction and maintenance works including:

- Road works and maintenance (worth almost \$1 billion per annum alone)
- Land development
- Parks and golf courses
- Pathways and trails
- Stormwater drainage
- Landscaping
- Seawalls, river walls and foreshores

Currently, civil construction activity is high in WA, with strong investment by the State and Federal Governments in major metropolitan road and rail projects, and in regional road upgrades.

Private sector activity is also strong, with high demand from clients in the land development, resources and industrial sectors.

In this highly competitive market, clients in all sectors increasingly appreciate the importance of being a 'client of choice' to attract bids from capable civil contractors.

Transparency in procurement is an important consideration for contractors. Clients of choice are open, transparent and fair when planning, procuring, and delivering civil construction projects. When given a choice, civil contractors will prefer to work with local government authorities that:

- Provide good visibility of the medium-term works pipeline
- Minimise unnecessary red tape in tendering
- Assess tenders fairly and transparently
- Use contracts that share risk appropriately
- Ensure contracts are managed fairly

This report focuses on transparency in tender assessment and looks at the legislative background and current state of play in Western Australia.

## 2. How we analysed tender evaluation transparency

CCF WA analysed the tender assessments of 29 of Western Australia's largest metropolitan and regional councils, as published in their council minutes and supporting documentation. The survey generally covered metropolitan councils with a population of more than 50,000 and regional councils with a population of more than 15,000.

Councils were scored out of 10 against the following criteria:

- 1 point for publishing the name of the winning tenderer and their price bid
- 1 point for publishing the names of all companies that tendered
- 2 points for publishing all prices bid

- 2 points for publishing each bidder's scores/ranking against non-price evaluation criteria
- 1 point for publishing each bidder's scores/ranking against price and non-price evaluation criteria
- 1.5 points for publishing some commentary (even if brief) on why the successful bidder chosen, plus an additional 1.5 points for publishing a more detailed explanation of why the successful bidder was chosen.

The full survey results are published in this report on pages 8 and 9.

Of the 29 councils surveyed, 11 (38%) achieved a 'pass' score of 5 or greater. Fourteen LGAs scored between 1 and 2 for providing only:

- The names of the companies that bid, and/or
- The name of the successful tenderer and the value of their bid

The most transparent LGA surveyed, City of Joondalup, scored a perfect '10' for providing:

- Names of all tenders and prices bid
- Each tenderer's scores and ranking against price and non-price evaluation criteria
- Highly detailed commentary explaining why the successful tenderer was chosen

The following councils are also commended for their transparency in providing useful information in support of their tender award decisions: City of Bayswater; City of Cockburn; City of Gosnells; City of Kalamunda; City of Kalgoorlie-Boulder; City of Perth; City of Rockingham; City of Swan; City of Wanneroo; and Shire of Dardanup. This feedback is highly valued by industry.

### **3. Why aren't more Western Australian councils transparent about tender evaluations?**

Section 5.23(2)(c) of the *WA Local Government Act 1995* provides that councils may choose to close to members of the public any part of a council meeting which deals with "a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting."

Council minutes we examined often referred to s. 5.23(2)(c) as justification for why tender evaluation assessments and tender pricing information were not published.

While the Act states councils may withhold information related to contracts, some council minutes seem to suggest that the Act compels them to withhold information. For example the cities of Swan and Bunbury have stated in their minutes that tender evaluation reports are withheld from the public "in accordance" with the Act.

### **4. Why do councils approach this issue differently?**

Clearly there is a wide disparity between LGAs when it comes to their views on transparency in procurement.

Some LGAs routinely use Section 5.23(2) (c) as a means to avoid disclosure of all information supporting or justifying commercial decisions. Others use it more judiciously, only invoking the Act if they believe there could be commercial harm if the information was made public.

It is our understanding that some councils believe that specific details of tender evaluations

should not be made public because suppliers have provided information about their business in confidence. CCF WA agrees that there is a balance between publicly detailing why a tenderer is recommended to be awarded the contract (and why other bidders were not successful) and maintaining the confidentiality of any sensitive information provided.

However, this does not explain why some councils do not even publish the prices tendered, nor the bidders' scores against the evaluation criteria.

CCF WA believes that LGAs should publish the results of qualitative and price evaluations, including percentage scores and/or rankings – however the majority do not. CCF WA also believes it is possible to publish a fairly detailed explanation of why tenderers were successful, or not, without disclosing any sensitive information about the business.

A number of councils we surveyed demonstrate this. City of Joondalup, for example, provided the following commentary to support its decision to award the Craigie Leisure Centre Refurbishment Project to BE Projects (WA).

*The submission from BE Projects (WA) Pty Ltd represents best value to the City. The company demonstrated a very good understanding and appreciation of the City's requirements with its submitted program in accordance with the City's preferred timelines. Its submission outlined the qualifications and relative experience of key personnel and it demonstrated very good experience in completing equivalent scopes of works for various local governments such as the Cities of Mandurah, Kalamunda, Rockingham, and Cockburn. The company is well established and has appropriate industry experience.*

City of Perth provided this commentary on an unsuccessful bidder for the Koolangka Koolangka Playground Construction – Wellington Square project:

*BOS Civil provided an adequate response with a sound appreciation and understanding of the scope of work required and outlined a detailed methodology to deliver the project. They provided some examples that included bespoke elements, however most projects listed are civil and paving jobs and not similar in scope or complexity to this playground project. The key team have reasonable experience behind them but seems to be quite a young team with 5-20 years' experience. The construction program indicated a completion date within the City's required timeframe.*

These commentaries disclose no commercially sensitive information about the tenderers, but they do provide a valuable and transparent insight into the reasons why council officers have recommended one company over another. CCF WA believes ratepayers have the right to expect such transparency when contracts are awarded using public funds.

## **5. How does the regulatory framework in WA compare with other jurisdictions?**

The commercial-in-confidence provision in WA's legislation, s. 5.23(2)(c), allows councils to be considerably more secretive than does the legislation in other states.

All other mainland states require at the least that councils must demonstrate that releasing contractual information would be prejudicial to the company that supplied it, and/or the council itself. The South Australian legislation goes further, expressly requiring councils to publish their reasons for choosing a successful tenderer.

The New South Wales *Local Government Act 1993* (S. 10A) has a limited exemption for

"commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it ... or reveal a trade secret".

The Queensland *Local Government Regulation 2012* allows councils to close meetings only for "negotiations relating to a commercial matter involving the local government for which a public discussion would be likely to prejudice the interests of the local government".

Victoria's *Local Government Act 2020* incorporates a public transparency principle, which states that decision-making processes must be transparent except when the council is dealing with information that is confidential. In a practice note to LGAs, the office of the Victorian Information Commissioner recommends a narrow interpretation of the Act's confidential-in-confidence provision (s. 125 (2)(a)) to promote transparency. OVIC's advice is that tender evaluation documents and tender responses should be made public, except where necessary to protect private commercial information, such as financial information provided by a contractor as part of a tender.

South Australia's *Local Government Act 1999* requires councils to publish meeting minutes in full except where the council decides the matter is confidential. However Section 91 of the Act expressly states that councils "must not ... prevent the disclosure of the identity of a successful tenderer for the supply of goods or the provision of services (including the carrying out of works), or of any reasons adopted by the council as to why a successful tenderer has been selected".

## 6. Local Government Reform in WA

As part of its current Local Government Reform initiatives, the State Government has acknowledged the importance of greater transparency and accountability, noting that ratepayers and the public expect local government decision-making to be clear and transparent.

In its *Final Report: Recommendations for a new Local Government Act for Western Australia* (May 2020), a State Government-appointed Local Government Review Panel stated that "procurement needs to be open, transparent, fair and ensure adequate market testing, value for money and local consideration".

The Review Panel recommended a model procurement policy for all local governments aligned to the State procurement framework. This recommendation would not necessarily result in a significant improvement in current levels of transparency. The State Government's Western Australian Procurement Rules only requires agencies to publish the name of the winning tenderer and contract value, and provide a debriefing to unsuccessful tenders on request.

Legislation in other Australian states, as noted earlier, recognises accountability and transparency are of even greater importance in local government than in higher levels of government.

While a private debriefing may be useful, it is no substitute for full and open transparency in the form of a published tender evaluation assessment, showing clearly how all tenderers scored against price and non-price criteria. Providing tender assessment information publicly would largely avoid the need for private debriefings, which are time-consuming for all parties.

## 7. Conclusion and recommendations

The very 'local' nature of local government procurement makes it more susceptible to probity issues and conflicts of interest, which is why the highest standards of accountability and transparency in local government procurement are essential.

**“Good procurement practices centred around the principles of probity, accountability and transparency are key to managing procurement risks and the delivery of good outcomes for ratepayers.” - *Western Australian Auditor General’s Report into Local Government Procurement, 2018.***

Other Australian states have recognised this, and accordingly require the highest level of transparency in their local government legislation.

CCF WA congratulates the councils that scored highly in our survey of major local government authorities in WA, and also congratulates any other councils that show a high level of transparency in their tender evaluation processes. The feedback from industry is that these councils are appreciated, and rewarded with a stronger level of interest in their tenders.

### Recommendation 1

CCF WA recommends that in the interests of transparency, all Western Australian local government authorities publish:

- The names of all companies that tender for works and maintenance projects/panels, and prices tendered.
- Each bidder’s scores/ranking against price and non-price evaluation criteria.
- Further commentary by the tender evaluation committee explaining how the scores were determined, and any other relevant information about how the successful tenderer was chosen.

### Recommendation 2

CCF WA recommends that the State Government replaces the current 'blanket' commercial-in-confidence provision in the *Local Government Act 1995* (s. 5.23(2)(c)) with a modernised provision, more in line with community expectations and the practice in other Australian states.

A new clause should state that tender evaluation documents should always be made public except where necessary to protect sensitive commercial information, such as trade secrets or financial information provided by a contractor as part of a tender.

*(Note this is a revised version of the report. It was been amended to reflect higher scores for the City of Bayswater and City of Swan. CCF WA apologises to these councils for the errors in our original research.)*

## 8. CCF WA survey results (see section 2 on page 3 for information about the survey process)

Local Government Authority	Publishes all companies that tendered (1 point)	Publishes all prices bid (2 points)	Publishes successful tenderer and price bid (1 point)	Publishes each tenderer's scores/ ranking against evaluation criteria - non price only (2 points)	Publishes each bidder's scores/ ranking against evaluation criteria: price and non-price (1 point)	Publishes some explanation of why successful bidder chosen (1.5 points)	Publishes a detailed explanation of why successful bidder chosen (1.5 points)	<b>TENDERING TRANSPARENCY SCORE</b>
City of Joondalup								<b>10</b>
City of Cockburn								<b>8.5</b>
City of Rockingham								<b>8.5</b>
City of Gosnells								<b>8.5</b>
City of Kalgoorlie-Boulder								<b>6.5</b>
City of Wanneroo								<b>6.5</b>
Shire of Dardanup								<b>6.5</b>
City of Bayswater								<b>6.0</b>
City of Kalamunda								<b>5.5</b>
City of Swan								<b>5.5</b>
City of Perth								<b>5</b>
City of Busselton								<b>3.5</b>
City of Stirling								<b>3.5</b>
City of Albany*								<b>3</b>

**CCF WA Survey – Transparency in WA Local Government tender evaluation**

Local Government Authority	Publishes all companies that tendered (1 point)	Publishes all prices bid (2 points)	Publishes successful tenderer and price bid (1 point)	Publishes each tenderer's scores/ ranking against evaluation criteria - non price only (2 points)	Publishes each bidder's scores/ ranking against evaluation criteria: price and non-price (1 point)	Publishes some explanation of why successful bidder chosen (1.5 points)	Publishes a detailed explanation of why successful bidder chosen (1.5 points)	<b>TENDERING TRANSPARENCY SCORE</b>
Shire of Capel								<b>2.5</b>
City of Canning								<b>2</b>
City of Kwinana								<b>2</b>
Shire of Serpentine-Jarrahdale								<b>2</b>
Shire of Augusta-Margaret River								<b>2</b>
Town of Port Hedland								<b>2</b>
City of Armadale*								<b>1.5</b>
City of Bunbury*								<b>1.5</b>
City of Greater Geraldton*								<b>1.5</b>
City of Karratha*								<b>1.5</b>
City of Mandurah*								<b>1.5</b>
Shire of Harvey*								<b>1.5</b>
City of Melville*								<b>1</b>
Shire of Murray								<b>1</b>
Shire of Broome								<b>1</b>

\* Lighter green box denotes half points awarded as information is not published in next council minutes.



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