



## Auckland Council Procurement of Architectural Services Discussion Document

### Introduction

The NZIA has been in existence since 1905, and is the professional body which represents the interests of over 90% of Architects in their role as principals and as employers and employees. It liaises with kindred professions and industry participants.

Procurement is a key issue for the Institute and its Members having made submissions on the the All-of-Government Building Materials Discussion paper and more recently the Residential Construction Market Study. The NZIA has consulted widely across its membership on the discussion document. Based on the experience of the NZIA's members with Auckland Council procurement practices, a number of key issues are highlighted below. The NZIA would welcome the opportunity to discuss these issues and the potential solutions further with the Council.

### Council Vision

Architects are encouraged by the commendable vision for Auckland outlined in the introduction to Chapter 10 of the Auckland Plan which reads:

**'Auckland expects its Urban Environment to be as beautiful as its natural Environment'**

And Priority 2 of Chapter 10 reads:

#### **'Demand Good Design in All Development'**

Architects welcome the opportunity to deliver benefits to the Client, build environment and the community in all developments. Good design is the result of listening, partnerships and responding to the brief, budget and context. There are several examples of quality public projects which have seen the Community, Auckland Council (Council) and Design and Construction professionals work together. Auckland Waterfront is a great example of demanding and delivering good design in all development.

The NZIA does however believe that more could be done to deliver improved outcomes for the Community. This would require amendments to the current method of procurement of architectural services by Council.

### The procurement process

The issue for further discussion relates to the re-tendering of design services for a project after an Architect consultant and/or designer have had a design concept accepted and approved by Council. NZIA members advise that Consultants are being asked to re-tender for their projects following the concept design (or feasibility study) and often this occurs without their prior knowledge. Generally the scope of the second Request for Proposal (RFP) is to:

- Review the concept plan by the incumbent and background to the proposed project or redevelopment

- Preparation of preliminary design, developed and detailed design, tender plans and supporting documentation and construction plans
- Provide supervision of Works and Contract Administration as required for construction monitoring.

It is the NZIA's understanding that the Uxbridge Arts and Cultural Centre Redevelopment followed this approach to procurement.

### **NZIA position**

The NZIA and its members have serious concerns regarding the re-tendering of projects in the early stages once a Consultant has been selected and their concept designs approved by Council. The NZIA strongly believes that a Consultant who has developed the initial concepts and having been selected based on an EOI and subsequent RFP as meeting the required attributes, should be retained through all design stages to deliver the project and a suitable fee negotiated for the work.

The procurement model currently in use by the Council:

- carries unnecessary risk around the delivery of the concept design
- raises questions on the management of intellectual property rights
- creates additional and unnecessary 'design' costs and time for Council
- creates an artificial market whereby 'architects' are incentivised to 'win' the tender that progresses the approved concept design
- creates unnecessary ambiguity in any future 'mediation' and/or complaints process – "who was the designer?"

### **Auckland Council processes**

The NZIA met previously with Kenneth Wooff (Head of Council Procurement) and Peter Blackwell (Head of Council Project Management) in December 2012 to discuss NZIA concerns with the procurement process.

From this meeting, the NZIA understands that Council uses a 2 stage process for a number of reasons:

1. To establish feasibility, and
2. Engage users and gauge public interest.

Council are limited by probity to spending no more than \$100K on these concept phases and any more must be publically tendered. To this end, Council normally procure design services for the less than \$100K from a shortlist of architectural practices.

Council do not ask for a full fee at the concept stage as they do not know on what to base the fee as the budget and scope have not been defined. The NZIA is of the opinion that Council has built a large number of projects and from past experience should be able to identify appropriate levels of fees based on the scale and complexity of previous projects.

### **Issues with the re-tendering process**

- *Inefficiencies*  
Re-tendering for the same project is inefficient and wasteful of Council's and Architects' time and public money. The cost of mobilising for a project where another Architect's

documentation is to be used is inefficient and fees will reflect these costs. These are additional reasons many Architects are electing not to tender and this is not delivering an open, auditable procurement process. It is also wasteful that on some projects there have been several Architects' concepts completed, sometimes years apart, before going back to the market.

The design, which presumably the community had been consulted on and was budgeted and approved, will then likely be changed or altered by the incoming design team for various reasons which may then mean re-consultation and subsequent delay. In the case where the project is retendered after say a Designation or Resource Consent under the Resource Management Act is in place, it is likely that the incoming design team will not be aware of vital issues and conditions of consent or consultation which may mean abortive work or mistakes are made both which use up time and fees. It could also mean that unnecessary additional work is undertaken or elements of work are duplicated.

In re-tendering, the bids are weighted, but the weighting is often heavily biased toward cost.. This is often at the expense of design, even though 'design' may have been fundamental to the project obtaining Council approval and public support. 'Design' is an important tender consideration, so to, whole of life costs. At the moment, these two important factors are often overlooked based on generally because the initial delivery cost is more highly weighted. There is significant evidence in the industry that shows lowest 'cost' projects often lead to above average operating and maintenance costs.

The implications of this are not insignificant in terms of continuity of the design concept and the detailed design follow through as well as the continuity of the engagement with the council team and stakeholders already working on the project.

The risk for Council of course, is that in the re-tendering process, a strong design led Practice will not bother to participate in the Tender.

- *Fair and equal conditions of tendering to all parties*

The NZIA questions how a public re-tender for architectural services can be fair and equal to all parties, if there is a party involved who has already completed part of the work, developed ideas, processes and relationships etc. and through that knowledge provides that party with obvious advantages over the other competing tenderers.

The NZIA suggests that there are legal issues that arise from such processes. The Council should seek its own independent advice to ensure that the Tender documentation and supporting processes do not create 'breach of contract' scenarios and that all parties clearly understand how the process will operate.

#### *Ethical issues*

The majority of Architects, because of their Code of Ethics, are reluctant to take over the concept plans developed by another Architect and complete developed design and documentation. Architects believe that fellow Architects are entitled to undertake this design work, and that Architecture is best served when they do. As a result, many will not participate with the re-tendering process leaving the Council with a reduced range of 'Provider' options.

- *Liability*

As Council will recognise, this is a particularly litigious environment and Architects are advised by the NZIA to minimise their liability on all projects by taking prudent business steps to do so. When two architectural practices work on the same project at separate times in the process, the liability of both parties is unclear. At this stage this has not been tested in the

Courts but under Joint and Several Liability, both practices, even if one is not at fault, will be included in a claim if there are performance issues with a building.

- *Track record*

Currently with the weighted attributes method/EOI based on project track record, if a practice hasn't actually built a project type or had direct experience with one being considered chances are the practice will not be able to demonstrate sufficient competency under some attributes and will be marked down accordingly.

Council's view seems to be that if an architectural practice has completed only one similar project compared to another practice that has completed four, then that second Practice will be awarded the commission, even though three of the four may be average in terms of whole of project outcome.

Another point of frustration with the issue of "track record" is the potential limitations for younger practices to emerge. Young and smaller firms can of course do JV's but on relatively small projects, and the scope for collaboration and spreading the work is limited.

- *What does Council need from Stage 1*

The NZIA believes that it would be very beneficial if Council made it very clear what outcomes it expected from stage one of the process to be able to determine whether the project goes ahead and what the budget will be. There is no doubt that many Architects will go far and beyond what is required when responding to an EOI and, if they are successful at stage one, become frustrated when the project is re-tendered.

The issue relates to confusion between Council and Architects as to what is meant by Concept, Feasibility Study, Masterplanning and other terms and what outcomes should be expected.

### **NZIA Proposal for Council procurement of Architectural Services**

1. That Council and the NZIA should work together to define what the various terms mean and that these definitions are included in the EOI.
2. If the first stage is a Feasibility Study to gauge public interest and the financial viability of the project, Council to advise all practices at the EOI stage that this is the case and call it a 'Feasibility Study'.
3. If an Architect's concepts are accepted and approved by Council after community consultation, then that Architect should be given the commission to complete all developed design, documentation, tendering, on-site observation and contract administration if the project is to proceed.
4. However the NZIA is aware that Council, at the completion of the Feasibility Study, will need to complete a process to confirm that the project will go ahead and a budget. The NZIA suggests that a time limit of up to two to three years be set for Council to have sufficient time to confirm the decision to proceed and the budget. If this is completed within this time frame then stage two is to be awarded to the practice that successfully completed the Feasibility Study/concepts in stage one.
5. If this process cannot be completed within the agreed time limit, then Council has the option to go back to the market with an RFP for stage two.

6. That Council considers using an NZIA endorsed Architectural Design Competition for major projects, or a limited invite pre-qualified competition. Waterfront Auckland has done this successfully.

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