

14 November 2018

Ms Sandra Ayton  
General Manager  
Central Coast Council



**Australian Institute of Architects**

Dear Ms Ayton,

On behalf of the Tasmanian Chapter of the Australian Institute of Architects (the Institute), I would like to raise some concerns that have been brought to our attention in relation the open tender for architectural (lead consultant) services for the \$7.5 million Ulverstone Cultural Precinct.

As a members' organisation, we have had representations from practitioners in relation to the process around this tender and confusion about the contracts and terminology being used.

As participants in a competitive process, these practitioners are unable to criticise that process and, therefore, have no recourse but to approach the organisation representing them, i.e. the Institute.

Our concerns are as follows:

- The contract used for the engagement of the successful consultant is AS 4122. This contract is for consultancy services between a Client and a Consultant and all other documents that will form part of the contract, as stated in the Request for Tender including the Conditions of Tendering, MUST use the same terminology, for avoidance of confusion, to make the terms explicit and so that the terms can actually be enforced under the contract. A prime example of this is the use of the term Superintendent which is conflated with BOTH the terms Client and Consultant. There is no Superintendent under AS 4122, rather there is a Client and Client Representative. We would recommend changing Superintendent to Client or Consultant as appropriate depending on which party is intended to perform the tasks described as being performed by the Superintendent.
- The Conditions of Tendering state that the terms of engagement will be AS 4122 but, in fact, appear to have been prepared based on previous Conditions of Tendering for a Construction Contract using AS2124 General Conditions of Contract and not a contract for consultancy services. Therefore, it is full of references to clauses, conditions and, more broadly, contractual concepts that do not exist in AS 4122. For example, Liquidated Damages does not apply to consultancy services. This is a concept taken from a construction contract. The Consultant does not pay \$500 per day to the Client for causing a delay in delivery of the consultancy services. This should be deleted. The Tender form also states that the Conditions of Engagement are AS 2124. They are, in fact, AS 4122.
- Annexure A to AS 4122 appears to have been cut and pasted from the original document downloaded from Standards Australia. It appears to have been modified from its original appearance and the Item Numbers of the Annexure Items have been deleted. Item 31 "Has this Contract been amended from its original form? Yes/No" has been deleted altogether. It must be included and answered. It is critical that Annexure A is completed properly. For example, the Annexure Item used to identify the document that describes the project Scope under the contract is identified as "Not applicable".

- Redundant clauses and padding are included throughout the Conditions of Tendering. For example:
  - 10.4 Design Program – which appears to be modified from ‘Construction Program’ – refers to Superintendent, plant, damage, injury etc. all at the risk of the Consultant. This does not make sense and requires clarification.
  - 10.8 Contingency Sum – this method of managing a contingency sum is highly unusual. Additional costs are normally handled as a variation. Given that an additional client meeting that was not allowed will cost \$1000 – \$2000, a \$10,000 contingency for consultancy services on a \$500,000 plus fee is probably not enough. We note that this amount is incorrectly listed in the Schedule as \$1000.
  - 10.13 Glossary of Terms – this attempts to bypass the issues raised by use of the term Superintendent; however in Clause 11.8 Site Meetings it becomes confusing because the Superintendent will almost certainly not be the Client once the project is under construction.
  - 11.2-11.5 – we recommend deleting this.
  - 11.7 Supervision and Inspection – we recommend deleting this.
  - 11.8 Site Meetings – does this refer to site meetings during construction, which the tender does not include, or to Client meetings?
  - 11.10 Rise and Fall – we recommend deleting this.
  - 11.10 Dimensions – we recommend deleting this.
  - 11.11 Work site – there is no work site, this is a consultancy service.
  - 11.12 Order of Works and Construction Program – this is for construction Contractors and refer to the Superintendent – we recommend deleting or revising this.
  - 11.17 Environmental Systems and Planning – this is for construction Contractors – we recommend deleting this.
  - 11.20 Tender Evaluation – OHS policy and Record: The consultant is asked to submit details of lost time incidents etc. This is for Contractors and we recommend deleting this from the evaluation criteria.
  - 11.22 Late Tenders – goes into tenders received by post when it is stated in the previous clause that all tenders are to be lodged electronically via Tenderlink. This causes confusion and requires clarification – are tenders allowed by post or not?

We would be very happy to meet to discuss these issues in more detail and can offer our help in any review of the tender documents. Our ultimate aim is to ensure that projects benefit the communities in which they’re located, and we believe the best results come from best practice procurement. If you’d like clarification of any of these issues or we can be of any further assistance, please don’t hesitate to contact us.

Kind regards,



**Jennifer Nichols**  
Executive Director, Tasmanian Chapter,  
Australian Institute of Architects