



SUBMISSION ON:

Optimising Infrastructure Procurement

24 November 2016

SUBMITTED BY

Malcolm Abernethy on behalf of the Civil Contractors New Zealand Member Companies.

Phone: 027 249 2513

Email malcolm@civilcontractors.co.nz

INTRODUCTION

This submission represents the collective views of thousands of people employed within the Civil Construction sectors in Auckland, who are likely to be directly affected should the proposed changes to Auckland Transport's Procurement environment be implemented.

While some aspects of the proposed changes are logical and may alleviate Auckland Transport's challenges of working with a large number of suppliers, there are aspects of the proposals that have been unsuccessfully trialled by other organisations throughout New Zealand and in other jurisdictions.

In this paper, we aim to highlight the importance of careful consideration of the downstream impacts - both positive and negative, of the proposed changes. We draw to your attention the experiences of other organisations that have engaged in similar procurement reform mechanisms.

Finally and most importantly, we consider the intention of the proposed reforms and outline key limiting factors that have been identified by the civil contracting industry as well as by procurement professionals.

The factors we identify and discuss are not addressed in the proposed reforms and which would provide a more effective and immediate means to address the core issues that Auckland Transport faces in improving the efficiency and effectiveness of its procurement environment.

ABOUT THE SUBMITTER

Civil Contractors New Zealand Inc is the national industry body representing Civil and General Contractors who carry out the country's civil infrastructure construction and maintenance work. We estimate that the civil construction sector carries out more than \$12 billion of work annually and employs in excess of 60,000 workers.

Our Members undertake a wide spectrum of work including construction, operation and maintenance of;

Transport networks	including roading, bridges, tunnels, railways, airports and ports
Water infrastructure	including water storage and water reticulation, irrigation, drainage, waste and storm water services
Communications Networks	including underground and above ground networks
Disaster relief and protection	Flood and coastal protection and emergency response
Energy Infrastructure	including both generation and distribution;
Commercial and Residential Building	including site access, site works, foundations, car parks and installation of services;
Agriculture and Forestry work	including dairy conversions, tracks, drainage, effluent ponds, feed pads, building site preparation and forestry tracks and skid sites
Ground Stabilisation	including slips, subsidence and rock falls
Parks and sports fields	Construction and maintenance including vegetation control

Civil Contractors New Zealand was originally formed in 1944 as the NZ Contractors Federation and following the merger of New Zealand Contractors' Federation and Roothing New Zealand in 2014 became Civil Contractors New Zealand.

Our primary roles are:

1. Industry advocacy and representation
2. Supporting industry development, professionalism and safety
3. Providing information and advice

Civil Contractors New Zealand aims to:

- Create a safe, viable, and progressive sector meeting the needs of all its participants.
- Contribute to ensuring a healthy civil construction sector where skilled and qualified clients, consultants, and contractors produce outcomes that deliver value for money for all participants.
- It is the result of investment in people, forward planning, fair and consistent procurement strategies, competition in the supply chain, and growth opportunities for those willing and able to take up the challenge.

Note that a number of our members have attended the AT workshops on behalf of their companies and may be making separate submissions.

GENERAL

Civil Contractors New Zealand (CCNZ) welcomes the opportunity to comment on Auckland Transport's '**Optimising Infrastructure Procurement.**'

We recognise there is an urgent need to reduce the time and costs involved in procurement for Auckland Transport. Furthermore, we contend that the overall aims of Auckland

Transport to make its procurement processes more streamlined, effective and efficient are whole-heartedly supported by the contracting industry.

However, we have significant reservations about the mechanisms proposed to achieve this, as well as the suggested timeframes. Further, we are concerned that the consultation process has not allowed for useful input from industry into the generation of a wider range of potential solutions to the core issues. Instead, it appears to have focused on the establishment of limited panels, coupled with generic, (rather than project-specific) mechanisms for scoring the quality attributes of suppliers.

We also consider that the stretch target date for the Panels to be in place is very optimistic, given that Panels as a solution are not widely accepted!

We will deal with this submission in three parts:

1. Industry Workshop
2. Feedback from the workshop; and
3. General procurement concepts – a way forward

1. INDUSTRY WORKSHOP

Auckland Transport provided some background that was extremely useful, in relation to the infrastructure spend in the previous five years.

We record those statistics here:

- \$2.2B awarded in 1,700 contracts
- 440 suppliers
- Top 10 suppliers represent 80% of the value
- 70 contracts > \$3M with value of \$1.9B
- 1,630 contracts <\$3M with value of \$300M

Current Challenges

We also acknowledge the current challenges, which are, in many respects, no different to other government organisations that have many small to large contracts being tendered and awarded each year. These are:

Significant tendering costs and time involved (for all parties), lack of forward work plans, missed opportunities, inconsistent / inefficient approach to tender evaluation methods, PQM risks and, not making the most of our contractor pre-qualification register.

We especially acknowledge and agree that there are '*Significant tendering costs and time involved (for all parties)...*' – research indicates that these costs can be in the order of 10 to 20 percent of the project value taking into account ALL parties – client, consultants, contractors.

However the following parts of this bullet from the presentation also provide clear reasons why tendering costs are so high:

1. *lack of forward work plans*, - comprehensive and largely accurate forward work plans allow suppliers to build capability and capacity in the belief that they will have an opportunity to bid for and win some of the work.

Forward work plans allow suppliers to invest with a level of confidence in developing their business by purchasing resources to build their capacity and productivity, and by providing training to employees to gain greater capability.

2. *missed opportunities*, - forward work plans and having tender ready documents in the bottom draw to take advantage market conditions can reduce the missed opportunities.

We acknowledge that missed opportunities also arise because of small packages that could be bundles to provide a measure of savings through scale. We will discuss this a little more in later sections.

3. *inconsistent / inefficient approach to tender evaluation methods*, - this is an issue that is squarely in AT's court and can be reduced by having trained evaluators as part of the Tender Evaluation teams.

Our members report that AT's approach to tendering varies widely; and also that many AT tenders ask for extensive information that bears little relevance to the success factors for the contract. The time and costs involved in both preparing and evaluating irrelevant information are extensive, and could be significantly reduced if procurement staff were better trained and focused on project-specific differentiators only.

There are some very good training packages provided by Clever Buying to approved Unit Standards. These Unit Standards are the basis of the NZQA procurement qualification which is mandatory for NZTA contracts.

4. *PQM risks and*, - by using pre-defined scales and attribute weighting tools, risks associated with PQM can be greatly reduced. The transparency provided by such tools reduces the likelihood of unsuitable tenderers engaging in the tender process; and the time taken for evaluation can also be minimised. Again, these skills and knowledge can be gained through the NZQA Procurement qualifications referred to above.
5. *not making the most of our contractor pre-qualification register* – AT already has a robust prequalification system that is not broken but needs to be trusted and, above all, used effectively to reduce the time, costs and efforts expended by both tenderers and procurement staff in preparing and evaluating generic, irrelevant information.

The system needs to fully embrace the AT PACE system to feedback and inform subsequent tender evaluations.

The solution to the above five issues is firmly in Auckland Transport's hands.

Broad Approach

We agree that AT need to 'Better manage a supplier base'. We do not agree however that the supplier base should be deliberately artificially and externally manipulated to become smaller. Industry will adapt to the procurement processes and available work that is provided to them - this has occurred continually in New Zealand from the very first physical works contracts that were awarded to private companies by the Public Works Department and then Ministry of Works.

CCNZ does not agree that panels are the solution. It appeared evident at the workshop that AT is determined that panels are the only option to resolve the current challenges, and only the details of panel organisation remain to be resolved. This approach simply pays lip service to consultation concepts.

If panels are used, then we suggest that they are open panels that allow all prequalified contractors to bid for the work in their area of expertise – essentially use the existing

prequalification and improved and consistent performance management systems to base contract award decisions upon.

Careful procurement planning for each contract would then enable pre-conditions to be set that are relevant and targeted to the critical success factors for each project. This then would provide a fair, transparent and relevant basis for determining an appropriate and efficient level of competition in relation to each project.

Further a supplier Relationship Management system is a welcome idea and could sit comfortably with the current Prequalification system. CCNZ can only see positives from this approach. We consider that annualised formal reviews would be part of this approach now and into the future.

We strongly suggest that limited supplier panels be removed from the table as an option.

It is difficult to see how panels provide '*Opportunities to move up within the panel structure*' where as prequalification will allow this to happen organically as a supplier's business grows.

Similarly we do not see the '*opportunity for new entrants*' as the panels proposed will accept only 10 percent of Auckland Transport's current suppliers. If supplier panels are limited to a specific number of parties, then it is clear that many existing suppliers and potential new entrants into the industry will simply not have an opportunity to bid. Apart from the obvious down-side for those companies, AT will also potentially limit its own opportunities to get best value from innovative solutions that most often are created by a wider supplier base.

The proposal would appear to be in direct contravention to government's second Principle of Procurement,

Be Fair to All Suppliers

- *Create competition and encourage capable suppliers to respond.*
- *Treat all suppliers equally – we don't discriminate*
- *Give NZ suppliers a full and fair opportunity to compete.*
- *Make it easy for all suppliers (small to large) to do business with us.*

Previous feedback

CCNZ and industry generally support the concept of the review to Optimise Infrastructure Procurement but that does not include the adoption of a panel system.

However CCNZ do agree with:

1. *Include a value component to the LPC evaluation process* – This can be achieved by using prequalification and AT PACE as it was intended and some project specific preconditions requested in the RFT.
2. *Consider direct award (negotiation with single supplier) of the physical works contract(s)* – This is one of the tools that can be used for urgent and minor works and we support this. Interestingly direct award will be to prequalified suppliers!
3. *Involve industry.* – It is essentially that industry is fully informed as each decision is made and each step is taken.

Panel Summary

The table provided in the workshop presentation needs a great deal of work as there remain many unstated and unanswered questions.

CCNZ does not support the formation of panels for physical works. Over many years we have seen the formation of panels for a period of time and then their rapid demise when both the client and the industry realise that panels in the physical works area simply do not work. There are examples within New Zealand, the most notable being Queenstown Lakes District Council, where physical works panels did not work as they excluded a large number of suppliers and did not reduce tendering costs.

Australian experience shows that 'Panels are most useful where there are recurrent needs for property or services, and, if used effectively, can benefit both agencies and suppliers, through shared understanding, lower cost and consistent procurement practices.' Panels appear to work for professional services however there are a large number of professionals that are excluded as a result.

If panels were used, the biggest issue to be addressed is the make-up or size of the panels. AT's proposal removes the right of **396 existing suppliers** to bid for the work. This approach does not give effect to the Government Rules of Sourcing ('Rules') or the healthy supplier market concepts developed by CCNZ.

An example would be that the smallest panel, whilst having what appears on the face of it, sufficient participants, does not recognise that there are a lot of specialist contractors that operate in this price bracket. If AT wanted to get a directional drilling project done for example, it may find that the number of panel contractors in that field is somewhat limited and those that do directional drilling do not do other specialist work. There are other examples of specialist trades such as demolition, clearing, soil nailing, stabilisation, drainage, watermain, services and so on.

While AT is not bound by Government's Rules of Sourcing, central government, crown agencies (NZTA) and District Health Boards (and others) are. Government's Rules of Sourcing are simply good practice. Furthermore, where funding is provided by NZTA, then NZTA's Procurement Processes also need to be followed (which incidentally align with the Government Rules of Sourcing).

For clarity we acknowledge that panels are allowed within the 'Rules', however in practice panels are generally used for commodity items rather than Construction contracts.

Break-out Discussion

We note that all of the questions covered in the break-out discussions related to panels and how they may be formed. This approach to the 'consultation' effectively indicated that AT's decision to use panels is a 'fait-accompli'. The consultation process appeared irrelevant in this context.

CCNZ also records that the workshop participants strongly encouraged AT to analyse the last five years of data by applying the proposed procurement strategy to that data.

The workshop was told that AT had not done so or that the forward workload did not relate to the past work. We doubt this.

The analysis should make a point of modelling what may happen to the companies that would be excluded from the panels.

We suggest that a proper analysis be carried out to provide transparency around AT's thinking leading to the proposals that have been put forward.

2. FEEDBACK FROM INDUSTRY WORKSHOP

We will not address each of the weighted questions as discussed above, but make a broad assessment of the feedback given.

The feedback provided generally asks more questions or raises more issues than provides answers.

The suggestion that bundling of similar work has also been proposed by suppliers as a tool that could reduce tendering and award costs. This could also provide additional savings in contract management and administration costs.

CCNZ therefore supports bundling, provided that is well thought out to support a healthy market (that does not minimise opportunities for innovation or restrict growth).

The concept of reducing the number of suppliers within the panels prevents specialist suppliers to bid in their own right. For those companies to continue to perform AT work, they would be relegated to sub-contractor status, with larger suppliers becoming in part project managers.

Experience across New Zealand has shown that these environments often result in those project managers driving sub-contractor prices down to potentially unsustainable levels, and then adding a margin for managing the sub-contractors that are finding it difficult to perform the work at unrealistically low prices.

Essentially AT would be contracting to management suppliers and paying for that by adding yet another layer of administration cost when the aim of this review is to reduce tendering, award and administration costs.

3. GENERAL PROCUREMENT CONCEPTS – A WAY FORWARD

The following is a breakdown of how the contracting industry is made up

The significant point to look at when comparing specialist Contractors with Sub Contractors is that the specialist Contractors have skills that provide added value, potential for innovation, high levels of investment in resources and training – and many other factors that ensure quality, value for money outcomes.

The difference between large Contracting Companies and the Specialist Contractors relate in the main to reduced overheads for the Specialist Contractor and the potential to develop and apply innovative solutions.

Large contractors	Specialist Contractors	Sub-Contractors	Cowboys
Professional	Professional	Professional	non professional
Add value	Add value	Provide a good price	Cheap
Have technical Skills	Have Technical Skills	Provide men and machines	Poor quality
Have Management Skills	Have Management Skills	Directed by head contractor	Contracts based on a handshake and count your fingers.
Invest in specialist plant	Invest in specialist plant	Invest in resources with some training investment	
Invest in training	Invest in training	Require management of compliance requirements	No compliance or management systems
Heavily invest in management systems for Quality, Environment, H&S and Training	Heavily invest in management systems for Quality, Environment, H&S and Training	Often working toward management systems to meet compliance requirements.	
Have considerable skin in the game	Have considerable skin in the game	Contract frequently based on a handshake and the relationship they have with the head contractor	
Hungry – want to maintain their position in the market	Hungry – want to develop skills and expertise – they want to grow!	Want to grow BUT Require supervision and management	
Rely on the quality of their last job to get the next	Rely on the quality of their last job to get the next	Rely on the quality of their last job to get the next	Hope there will be another client to work for

By going to a panel approach much of the agility and resourcefulness of smaller and specialist companies will be lost forever.

We have included the Five Principles of Government Procurement at Appendix 1 for easy reference as it those rules that form the foundation of procurement processes.

THE WAY FORWARD

It is CCNZ view that a far more effective means of optimising procurement will be to start with more effective procurement planning. Government's First Principle of Procurement states that procurement agencies should:

PLAN AND MANAGE FOR GREAT RESULTS

- *Identify what you need and then plan how to get it.*
- *Set up a team with the right mix of skills and experience.*
- *Involve suppliers early – let them know what you want and keep talking.*
- *Take the time to understand the market and your effect on it. Be open to new ideas and solutions.*
- *Choose the right process – proportional to the size, complexity and any risks involved.*

The most immediate and effective improvements to efficiency and effectiveness in AT's procurement would accrue from procurement planning that develops targeted tools to select suppliers, including project-specific, designed to both eliminate unsuitable suppliers from tendering (on a project-by-project basis) and differentiate between suppliers of average and exceptional capability.

Understanding the market and involving suppliers so they can plan tendering and contracting activity in advance also will provide better opportunities to engage a healthy and balanced supplier market.

By making AT's existing prequalification system more robust with an improved and consistent AT PACE system to inform and keep up-to-date suppliers prequalification status, AT can reduce the time and costs incurred by both suppliers and procurement staff associated with tendering; and at the same time, can develop more targeted and relevant tools for identifying the best value for money suppliers.

If this approach were coupled with a robust Supplier Relationship Management approach, many of the issues that AT is facing would be effectively and relatively quickly addressed.

Prequalification should have a minimum expectation of levels of compliance and professionalism. In the process of Prequalifying, the Contractor can identify their areas of expertise. When AT are tendering jobs, they go to the prequalified Contractors that suit the type of work required and invite bids.

It doesn't need to be limited to a Panel of a small number of Contractors

AT currently has 440 suppliers, of which a small group wins the bulk of the work. This implies that suppliers want the opportunity to bid for work, but for commercial reasons, or as a result of the current evaluation methods, they do not win contracts.

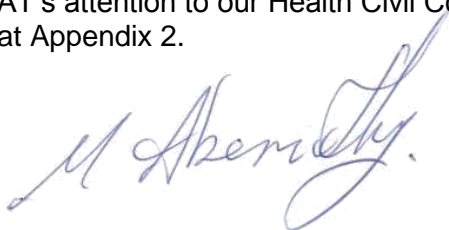
The current suppliers to AT are largely known to AT.

1. The suppliers are prequalified
2. AT know the suppliers' capability and capacity
3. AT know the work they have done in the past
4. AT know they are capable of doing the work safely and to a high quality standard

These components of current tendering processes do not have to be repeatedly asked for and evaluated. They are (or can be) covered through AT's existing Prequalification System, CCNZ believes that AT should drop the concept of panels and work toward fully adopting its current prequalification system and trusting in the effectiveness of that platform (coupled with project-specific preconditions) as a means to manage the number of tender responses to appropriate levels.

Where LPC or AT PQM is used, then develop transparent marking scales, and determine non price attribute weightings and questions that reflect the risks, priorities and opportunities of the project.

Whatever the outcome of this Procurement review, CCNZ takes this opportunity to draw AT's attention to our Health Civil Construction Sector statement appended to this submission at Appendix 2.



Malcolm Abernethy
Civil Contractors New Zealand
Executive Officer

24 November 2016

Appendix 1 – Five Principles of Government Procurement.

CCNZ suggest that if these rules are followed then procurement should be fair transparent and financially efficient.

1. PLAN AND MANAGE FOR GREAT RESULTS

- *Identify what you need and then plan how to get it.*
- *Set up a team with the right mix of skills and experience.*
- *Involve suppliers early – let them know what you want and keep talking.*
- *Take the time to understand the market and your effect on it. Be open to new ideas and solutions.*
- *Choose the right process – proportional to the size, complexity and any risks involved.*
- *Encourage e-business (for example, tenders sent by email).*

2. BE FAIR TO ALL SUPPLIERS

- *Create competition and encourage capable suppliers to respond.*
- *Treat all suppliers equally – we don't discriminate (this is part of our international obligations).*
- *Give NZ suppliers a full and fair opportunity to compete.*
- *Make it easy for all suppliers (small to large) to do business with us.*
- *Be open to subcontracting opportunities in big projects.*
- *Clearly explain how you will assess suppliers' proposals – so they know what to focus on.*
- *Talk to unsuccessful suppliers so they can learn and know how to improve next time.*

3. GET THE RIGHT SUPPLIER

- *Be clear about what you need and fair in how you assess suppliers – don't string suppliers along.*
- *Choose the right supplier who can deliver what you need, at a fair price and on time.*
- *Build demanding, but fair and productive relationships with suppliers.*
- *Make it worthwhile for suppliers – encourage and reward them to deliver great results.*
- *Identify relevant risks and get the right person to manage them.*

4. GET THE BEST DEAL FOR EVERYONE

- *Get best value for money – account for all costs and benefits over the lifetime of the goods or services.*
- *Make balanced decisions – consider the social, environmental and economic effects of the deal.*
- *Encourage and be receptive to new ideas and ways of doing things – don't be too prescriptive.*
- *Take calculated risks and reward new ideas.*
- *Have clear performance measures – monitor and manage to make sure you get great results.*
- *Work together with suppliers to make ongoing savings and improvements.*
- *It's more than just agreeing the deal – be accountable for the results.*

5. PLAY BY THE RULES

- *Be accountable, transparent and reasonable.*
- *Make sure everyone involved in the process acts responsibly, lawfully and with integrity.*
- *Stay impartial – identify and manage conflicts of interest.*
- *Protect suppliers' commercially sensitive information and intellectual property.*

Appendix 2 – Civil Contractors New Zealand – A Healthy Civil Construction Sector



CIVIL CONTRACTORS
NEW ZEALAND




A Healthy Civil Construction Sector

Vision

A safe, viable and progressive sector meeting the needs of all its participants

A healthy civil construction sector is one where skilled and qualified clients, consultants and contractors produce outcomes that deliver value for money for all participants.

It is the result of investment in people, forward planning, fair and consistent procurement strategies, competition in the supply chain and growth opportunities for those willing and able to take up the challenge.



Principal Business Partner

Elements

A healthy civil construction sector environment is one where:

- safety is a priority for everyone
- there is competition for all types and sizes of projects based on value for money
- there are growth opportunities for all business types and sizes
- there is a degree of certainty of forward work that allows investment in personnel and resources
- collaboration produces innovative solutions
- there are transparent procurement strategies
- procurement and delivery processes promote a sustainable industry environment
- industry participants take responsibility for environmental and other community and social impacts
- there is recognition that investing in improved skills and training will improve quality and productivity
- industry participants are aligned to client needs and adapt to changing political or economic conditions

www.civilcontractors.co.nz