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Review of DPTI Conditions of Tendering for Architectural Services

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Submission made to:

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1.0 INTRODUCTION

This submission is made in response to a request for feedback from DPTI in relation to the review of conditions of tendering for the procurement of architectural services for South Australian Government construction projects. Andrew Brown Supervising Architect, Project Delivery – Building Projects, DPTI, met with Nicolette Di Lernia, SA Chapter Manager of the Australian Institute of Architects and David Kilpatrick, representing the Association of Consulting Architects on 17th February to discuss the proposed changes.

The Australian Institute of Architects and the Association of Consulting Architects greatly value the opportunity to participate in the review process.

1.1 Response to the Proposed Conditions of Tendering

General Comments:

Tendering is a time consuming and costly process. The aim of tendering procedures should be to gain accurate and relevant information to assess the most suitable candidate for the project. Providing a procedure that enables this to occur in an efficient, cost-effective and consistent manner is to the advantage of all parties.

Tendering for services contracts relating to State Government projects currently occurs within a framework including prequalification. Prequalification establishes the general capability and capacity of practices and records information regarding their business systems, including insurance, quality assurance and WHS. This practice-specific information enables Government to identify suitable tenderers for a project.

In light of this, the “Information to be Submitted” section of a project tender should focus solely on project specific questions. Information requested should not replicate that available through the prequalification process and should not contradict the information requested in prequalification. For example the value of PI cover required for the project should not vary from the amount required to achieve prequalification.

Wherever possible, the tender documentation should include standard un-edited material, with version numbers to track revisions. This information could be made available on-line. Where the standard material is changed, this should be specified as part of the tender information.

1.2.1 WEIGHTING – There is currently no indication of weighting provided against the tendering criteria. Weighting would:

- improve the transparency of the process
- provide tenderers with an understanding of the priorities for that submission
- improve the effectiveness of tender responses
- improve clarity around assessment and feedback



- 1.2.2 FEE BANDS – Fee bands provide a bench mark for assessing the adequacy of fees in relation to the level of services required to successfully deliver the project. Maintaining realistic fee bands, especially in times of economic pressure, is important in managing project cost and risk. Transparency is important. Tenderers need to be aware that the Fee Band is enforced and that low bids will be rejected on the grounds that they represent an unacceptable risk to successful project delivery.

Without realistic fee bands the tendency is for fees to decrease over time, placing pressure on architects' ability to provide the required level of services. This may result in an increase in variations and therefore project cost. Given that difference between the highest and lowest LPSC fee bids is a very small component of the overall project cost, acceptance of a low fee can quickly be outweighed by variation costs.

Ultimately the continual erosion of fees impacts on the viability of architectural practice. This presents a significant risk to the capacity of the local market and erodes the contribution provided by architectural practice to the economy.

We would also suggest that the fee band be provided with the tender information. This would ensure that the winning tenderer can provide the full range of service required. The assessment would then place more emphasis on the quality on the submission and on past performance

1.2 Comment Regarding Specific Tendering Criteria

Clause 1.1.3 (b) EXPERIENCE WITH PROCUREMENT METHODOLOGY –

This clause unfairly disadvantages new practices and those practices that have not yet undertaken a project using the specified procurement method. This is particularly relevant when new procurement methods are being introduced in relation to State Government projects.

A Practice with prequalification should be competent and capable of providing the service irrespective of the procurement method. Requesting a methodology statement to detail how the tenderer proposes to deliver the project under the specified procurement method would be a preferable requirement.

Clause 1.1.4 (c) SUBCONTRACTOR TEAM MEMBERS – For projects over \$2.0m, the QS is engaged separately; i.e. not part of the LPSC consultant team, which renders section (c) unnecessary. If the project is under \$2.0m, then the section (c) is covered under section (a).

Clause 1.1.5 (a) Failure to comply... - The sentence stating that the tender may not be considered if 1.1.5(a) is not addressed is misleading and should be removed. It implies that all other clauses are optional as only 1.1.5(a) has this consequence rider attached.



Clause 1.1.5 (c) P.I. INSURANCE – As Professional Indemnity insurance is a requirement of the Pre-Qualification process, that this clause should be omitted. In addition, PI cover should be set for the category for which the LPSC is prequalified and not variable for each project as this may impose unreasonable additional cost on a Practice for at least 5 to 6 years.

Clause 1.1.5 (d) STATEMENT BY TENDERER – This section requests information that is not project specific. Some of the information requested conflicts with other DPTI requirements and/or is already provided through other processes.

Parts A, B and C ask for information that should be included in the prequalification system. A request for a statement of any changes that have occurred in the period since the last re-registration of the Practice's prequalification would be less onerous and maximise the effectiveness of the prequalification and tender processes.

Parts D and E relate to compliance with the Building Code. All registered architects are required to practice in accordance with the Architect's Code of Conduct, which states that architects must comply with "legislation and codes in force in any jurisdiction in which architectural services are provided"¹. This includes the Building Code and is therefore implicit provided the LPSC is a registered architectural practice.

Part F requires the tenderer to provide a response to parts A, B and C on behalf of sub-consultants. This is unnecessary as these sub-consultants are prequalified and/or engaged by the LPSC under DPTI contractual arrangements. This requires that the LPSC is responsible for the sub-consultants and that they are engaged under the same conditions as the LPSC.

Part G Compliance with the Fair Work Act is covered under legislation. Therefore compliance with the Fair Work Act is implicit provided the LPSC is a registered architectural practice.

Clause 1.1.5(e) DECLARATION OF COMPLIANCE – This asks the LPSC to state that something yet to be defined (whether the whole project, the design, the building work...?) will comply with the (now superseded) Building Code (2013). This is unreasonable under all forms of procurement, but is particularly onerous where the architect is not engaged to provide full contract administration services, which is the case with all DPTI projects.

The legal obligation of the Architect is to perform their services "competently, diligently and in a timely manner and to apply in their work professional standards of skill, knowledge and care"². A registered architect must also be "insured in a manner and to an extent approved by the [Architectural Practice]

¹ Section 2, Clause 2.5 - Architect's Code of Conduct, Version 1/11/2012 – page 3

² Section 2, Clause 2.1 - Architect's Code of Conduct, Version 1/11/2012 – page 3



Board against civil liabilities that might be incurred by the person in connection with the provision of services as a registered architect”³.

Providing a warranty that a whole project will meet all aspects of the “Building Code and Supporting Guidelines” is uninsurable under all standard forms of architectural PI Insurance. This is in direct conflict with the DPTI requirement that consultants have current PI insurance cover. It also risks being in contravention of the Architect’s Code of Conduct under the Architectural Practice Act 2009.

In addition this introduces greater risk to the client. The clients’ interests are not protected where the level of service exceeds the indemnity insurance cover.

This clause should be removed.

1.3 Conclusion

Tendering for projects is an important process that enables clients to access project specific expertise as well as value for money. It also provides architects with the opportunity to access work in an equitable and impartial manner. A robust and well managed tendering process provides benefits to both the client and the tenderer.

We believe that the feedback provided in this submission in relation to the review of conditions of tendering will:

- Reduce duplication of information
- Remove conflicting requirements
- Maximise the effectiveness of the prequalification and tendering systems
- Reduce risk in the procurement of architectural services

This will result in a more efficient tendering process.

We would be happy to continue to participate in the review as required and to make our considerable collective experience in project procurement and delivery available to DPTI to assist in delivering the best possible outcome.

³ Section 8, Clause 8.1 – Architect’s Code of Conduct, Version 1/11/2012 – page 6