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**THE PROCUREMENT OF PROFESSIONAL PLANNING
SERVICES FOR ROADING PROJECTS UNDER A
COMPETITIVE PRICING REGIME**

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for the degree of
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ABSTRACT

The introduction of the Transit New Zealand Act changed the provisions for purchasing professional services for the development of roading projects. This change was consistent with the wider shift of the public sector towards greater transparency and accountability, and the separation of the roles of the funder, purchaser and provider of government services. The Act states that all professional services contracts for the development of roading projects are to be contracted out to the private sector by tender, with the selection of consultant determined by a Competitive Pricing Procedure (CPP).

This study has been undertaken as a preliminary assessment of the factors that influence the implementation of competitive tendering for professional services and its impact on planning practice in New Zealand.

The study is based on a literature review and original research. Surveys were undertaken with representatives from both the consultants and tendering authorities with experience in CPP, to obtain their views on different aspects of the tendering procedures adopted by Transfund New Zealand. Follow up interviews were also carried out with key representatives involved in the market to identify their responses to the survey results.

It is concluded that there are significant differences in perception of the effectiveness of the implementation of the CPP between suppliers and purchasers, particularly with the planning services associated with roading projects. Consultants consider that they must put in the most competitive price in order to win a contract. This, they believe, compromises the quality of planning services by limiting the number of interested and affected parties that can be consulted, by favouring the simplest method of evaluation of environmental effects, and by discouraging the use of the best people for the job.

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CHAPTER ONE

INTRODUCTION

Environmental planning in New Zealand has undergone radical changes in the last decade. The current regime for planning and managing resources in New Zealand is the product of local government and resource management law reform, preceded by the restructuring of the public sector (Dixon et al, 1997). The restructuring of the public sector in the mid 1980s was comprehensive in scope and in broad conformity with the ideas, principles and practices of managerialism (Boston, 1995). The Labour government's decision, as part of the reforms, to discontinue the role of the state as developer has had a significant impact on the direction of environmental reform.

The reforms of local government and resource management law were guided by similar principles to those adopted for the reform of central government, and intended to provide for a more flexible, devolved and integrated approach to resource management (Dixon et al, 1997). Resource law reform led to the enactment of the Resource Management Act 1991 (RMA), which promoted effects-based planning, and introduced a mandatory requirement for the submission of an Assessment of Environmental Effects (AEE) with resource consent applications.

Central and local government reform, and the introduction of the RMA had a significant impact on the practice of planning, especially in the private sector. They shifted the emphasis from prescribing land and resource use, to promoting sustainable management through the consideration of the environmental effects of resource use decisions. The focus of planning shifted to meeting environmental standards determined through a combination of local consultation and analysis, rather than the application of predetermined rules and regulations.

The move towards privatisation and corporatisation of public sector services, and the separation of funding and service delivery favours the contracting out the provision of some public services and subjecting their supply to competitive bids (Boston, 1995). Public agencies were encouraged, or required by legislation, to contract many of their service delivery functions to private firms, in a move intended to increased efficiency,

transparency, accountability and quality. This was particularly so in the transportation sector in New Zealand.

As part of the reforms of central government, a new crown entity, Transit New Zealand (TNZ) was created under the Transit New Zealand Act 1989 (TNZ Act)¹. One of the functions of TNZ was the allocation of resources for the safe and efficient operation of the roading system. This function was subsequently transferred to another crown entity, Transfund New Zealand (Transfund), in a 1995 amendment to the TNZ Act. The TNZ Act requires all professional service contracts for the development of roading projects funded by Transfund to be contracted out to private firms by tender, with the selection of provider determined by a competitive pricing procedure.

All professional services contracts for roading projects are currently performed by private firms, selected on the basis of competitive procedures. In the majority of cases, these services include the requirement to complete an AEE, as required by the RMA. Hence, the demand for planners in the private sector to provide these services has increased. The planners role is therefore to deliver the services which are determined and funded by a client who is promoting a particular development. This is in contrast to the traditional role of the planner in the public sector whose role is to protect the public interest.

This thesis explores the impact of the changing emphasis in planning practice by examining the experience of tendering out professional planning services for roading projects in New Zealand.

The changes in resource planning in New Zealand since 1984 are outlined below, as the wider context within which the experience pertaining to the case study can be assessed. The case study is then introduced and the research objectives of the thesis outlined.

1 The TNZ Act refers to the Transit New Zealand Act 1989 and all subsequent amendments, including the Transit New Zealand Amendment Act 1995 which came into force on 1 July 1996, and which created Transfund New Zealand.

1.1 RESTRUCTURING OF THE STATE

1.1.1 Town and Country Planning Era

Planning practice in New Zealand has traditionally followed the British town and country approach. Memon and Gleeson (1995) claim that this approach may be viewed as an historical form of state regulation which was embedded in the wider political economy of the welfare state. According to Buhrs and Bartlett (1993) the New Zealand State, prior to 1984, was directly responsible for much environmental degradation, by its promotion of economic development through direct involvement in the ownership, allocation and management of resources. The government was heavily interventionist, taking an active part in the economy in an attempt to stimulate growth, and encouraging large scale developments, often with adverse environmental outcomes.

During the 1970s the government made amendments to environmental legislation in response to increasing dissatisfaction with the way the environment was being managed. Environmental Protection and Enhancement Procedures (EPEP) were introduced in 1974 to assess the environmental impacts of government funded projects. These procedures were not mandatory and recommendations made were not necessarily implemented.

The Town and Country Planning Act 1977 (TCPA) was the statute which governed the preparation, implementation and administration of regional and district plans. The TCPA required planning approval for developments, involving public submissions and hearings. In 1979 however, the government became frustrated by delays created by interest groups in gaining necessary approvals for large projects, and introduced the National Development Act. This statute streamlined the application process for major government development projects.

One of the major roles of local planners prior to the reforms in the mid 1980s was the facilitation of the development agenda of central government. While the responsibility for plan preparation lay with local authorities, government departments such as the

Ministry of Works and Development held both environmental and development responsibilities. This dual mandate was criticised by environmentalists (Buhrs and Bartlett, 1993) as having a major influence on planning practice. McDermott (1998) asserts that it is therefore hardly surprising that:

‘the town and country planning legislation could be interpreted as facilitating a central development mandate, rather than providing a basis for the protection and development of community, economy, heritage and environment’ (McDermott, 1998, page 639).

Planning practice increasingly became the target of public dissatisfaction in the late 1970s, due, among other things, to the perceived inflexibility of the process, and unwarranted intervention in the market place (Memon and Gleeson, 1995). However, since 1984, the role of the State in the management of resources has been dramatically redefined, which, according to Buhrs and Bartlett (1993) is largely attributable to the ‘New Right’ philosophy embraced by successive governments.

1.1.2 Period of Reform 1984-1991

Since 1984, the public sector of New Zealand has undergone a radical restructuring (Grundy, 1994), which, as stated by Memon and Gleeson (1994) left a once highly protected economy open to deregulated market forces and external competition.

Those behind the restructuring of the public sector in New Zealand placed a strong emphasis on the devolution of management responsibilities, the privatisation of commercial state assets, the commercialisation of many departmental functions, the institutional separation of public service funding and provision, and the separation of the functions of policy advice, regulation and service delivery (Boston, 1995).

Franklin (1991) claims that the primary motivation of the Labour government who instigated the reforms was to increase the international competitiveness of the economy. Other influences on these fundamental changes in policy direction have been identified by Holland et al, (1990) and include the dominance of the ideology of the market place, a search for efficiency in the use of resources, and the influence of senior neoliberal

Treasury officials.

The decision of the Labour government to discontinue the historically important role of the state as a developer, to reduce spending and to increase transparency, accountability and efficiency in the delivery of services had a significant impact on the direction of environmental reform (Memon, 1993).

The restructuring of central government provided the overall contextual environment for the review of the environmental planning and local government legislation (Holland et al, 1990). The introduction of the Environment Act in 1986 established two new agencies in the place of the Commission for the Environment: the Ministry for the Environment (MfE) and the Parliamentary Commissioner for the Environment (PCfE). Buhrs and Bartlett (1993) state that the:

‘Retrenchment of government involvement in construction and development activities, reflected in the abolition in April 1988 of the once powerful Ministry of Works and Development, and the incorporation of its remaining commercial activities in the Works and Development Corporation. The responsibilities of the Ministry for Town and Country Planning were transitionally transferred to the Ministry for the Environment’ (Buhrs and Bartlett, 1993, page 119).

Dixon (1993) claims that it was these changes that drove the major reforms of local government and resource use legislation:

‘These reforms were integrally linked with resource management functions to be carried out by newly reorganised units of local and regional government. Along with reform of resource law, a major reorganisation of local government has put in place new spatial arrangements and functions for reformed city, district and regional councils’ (Dixon, 1993, page 241-242).

Most of the New Right principles that guided central government reform were also applied to local government reform. These included the separation of regulatory from service functions, accountability and transparency, more business like approaches and the decentralisation of responsibility for environmental decision making (McDermott et al, 1996). Buhrs and Bartlett (1993) argue that the rationale behind the local government reform was to allow local authorities to perform their functions effectively and efficiently in an unregulated and competitive economic market.

In 1991 the RMA was introduced, and became the governing piece of legislation for almost all resource use in New Zealand. The purpose of the Act is to promote the sustainable management of natural and physical resources. Memon and Gleeson (1994) state that the RMA recognises the important role that the government has in planning, and defines a three-tier planning structure of central government, regional councils and territorial councils. This hierarchy is 'based on the assumption that decisions should be made as close as possible to the appropriate level of community of interest where the effects and benefits accrue' (Memon and Gleeson, 1994, page 448).

The introduction of the RMA signalled a new approach, focused on effects based planning. It brought with it new processes and responsibilities, including a requirement that all resource consent applications be accompanied by an Assessment of Effects on the Environment (AEE)². Dixon (1993) argues that the assessment of environmental effects in the context of sustainable management forms the cornerstone of the RMA.

1.1.3 Theoretical Underpinnings of Reform

The aims of the new model of public management were to improve efficiency, enhance the effectiveness of government programmes, improve the accountability of public sector institutions, reduce the level of government expenditure and the size of the core public sector, improve the quality of goods and services produced by public agencies, and make public services more accessible and responsive to consumers (Boston et al, 1996). While the political desire for reform was strong, one of the most striking features of the reforms was the impact of certain bodies of economic and administrative theory, such as agency theory, transaction-cost economics and managerialism.

Boston (1995) claims that the majority of changes made conform to the principles and practices of managerialism, due to the emphasis placed on the devolution of management responsibilities:

2 Section 88(6) requires that an application for Resource Consent shall be prepared in accordance with the Fourth Schedule. The Fourth Schedule of the RMA identifies the matters that should be included in an assessment of effects on the environment.

‘These changes have not only brought about a radical reshaping of the bureaucratic landscape, but also contributed to a dramatic downsizing of the core public sector and the development of a new managerial ethos’ (Boston, 1995, page x).

There are a number of key features associated with this concept, including a belief that the differences between the public and private sectors are not significant, a shift in emphasis from process accountability to accountability for results, the devolution of management control, a preference for private ownership, contestable provision and the contracting out of most publicly funded services and an emphasis on cost-cutting and efficiency (Boston et al, 1996).

One particular feature of the new model of public management that has emerged is the increasing use of competitive tendering and the contracting out of publicly funded services. This has occurred both at central and local government levels and reflects the principle that:

‘Wherever possible, publicly funded services, including the purchasing of policy advice, should be made contestable and subject to competitive tendering; the quality, quantity and cost of publicly funded services should be determined by the purchasers requirements rather than the producers preferences (Boston et al, 1996, page 5).

As a consequence of the reforms, many government departments and crown entities divested service delivery functions to private firms or consultants. While government reliance on the private sector for the provision of goods and services is not new, what is new, is the growing number of services which were previously provided solely by public organisations which are now being considered for external contracting:

‘Whereas contracting out was once limited to the more peripheral or secondary functions of the state and those activities which can be readily quantified and measured, such as garbage collection, it is increasingly being used to supply goods and services which lie at the core of the states responsibilities such as policy advice....and planning’ (Boston, 1995, page 83).

Boston (1995) identifies a number of issues arising from the trend towards contracting out public services, in relation to ‘risk management, institutional learning, the contract management skills of public agencies, political accountability and responsible

government' (Boston, 1995, page x).

Boston et al (1996) also raises important questions about contracting out, specifically determining the relevant criteria for assessing the quality of advice, the best institutional arrangements for generating and delivering good advice, and from whom advice should be sourced.

1.1.4 Impact of Reform on Planning Practice in New Zealand

The reforms of central and local government, and the introduction of the RMA have had a great influence on planning practice in New Zealand. Local government reform has encouraged the compartmentalisation of planning functions, the most obvious being the separation of policy and regulation, resulting in planners becoming specialised in different areas. There has also been a move towards contracting out various service delivery functions of planners, as has already occurred in central government.

Montz and Dixon (1993) claim that the introduction of the RMA, which included provisions for the mandatory assessment of environment effects, reflects the following major shifts in traditional planning practice:

1. Greater emphasis on the evaluation of environmental effects of activities rather than the regulation of land use activities, as provided for under the TCPA;
2. A shift from concern with planning as a process to planning as a means of achieving outcomes;
3. A shift from site-specific and discipline specific decision making towards a more integrated and less discipline specific practice (Dixon and Montz, 1993, page 89).

The RMA requires those who exercise powers under it to focus on the effects of resource use on the environment. The Minister for the Environment, Simon Upton (1995), stated that under the RMA, people are assumed to be able to make their own choices about the use of resources. The role of the planner is to ensure that the effects of those choices are consistent with the philosophy of sustainable management.

The Minister for the Environment's view of the new role of the planner, can be

compared to Forester's (1989) progressive planner, who is concerned with informing and empowering local citizens in the planning process. McClendon (1991) develops the notion of empowerment as one of customer service.

Within the new managerial context planning practice has been forced to become more directly responsive to the marketplace. With the increasing trend towards the contracting out of publicly funded services, together with the new requirements for all applications for resource consent to be accompanied by an AEE, the demand for planners in the private sector to provide these services has increased.

Under the new market orientated approach, which requires public agencies to provide services in the most cost efficient manner, services are determined and funded by the clients, not the planners (McClendon, 1991). It is the role of the client to:

‘determine the form of the service, how and when it is to be delivered and under what conditions it will be made available to them. It involves a conscious movement from production orientation to customer orientation...it means using technical knowledge and specialised expertise to create and deliver new customer satisfying services’ (McClendon, 1991, page 673).

McClendon (1991) claims that it is the role of the planner today to meet a growing demand for new, highly customised planning services with greater economy, efficiency and effectiveness.

The consultant planner is therefore required to deliver the services required by the client, constrained by what they want, and what they are willing to pay for it. While planners are required to act in the interest of their client, they must do so while maintaining obligations to the public, their profession and themselves. Hence the reductionism implied in limiting practice to the interest of the individual client challenges the notion of planning for the public good, and may be forcing the planner to compromise traditional values of professional integrity and responsibility to the public good.

Moore (1986) recognises this change in practice, stating that in the bidding situation it

becomes necessary for consultants to change their thinking and actions from that of trusted and knowledgeable professional advisors, to that of competitive merchants of technical services. He argues that the client in effect issues a challenge to the consultants to devise ways by which they can use their superior technical knowledge to beat the competition by naming a minimum price which will give the client exactly what is specified.

In summary, the purpose of statutory planning in New Zealand has shifted towards a more flexible approach to protecting the environment, and facilitating solutions developed by the community through the district planning process, and resource users through resource consent procedures. In parallel, management practices and principles have changed, changing the relationship between the planner and the public and the planner and the client. Practice has therefore been under pressure from two sources: a new community or locality-centred environmental mandate that is intrinsically more uncertain than under the TCPA, and a managerial code that makes clients more accountable.

The focus of this research is the impact of one aspect of the reforms, the competitive tendering of public services to the private sector, as being practiced in the transportation sector, by Transfund New Zealand, on planning practice.

1.2 IMPACT OF REFORM ON THE TRANSPORTATION SECTOR

The process of corporatisation, which included major changes to the way functions in central and local governments were performed, saw the creation of a new crown entity, Transit New Zealand (TNZ), to perform the combined functions of the former National Roads Board and the Urban Transportation Council. In 1995 another crown entity, Transfund New Zealand (Transfund) was created. Transfund is constituted by, and functions under the TNZ Act, and has the objective to 'allocate resources to achieve a safe and efficient roading system' (TNZ Act, 1989, section 3b).

The TNZ Act, changed the provision of professional services for the development of

roading projects, consistent with the wider shift of the public sector towards transparency and accountability, and the separation of the roles of the funder, purchaser and provider of government services.

1.2.1 Procurement of Professional Services

Section 27 of the TNZ Act requires all professional services contracts, for the development of roading projects funded by Transfund, to be contracted out to private firms by tender, with the price determined by a competitive pricing procedure.

TNZ produced a comprehensive Competitive Pricing Procedures Manual (CPP Manual) covering the engagement of both professional services and physical works, approved in June 1990. The manual was developed in conjunction with KPMG Peat Marwick and Works Corporation (previously Ministry of Works and Development), after extensive consultation and research on overseas practices.

While many overseas government agencies select consultants on the basis of professional qualification and competence alone, a procedure advocated by the Association of Consulting Engineers of New Zealand (ACENZ)³, TNZ decided that price should also be taken into account when engaging professional services for roading projects. TNZ considered competition to be an effective and low cost mechanism through which to secure quality roading services at low prices (Transfund New Zealand, 1997).

As a result of the TNZ Amendment Act 1995, the CPP Manual prepared by TNZ was approved and adopted by Transfund New Zealand in 1996, without any substantive amendments, in order to meet its requirements under Section 26 and 27 of the TNZ Act.

³ The Association of Consulting Engineers is a professional body representing the Consulting Engineering Profession within New Zealand. It acts as an administrative body representing the interests of its constituent members, who provide professional services to all types of clients.

The Transfund CPP Manual requires tendering authorities⁴ to prepare a Request for Tender (RFT) document which specifies the nature of the professional services required and the information to be supplied by the consultant in the tender. Consultants then use the RFT, which includes various engineering specifications and guidelines, to prepare their tender bid for the contract.

The most commonly used procedure for preparing a professional services tender is to: (i) select an appropriately skilled and balanced multi-disciplinary team (based on the specifications in the RFT); (ii) prepare a statement of how the professional services will be provided if the tender is successful, and the deliverables and outcomes the roading authority can expect; and (iii) provide the cost of the professional services (allowing for risks, contingencies and profit).

1.2.2 Role of Planning within the Competitive Pricing Regime

The development and operation of the roading system, including the construction of new roads, have the potential to generate adverse effects on the environment. All roading development projects undertaken by roading authorities⁵ are therefore required to comply with the provisions in the RMA to ensure that any adverse effects on the environment are ‘avoided, remedied or mitigated’ (Section 5, RMA). For the majority of projects, this will involve completing an AEE.

The professional services for new roading projects are therefore likely to include planning inputs to meet such legislative requirements. Planning inputs refer to the services undertaken by the consultant in order to obtain the necessary resource consents from the relevant local authority⁶. These services typically include consultation with interested and affected parties, the preparation of the AEE, and the application for resource consents.

4 Tendering Authority is defined by Transfund New Zealand (1997) as including Transit New Zealand and any local authority within the meaning of the Local Government Act 1974, or road controlling authority which prepares tender documents, invites tenders, lets contracts and/or carries out any other function associated with payments for physical works or professional services (Transfund, 1997).

5 Roading Authorities include TNZ who manage the state highway network and Local authorities, who manage the local roading network within their territorial boundary.

6 Local authority means any regional council or territorial authority within the meaning of the Local Government Act 1974.

1.2.3 Pricing the Professional Planning Services

The rationale behind the contracting out of professional services is to accentuate competition in the market so that competing parties are forced to make the most attractive offer possible to the client. In relation to roading projects, KPMG Peat Marwick (1990) state that competition is particularly good at increasing the likelihood that the roading authorities will be offered quality services at low prices.

Estimating the engineering design work in terms of costs and time involved in the contract is assisted by specific and well established roading design guidelines and specifications that have been developed and practised over decades, by organisations such as the Ministry of Works and Development. Consultants are required to have regard to a number of guidelines included in the RFT for the engineering services (Appendix A).

Consequently, it would appear that the engineering design works are relatively easy to price, and tender prices for these services would be expected to be similar between competing bidders. However, estimating the amount of planning services required to satisfy the requirements of the RMA, in order to obtain the necessary resource consents, is made difficult for the planner by:

- the relatively new requirements to provide planning services in accordance with the effects based approach of the RMA;
- the fact that the exact nature of environmental issues and the required amount of consultation are not often known at the time of tender preparation;
- the preference of tendering authorities for consultants to bid lump sums (Transfund New Zealand, 1997); and
- the lack of specific guidelines or code of practice for planning methodology.

Such factors are made even more difficult by the desire of the planning consultant to bid competitively in order to win the contract. Therefore the requirement to cost the planning services required within the CPP framework may be forcing consultants to make optimistic estimates of time and resources required for public consultation and preparation of the AEE, omission or underestimation of disbursements, such as the

employment of external experts, and the limiting of the use of sophisticated evaluation methods which might increase the labour costs of the consultants.

From a roading authority perspective, it is desirable that the consultant carries out the work in a way that is likely to obtain the required consents without the time delays and expense associated with public notification and hearings. This is only possible where the planners at the local authority are satisfied that all interested and affected parties will consent to the project, and where the proposal complies with provisions of both the RMA and relevant planning documents.

1.3 THESIS AIM AND RESEARCH OBJECTIVES

This thesis aims to examine the extent to which planning practice may be affected by the competitive tendering for the supply of planning services. The procedures implemented by Transfund New Zealand for the procurement of professional services for roading projects are examined as a case study, within which the impact of this facet of managerialism on one area of practice can be assessed.

The following research objectives seek to achieve the aim of the thesis:

1. Identify and assess the different procedures available for the procurement of professional services for roading projects, and those practiced by different organisations overseas.
2. Identify and assess the procedures used by tendering authorities in New Zealand for the procurement of professional services contracts
3. Identify the influence of the Resource Management Act on the development of roading projects in New Zealand.
4. Assess and evaluate the extent to which the procedures used by tendering authorities in New Zealand for the procurement of professional services for roading projects impact on planning practice.

1.4 CHAPTER OUTLINE

Figure 1-1 shows the Chapter outline for this thesis. Chapters Two, Three and Four provide an overview and background to the research.

Chapter Two explores the notion of competitive tendering, and identifies and analyses the different procedures available for the procurement of professional roading services, and those practiced by different organisations overseas. The procedures used by tendering authorities in New Zealand are then identified in Chapter Three.

The current planning framework in New Zealand, and the requirements included in the RMA related to the development of roading projects is included in Chapter Four. This chapter also identifies the potential impact of these provisions on roading projects, and the response of TNZ to the provisions.

Chapter Five outlines the Research Design and Methodology of the thesis.

Chapter Six presents the research findings, documenting the results of the questionnaires and interviews. The findings are grouped into four different aspects of the procurement process: (1) the adequacy of the RFT, (2) tender evaluation methods, (3) price models and (4) tender evaluation teams.

Chapter Seven integrates the key findings from the literature review and the survey, summarises the main conclusions of the thesis, reviews whether the aims and objectives have been met and identifies areas for further research.

Figure 1-1: Chapter Outline

